



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: ADA3664**

**Objector: An individual**

**Admission authority: The Governing Board of Beths Grammar School, Bexley**

**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 Beths Grammar School for Beths Grammar School, Bexley.**

**We have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.**

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

## 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 Beths Grammar School (the school), a selective academy school for boys aged 11 – 18 for September 2021. The objection is that:

- a) The arrangements are not sufficiently detailed or clear;
- b) The methodology for setting the qualifying standard does not operate to establish a reasonable qualifying standard;
- c) The same selection tests are re-used for late sitters;

d) The selection tests are standardised for age.

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 the London Borough of Bexley. The local authority is a party to this objection. Other parties to the objection are the school and the objector.

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

5. There are a number of aspects which are common to all twelve objections. We are aware that the objector has made objections to other schools in previous years about these same aspects. Those objections have been determined by different adjudicators. We have read the relevant previous determinations and taken them into account. Those determinations do not form binding precedents upon us, and we have considered each of these aspects afresh. The approach we have taken is to discuss each of the common aspects in the objections which have been made this year and agree the wording of our determinations in relation to those aspects. Identical, or similar, 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 10 April 2020. We are satisfied the objection has been properly referred to us in accordance with section 88H of the Act and it is within our jurisdiction. We have also used our powers under section 88I of the Act to consider the arrangements as a whole.

## Procedure

8. In considering this matter we have had regard to all relevant legislation and the School Admissions Code (the Code).
9. The documents we have considered in reaching our decision include:
  - a. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
  - b. a copy of the determined arrangements and the Supplementary Information Form;
  - c. the objector's form of objection dated 10 April 2020, supporting documents and further representations;
  - d. the school's response to the objection;
  - e. the local authority's response to the objection and further information provided by the LA;
  - f. a video sent to us by the objector about grammar schools; and
  - g. relevant previous determinations, research papers and court judgments referred to in the text which were identified by us and shared with the parties for comment.

## The Objection

10. There are four aspects to this objection. We have identified the relevant paragraphs of the Code 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 a number of aspects of the admission arrangements are unclear, including the phrase *"Those boys identified by the Local Authority as achieving one of the highest 180 scores in the selection tests"*. He says that it is unclear how an applicant achieves this prescribed standard. He also says that the arrangements are unclear because they do not set out the test dates, application deadlines or late testing provisions. Relevant paragraphs of the Code are 14, 1.8 and 1.17.

12. Second, the objector asserts that the methodology for determining the qualifying standard is unreasonable and does not operate to establish an objective standard of grammar school ability. The relevant paragraph of the Code is 14.

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

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

## Other Matters

15. The following other matters did not appear to comply with the Code:
- i. The arrangements do not make clear how parents are to be notified of the test arrangements and the test dates (paragraph 14 of the Code);
  - ii. There was no definition of the terms 'standard prescribed by the London Borough of Bexley', 'deemed selective' or 'eligible for a place' (paragraphs 1.17 and 14 of the Code);
  - iii. The arrangements refer incorrectly to the number of "*intended admissions*" for the year commencing September 2021. There is also a reference to "*planned admission number*". The references should be to the Published Admission Number (or PAN) (paragraph 14 of the Code);
  - iv. The term "*registered carer*" is not defined in the arrangements (paragraph 14 of the Code);
  - v. The Supplementary Information Form (SIF) referred to in the arrangements was not published as part of the arrangements (paragraph 14 of the Code);
  - vi. The definition of children who are looked after and formerly looked after refers to Residence Orders which have now been replaced by Child Arrangements Orders (paragraph 14);
  - vii. The arrangements for admission in 2021 were not published on the school's website or the local authority's website.

## Background

16. Beths Grammar School is a single sex boys' grammar school with a co-educational sixth form located in Bexley, South East London. The school converted to academy status in October 2010 and was rated by Ofsted as Outstanding in September 2012. The school has a Published Admission Number (PAN) of 192 for admissions to Year 7, and a PAN of 108 sixth form places available to external applicants, both male and female.

17. The objection relates to the admission arrangements for Year 7. The arrangements provide that only boys who attain the prescribed standard for admittance to selective schools in the London Borough of Bexley will be eligible for entry to the school. Where applications exceed the number of places available, the following oversubscription criteria are applied for applicants 'deemed selective in the Bexley Test' in the order below:

- 1) "Looked after or previously looked after children.

- 2) Those boys identified by the Local Authority as achieving one of the highest 180 scores in the selection tests.
- 3) Applicants with a sibling attending the school at the time of enrolment.
- 4) Applicants with a parent or registered carer employed by the school on a permanent contract at the time of application.
- 5) Up to 12 places for boys who are eligible for the Pupil Premium and/or Free School Meals and deemed selective at the time of application in rank order of distance from the school.
- 6) On the basis of proximity to the school.
- 7) Where distance is identical to 0.001 of a mile, the scores in the selection tests will be used as a tie-breaker with priority given to the higher score”.

18. The arrangements also say: “On occasions it may be possible for us to offer places from our Reserved List. Any offers from this list will be made once our waiting list of selective students has been exhausted. Dependent upon the agreed pass mark (which is an arbitrary figure), we would be content to offer to students who attained a minimum of 214 – the mark that, historically, has not been offered below. Students from the Reserved List would be offered in rank order and according to the criteria listed above. Once those on the highest mark below the pass mark have been offered, the same would then be done with the next mark, and so forth.” The arrangements also say, “Parents of children in Bexley High School are notified of these arrangements and announcements are made in the local press”.

19. The number of first preference applications to the school for the last three years; the numbers of these applicants who attained the ‘qualifying score’; and the number of places allocated within each oversubscription criteria for each of these three years are set out in the table below.

Year of entry to the school	2020	2019	2018
1 <sup>st</sup> preference	106	108	165
Selective 1 <sup>st</sup> preference	81	90	142
SEN	0	0	0
LAC	0	0	2
Top 180 Scorer	2	4	4
Sibling	15	17	17
Staff Child	0	9	0
Pupil Premium	9	0	0
Distance	166	162	169

## Consideration of Case

### The objection

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

### **The arrangements are unclear**

21. The objector considers that the arrangements are unclear in the meaning of the phrase “Those boys identified by the Local Authority as achieving one of the highest 180 scores in the selection tests”. He asks whether this is the 180 first preferences to the school or the first 180 boys taking the tests for all Bexley grammar schools. He wonders whether the phrase means that 180 places are allocated in rank order. He also considers that the arrangements are unclear about how the qualifying standard is met, and because they do not set out the test dates, application deadlines or late testing provisions.

22. The objector did not suggest in his form of objection that the methodology for setting the qualifying standard is unreasonable or operates unfairly, however he did suggest this in the later submissions he was invited to make. All that is said in the arrangements themselves about how the qualifying standard is set is that it is an 'arbitrary figure' (we have not taken this to mean that it is a figure plucked out of the air). Without any information about how the standard is set, it would be difficult to argue that it is set unreasonably or operates unfairly. It was legitimate for the objector to make these points subsequently once the methodology had been explained, and we have therefore considered them. When we asked the school to respond to the issues about lack of clarity raised in the objection, the response was:

"The top 180 are the highest scores across the test. Those students who achieve one of the highest 180 scores in Bexley's test are awarded top scorer status which gives them priority similarly to that of a confirmed sibling. The cut off score varies from year to year dependent upon the scores achieved by those sitting the test. The decision to set the cut off is made at local authority level.

The Local Authority Selection Panel, having considered previous trends of acceptance rates and offers of selective places, and taking into account the number of selective places available (832) in the four selective schools, decides how many students should be deemed selective. This year, for example, the number was 2027. In setting this figure they decided not to set aside an assumed number of places for subsequent decisions by the Head Teacher Review. They were also aware that a number of students had not completed the tests at the time the decision was made. It was decided that any student subsequently completing the tests who reached the total score set as the selective standard should be deemed selective, but the number of students deemed selective at this stage should not be reduced to compensate for such students.

It should be noted that, since Bexley's system is competitive amongst the students taking the test each year, the selective score will change from year to year, depending upon the number of selective places available and how the students scored in the tests in the particular year. Therefore, it would not be correct to compare the selective score in any one year to those in other years.

The Panel concluded that students with aggregate test scores of 216 and above should be deemed selective, this year".

23. In response to the suggestion that the arrangements are unclear because they do not set out the test dates, application deadlines or late testing provisions, the school's response was: "We would argue that the admission process for those schools who use the Bexley Selection Test are clearly detailed on Bexley local authority's website from the May prior to the test being sat. At the time the parent registers their child for the test they would have read and understood the information regarding it and the type of language used by the local authority relating to it. Our policy does not set out these details as they are set by the local authority and not the school. We administer the test under instructions from the local

authority. We receive the test material from the local authority. We are the examination centre for the test only”.

The school has also said that there is a link on its admissions page which takes you directly to the ‘Selection Tests’ page on Bexley local authority’s website. We went to the section on the school’s website labelled ‘Year 7 admissions’. There is indeed a link to a page on the Bexley local authority website entitled ‘Selection Tests’ which says that Bexley has four grammar schools and that if a parent wants their child to go to any of them, the child must sit an 11+ test. Registration is now closed for admissions in September 2021, but there is a link to another page called ‘About the Test’ which sets out further details. At the end of this page there are links to a PDF Booklet entitled Admissions to Secondary Schools in September 2021, which may be the schools’ prospectus. The final sentence says: If you have any other questions about selection tests we have a PDF booklet - Selection test leaflet about the test. If you can’t find the answer there, get in touch.”

24. The pdf selection test leaflet provides essential information for parents. We have set out what the leaflet says in relation to the points made in this objection. It explains that the test papers are marked by an external company. The raw scores (the number of correct answers in each section) are converted to an age-standardised score to make allowance for the child’s age at the time of the test and to ensure that younger children are not disadvantaged. Children will be given a separate age standardised score for each of the three subject areas, verbal ability, numerical ability and non-verbal ability, and one total age standardised score that will be used to decide whether the child is suitable for selective education or not. The total score is weighted, by adding 50 per cent of the verbal ability score, 25 per cent of the numerical ability score and 25 per cent of the non-verbal ability score. The mean (average) total weighted age-standardised score is 200; approximately two thirds of candidates will achieve a score within the range of 170 – 230.

25. The leaflet says that emails with the test results will be sent by 7 October 2020. Results will not be available online. The test result will be sent to the head teacher of the child’s primary school for information and to assist in the preparation of a review request if considered appropriate. If a child is deemed suitable for a selective education and the parent wishes him or her to be considered for a grammar school place, they must list one or more grammar schools in Bexley among their preferences on the secondary school Common Application Form. There will be an opportunity for all head teachers to request a review of the score achieved in the test, but this will not happen until after the results have been published and after the closing date for secondary school applications to be submitted<sup>1</sup>.

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<sup>1</sup> The arrangements for admission in September 2021 have been varied as a result of the Covid 19 pandemic. The test dates have now changed, and parents will not be aware of their child’s test result or the qualifying standard until after the deadline for expressing school preferences (31 October 2020) has passed.



26. If the child is not deemed suitable for a selective school place, but the parent considers that there may be grounds for a review of the decision, the parent is advised to express a preference for a grammar school on the application form and then discuss with the child's head teacher whether a request for a review should be made. The leaflet says that selective decisions will only be changed by the Head Teacher Review Panel in exceptional circumstances. Additionally, the local authority has informed us that the Review Panel considers the child's 'academic merit', and that there must also have been exceptional circumstances leading to a perceived underperformance in the test in order for the Review Panel to deem that a child who has not achieved the pass mark is nevertheless of the qualifying standard.

27. The leaflet also says that selectivity is based on the total weighted age-standardised score achieved in the test. All children who have taken the test will be ranked in order of their total age-standardised score. The local authority will decide how many children should be deemed suitable for a selective education in order to fill the places available and will set the selective score accordingly<sup>2</sup>. More children are deemed suitable for a selective place than places available, because the local authority knows from experience that some children will be offered places at other higher preference schools.

28. By way of an example, the leaflet says that, in 2019, 6424 children sat the test and 2027 achieved the selective standard, with 800 grammar school places available. The 180 children with the highest total age-standardised scores are placed in one of the highest priority groups for their preferred grammar school. For other pupils who are deemed selective, there is no guarantee of an offer of a place. Grammar schools will offer places according to their oversubscription criteria, and in most cases the deciding factor will be the distance from home to school. The leaflet says that the full admissions policies for each of the schools can be seen on the schools' websites or in the 'Admission to Secondary Schools in Bexley 2021' booklet. If places in grammar schools remain unfilled at the end of the allocation process, places may be offered to children who missed the selective score by a small margin. Any available places will first be offered to those who scored one mark below the selective score, in order of the oversubscription criteria of the school, then to those who scored two points below the selective score. All decisions are said to be made by a panel consisting of head teachers and senior local authority officers.

29. The leaflet explains that, when parents register their child to sit the tests they are provided with details of the date, time and venue, and there is said to be a link on the registration page to familiarisation tests which parents are encouraged to go through with their child. Because registration for the tests is closed, we were unable to access this information.

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<sup>2</sup> This is not in fact correct. Information submitted later indicates that the qualifying standard is proposed by LA officers to the grammar school head teachers who then agree between them what the qualifying standard should be.

30. It is significant that most of the relevant information is not available on the school's website. The school considers that, because the testing arrangements are facilitated by the local authority, it is reasonable for the local authority to tell parents how the process works. Whilst the school's attitude is understandable, there does appear to be an error in its understanding of the responsibilities it has under the Code. The school is its own admission authority and is the body responsible for complying with the requirements of the Code. Paragraph 5 of the Code makes this clear: **"It is the responsibility of admission authorities to ensure that admission arrangements are compliant with this Code. Where a school is the admission authority, this responsibility falls to the governing body or Academy Trust"**. The school has made the point several times in response to this objection that it is merely a test centre administering the tests on behalf of the local authority. In fact, the legal position is entirely the opposite. The local authority is administering the tests on behalf of the school.

31. This brings us to the questions of what exactly the school's admission arrangements are, what must they contain as a minimum and when this must be made available on the school's website. It is frequently the case for selective schools that, because parents need to be made aware of a large number of facts about the nature of the tests, deadlines for registration, test dates and so on, not all of these facts are published in the same place. The document referred to as the school's admissions policy and published on the school's website (as admission arrangements are required to be) contains very little information. Unless there are other documents which can also be reasonably considered to be part of the admission arrangements and which have been made available according to the timescale set out in the Code, there is no doubt that the arrangements for this school are insufficiently detailed to comply with the requirements of the Code.

32. The Code defines admission arrangements as: "... the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered".

Paragraph 14 of the Code states that: "In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."

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

33. A parent looking at the admissions policy published on the school's website would be able to understand that, in order to be eligible for a place, their son would need to attain a qualifying score and that, if there are more boys qualifying than places available, the oversubscription criteria will be applied. However, there is no detail in the policy about the procedure or practices used to determine whether a place will be offered, and no information about the process for selection. Although it is clear that to be eligible for a place, applicants must meet the qualifying standard in some form of selection tests,

because there is no information at all in the policy about what this means, our view is that this document by itself is not sufficiently detailed to comply with paragraphs 14 and 1.17 of the Code.

34. That said, if one follows the links through, all of the necessary information is available for parents on the local authority's website and in the pdf leaflet. Whilst we consider that any parent considering making an application for a place at the school would probably follow the path indicated to us by the school and arrive at the relevant web pages and information leaflet, our view is that the local authority website pages and pdf leaflet cannot presently be construed to be part of the school's admission arrangements. Parents are sent on a circular journey from the admissions policy itself to the Year 7 admissions section on the school's website, to the registration page on the local authority's website, to the 'About the Tests' web page, to the pdf leaflet and then to the booklet about admissions to secondary schools or the school's own website. The problem can be remedied easily in the short term by inserting a direct link to the pdf leaflet about the selection tests into the admissions policy document so that the information on these pages can be said to form part of the arrangements. Either this will need to be done or the additional information which is set out in the leaflet will need to also be set out in the admissions policy published on the school's website in order for the arrangements to comply with the Code.

35. The governing board, as the admission authority for the school, must acknowledge that it has the responsibility to ensure that parents are able to look at the arrangements published on its website and understand easily from those arrangements how places at the school will be allocated. However, although the leaflet contains the information needed in order to comply with paragraphs 14 and 1.17 of the Code, we are told that it is not posted on the local authority's website until Easter. In terms of the arrangements for admission in September 2021, it would not be a problem to simply insert a link to the pdf leaflet into the arrangements. However, the practical difficulty in the longer term with simply incorporating the leaflet into the school's admission arrangements is that the arrangements must be determined and published by 15 March, whereas the pdf leaflet is not produced until Easter.

36. The local authority says: "Bexley's Selection Process is annual and with testing in September, results in October, reviews in November and outcomes in December, the annual cycle does not begin again until January, when we set dates for the Test taking place later that year. Schools are required to determine their Admission Arrangements in excess of 18 months ahead of the September when they come into effect. It is therefore not possible for Beths Grammar School to provide additional detail relating to test dates within this timeframe". The local authority produces the leaflet once test dates and arrangements have been confirmed and ahead of any registration period. This sets out the arrangements for the tests and is available at Easter each year. The school and the local authority will need to ensure that the leaflet is ready to publish by 15 March if its contents are to be incorporated into the school's arrangements. If the relevant dates are set in January, the leaflet could either be published earlier or, if this is not possible, the school could publish an addendum to the arrangements incorporating the text of the leaflet and inserting the relevant dates. Much of the information in the leaflet is generic. It is for the school to determine how to ensure that future sets of arrangements comply with the Code. Our

jurisdiction here relates to the school's admission arrangements for 2021 which, as we have said, are not sufficiently clear to comply with paragraphs 1.17 and 14 of the Code.

37. We were initially unclear about the meaning of the phrase "Those boys identified by the Local Authority as achieving one of the highest 180 scores in the selection tests". Relevant paragraphs of the Code are paragraph 14 (set out above) and 1.8., which says that "Oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation". We now know that the 180 children with the highest total age-standardised scores are placed in one of the highest priority groups for their preferred grammar school. Although the phrase means what it says, its meaning is not immediately clear without additional explanation. As this is one of the oversubscription criteria, parents need to understand that there is something called 'high scorer status' which creates an additional level of priority over applicants who are merely deemed selective. We agree with the objector that the arrangements are not sufficiently detailed to be clear about the meaning of this phrase, and our view therefore is that this aspect of the arrangements does not comply with paragraphs 14 and 1.8 of the Code.

38. The objector considers that the arrangements are unclear about how the qualifying standard is met, and because they do not set out the test dates, application deadlines or late testing provisions. Paragraphs 14 and 1.17 are relevant. We agree with the objector that the admissions policy published on the school's website contain very little information about how the qualifying standard is met. They say that the standard is prescribed by the London Borough of Bexley; that it is an arbitrary figure; and that it *may* be possible to admit applicants who score below the qualifying standard if they score a minimum of 214 marks.

39. Our view is that in order for the arrangements to be sufficiently clear, where the pass mark is not a pre-established one, the arrangements must say that this is the case. They must also say when the pass mark will be set, and when parents will be told whether their child has reached the pass mark. The arrangements do not provide parents with this information and so are not sufficiently clear to comply with paragraphs 14 and 1.17 of the Code.

40. The arrangements do not set out the registration deadline, test dates, application deadline or late testing provisions. They are required to do so, or at the very least signal exactly where parents can find this information and make it available by a one click direct link so that it can be said that the information forms part of the arrangements. For the above reasons, we uphold this aspect of the objection. We have also identified other aspects of the arrangements which are not sufficiently clear, and which we have considered below under the subject heading of 'Other Matters'.

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

41. There is no requirement that the qualifying standard (pass mark) must be set using a particular methodology or that it be set by a specified body. However, the arrangements must be reasonable and operate fairly; therefore we consider that the pass mark must be set by a competent person or body. There is no requirement that admission arrangements

must describe how the pass mark is set, but where arrangements do describe how it is set, they need to do so clearly.

42. We are informed by the school that the standard required to be eligible for admission to the school is set by the Local Authority Selection Panel comprised of senior council officers and head teachers from the Bexley grammar schools. We were told that head teachers of the non-selective schools are invited to attend. The Panel meeting is chaired by the Head of School Improvement. The qualifying standard is set taking account previous trends of acceptance rates and the number of selective places available (832). The school says that this year, for example, it was decided that 2027 applicants were deemed to be suitable for a selective place. The score changes from year to year depending upon the number of applicants taking the tests and the test scores. The school considers that it would not be correct to compare the qualifying score in any one year to the qualifying score in any other years. This year (2020) the score was set at 216. We are also now aware that there is a review process whereby the head teacher of a child's primary school can request that the child's score is reviewed. If the review is successful, the child will be deemed suitable for a selective place.

43. The local authority has provided the following additional information: “.. there are a number of factors taken into consideration when determining the Selective standard not least including the number of selective places available and how many selective places, if any, were unable to be filled with Selective applicants the previous year. The combined number of successful head teacher reviews and candidates deemed Selective in the late test session is negligible in comparison with the overall cohort sitting the test, and therefore does not significantly affect the analysis behind determining the Selective standard. Places are not reserved as both processes are concluded ahead of the London-wide allocation phase. Therefore if a pupil is deemed Selective following either the late test or the review process they will be eligible to be considered for a Selective school in Bexley in the initial round of offers made on National offer day, against the oversubscription criteria of any to whom they applied, and alongside all other applicants already deemed Selective on results day. This means that there is no disadvantage posed to any candidate deemed Selective, regardless of the pathway to being deemed so”.

44. The selection panel took place electronically this year, and there are no minutes. The local authority has sent details of a confidential email conversation between council officers and head teachers which led to the decision to determine the qualifying score for admission in September 2020. This was circulated to the parties in the case. The contents are confidential, and so we will not refer to the discussion in detail. Suffice it to say that the discussion was facilitated by the local authority and various options were suggested by the local authority, but the decision was made by the head teachers of the four Bexley grammar schools.

45. The school has pointed out that it does not know the ability of applicants before the test results. It does not compare the test results of one year group against another. Both the school and the local authority consider that the setting of its pass mark is a rational and fair process. We agree. From the CEM familiarisation papers and other evidence we have

seen, it is apparent that the same areas are tested each year with similar types of questions; the appropriate academic standard is set with reference to the cohort of boys taking the tests each year, which is reasonable; the school is not seeking to establish that the boys who are admitted are of exactly the same academic ability as those admitted in the previous year (in order to do this the school would need to use identical tests each year and have an identical pre-set pass mark); it is seeking to ensure that places at the school are filled by applicants who will be capable of coping in the academic environment of a grammar school. In achieving these entirely legitimate objectives, it is clearly sensible for the persons with detailed knowledge of the school, such as the head teachers for the four Bexley grammar schools and senior council officials with experience in the admissions process for these schools, to be influential in this process.

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

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

48. However, many grammar schools choose not to have admission arrangements which are based solely on achieving the highest scores in selection tests, 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.

49. 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.

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

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

52. From our experience in previous cases, we know that various factors are taken into account in setting the qualifying score where it is set after the test scores are known. Each year the number of applicants sitting the tests and the ability of those applicants will be slightly different, not least as the number of children of the relevant age group in any part of the country will be different from year to year. It is also possible that, notwithstanding the extensive work undertaken to benchmark the tests against those used in previous years, the level of difficulty of the tests will be slightly different. These factors will affect the level at which the qualifying score is set.

53. The aim, as the objector says, is to fill the school to PAN, which is a legitimate aim. Grammar schools are able to have vacant places where there are insufficient applicants who meet the required standard, but most choose not to do so. Each pupil brings an allocated amount of funding, which schools need. We also know from our experience that schools regularly fall into budget deficit where they are unable to fill to PAN. The factors taken into account in setting the qualifying score are the number of applicants, the range of test scores, and the standard of education at the school. The objective is to ensure that enough offers will be accepted; that those who accept an offer for a place at the school will

be able to thrive in the particular academic environment at that school; and that the school will maintain, or improve, its level of achievement in public examinations.

54. The process is complicated by the fact that parental preference is unpredictable, and so the qualifying standard will need to be set at a level where more applicants achieve the qualifying standard than there are places available. However, where it is set too low, there will be a large number of dissatisfied parents whose child has achieved the qualifying standard but not been offered a place. In our view, setting the qualifying standard is a challenging task, and is one that must be undertaken by persons who have detailed knowledge of the school, the patterns of offers and acceptance in previous years and most importantly the day-to-day operation of the school itself.

55. As mentioned above, the qualifying standard for this school is set by a panel comprising the grammar school head teachers and senior local authority officials with knowledge of the grammar schools' admissions process. This appears to us to be a fair and objective method of setting the qualifying score.

56. Finally, on the question of fairness, 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".

57. With respect to the objector, the video contains a number of statements which are critical of the types of tests used by grammar schools (including statements that they disadvantage Pupil Premium applicants and are hijacked by middle class parents who can afford to have their children tutored), but it cites no evidential or research basis for these statements. The CEM employee tribunal case indicated that there had been no manipulation of the test scores. Therefore, if anything, CEM was over-zealous 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 argues must be published. We were unable to find anything in the Code which could be interpreted to impose such a requirement.

58. We do not consider that the Code imposes a requirement for admission authorities to set out the qualifying score in the arrangements unless there is a pre-set qualifying score



which the arrangements determine. It would not be possible to set out the score in the arrangements if it is not determined until after the test results are known. There is no requirement to explain the methodology for setting the score; the mean used in the distribution; what standard deviation is used and why; or the full standardisation process. Neither do we find any need for the arrangements to contain a statement that no questions will be removed from a test after being sat on the basis that “they did not function as expected”. As long as the same questions are removed for all applicants, this practice does not appear to be unfair or unreasonable. For these reasons, we do not uphold this aspect of the objection.

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

59. The admissions policy published on the school’s website makes no mention of late testing, although in our view the arrangements should state clearly whether, and in what circumstances, applicants will be offered the opportunity to take the tests at a later date. We are aware that there is more than one round of tests because we have read the information in the pdf leaflet about the selection tests which contains the following section:

“If your child is unwell on the day of the test, or if there are serious personal circumstances that might affect performance in the test, such as the death or illness of a family member, you should notify the Head Teacher of your child’s school and not send your child to the test. Arrangements will normally be made for your child to sit the test at a later date. Reasons other than illness or serious personal circumstances will not be accepted, and a medical certificate or other appropriate evidence will be required. It is not possible for allowance to be made retrospectively if a child is allowed to sit a test when ill or upset. Children who become ill during the test and are unable to finish the questions will not be allowed to sit the test again. The Review Panel will make a decision on whether he or she should be deemed selective”.

60. The local authority website says something similar. Nowhere is it said that the same tests are used for late sitters, but the school and the local authority have confirmed that the same tests are used. The school has said: “There is no mention in the Admissions Code that a test cannot be reused. Tests are held on different days because of the number of students sitting the test. Given the fact that the test is competitive, there is no advantage to sharing any content from the test, even if a student were able to recall parts of it. The School has no control over the content of the test. We are an examination centre for the test only. We act under the instruction from the local authority”. As we have said above, there does appear to be a misunderstanding on the part of the school. The school is not simply an examination centre, it is the admission authority.

61. The local authority has said: “... there is no evidence and neither do we believe that parents/carers of pupils taking the test first then share any answers with those taking a later test session. Analysis of those taking the earlier test in 2019 revealed a higher percentage of pupils were deemed selective than those taking a later test session”.

62. 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.

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

64. 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.

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

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

the questions on a website knowing that other children are about to take the same test, the parent could be enjoined to take down the content of the website...”

66. 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 sitters 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. Admission authorities generally require substantiating evidence before they will agree to a particular candidate being late tested. Indeed, paragraph 5.1 of the arrangements impose this requirement. 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.

67. 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...”.

68. 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.

69. 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.”

70. 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.

71. 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.

72. 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.

73. 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.

74. 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.

75. 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.

76. 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.

77. 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.

78. 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.

79. 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.

80. 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.

81. 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 sitters.

82. 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.

83. 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.

84. In the light of that conclusion, we have not sought to establish the precise cost to the school, or other schools, of commissioning a separate test for late sitters. We accept that there would be some cost attached, and that it would be extremely difficult to ensure fairness as between candidates sitting different tests. Given that we have concluded that the practice of reusing the same test is reasonable, objective and fair, there is no reason for

the school to expend money or time exploring whether a second test could be provided for late sitters. We therefore do not uphold this aspect of the objection.

### **Age standardisation**

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

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

87. 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.

88. 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."

89. 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.

90. 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.

91. The school has said in response to the objection that CEM believe that age standardisation should be used as, in extreme circumstances, there can be up to a year difference between the ages of the children sitting the test. "One year may not sound like a lot but children who are nearly a year older during the Selection Testing have a distinct advantage over younger children if scores are not adjusted. We are not involved with any standardisation process. The school receives students after this process has been completed".

92. 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?

93. 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".

94. 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.

95. Dealing first with the issue of clarity, the arrangements refer to "the standardised score" but the term is not explained. However, there is an Information Booklet about the tests accessible via one click from the admissions section on the school's website in which the term is explained. The Booklet is essential reading for any parent whose son is intended to sit the Entrance Tests. The term 'standardised test' is explained as follows: "Test Results are standardised according to the age of the pupil at the time of the Entrance Test by year, month and day".

96. 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.

97. 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.

98. 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.

99. 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.

100. 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.

101. 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.

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

103. 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.

104. The objector refers to the fact that the Key Stage 2 Standard Attainment Tests (KS2 SATs) are taken within a few months of the 11+ tests and are not age standardised (we think the KS2 SATs are taken several months after the selection tests). Whilst the objector

is right that the KS2 SATs are not age standardised, it is also true that summer born children as a group do less well in the KS2 SATs than autumn and spring born children. Of course, KS2 SATs tests serve a different purpose to the 11+ tests, and the fact that there is no need for KS2 SATs tests to be age-standardised has little bearing on what is appropriate for 11 + tests.

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

### Other Matters

106. In a letter dated 11 June 2020 the case manager explained on our behalf that there were a number of other matters which did not appear to comply with the Code. The arrangements state: "Parents of children in Bexley primary schools are notified of these arrangements and announcements are made in the local press". We asked why the arrangements do not explain how the parents of children in Bexley primary schools are notified, which publications contain the announcements and when these announcements are made. Our view was that parents should not be expected to scour all 'local publications' for the announcements. The procedure for applicants not attending Bexley primary schools is not explained at all in the arrangements. We explained that this appears not to comply with paragraph 14 of the Code.

107. The school response was "This is one for Bexley local authority as about their advertising regarding testing". The local authority's response was that the local authority send a leaflet which contains the registration deadline and the test dates to all Bexley primary schools, regardless of whether they host the test or not, to ensure all Bexley children receive a copy. The local authority also retains the address labels of all schools that received test results in the previous year and provides a copy of the leaflet to each of these schools. This is done before the registration process goes live in the first week of May. This is a reasonable method of making local parents aware of the arrangements for the test, provided that the local authority asks that schools receiving the leaflet take steps to make parents who may be considering making an application to the school aware of its contents. But the statement in the arrangements is plainly incorrect. It is not a clear explanation of how parents are notified, and the arrangements will therefore need to be revised in order to reflect what actually happens.

108. Paragraph 1.17 of the Code requires that the arrangements for selective schools must publish the entry requirements. The arrangements for the school state that "Only boys who attain the standard prescribed by the London Borough of Bexley for admittance to

selective schools in the Borough will be eligible to be considered for entry to the school". There is a later reference to applicants "deemed selective in the Bexley Test". There is no explanation of the terms "standard prescribed", "deemed selective", or "eligible for a place".

109. We explained to the school that this appears in contravention to paragraph 1.17 and also paragraph 14 of the Code. which requires that the practices and the criteria used to decide the allocation of school places are clear. The school's response was that these terms all mean the same thing, namely that an applicant has achieved the qualifying standard either through achieving the relevant test score or by virtue of being deemed selective by the Head Teacher Review Panel. The arrangements will need to be revised so that the terminology is consistent, and the arrangements will need to set out how an applicant becomes eligible for a place at the school. There is currently no mention of any Head Teacher Review Panel in the admissions policy published on the school's website.

110. The arrangements state: The number of "intended admissions" for the year commencing September 2021 is 192 at age 11. There is also a reference to "planned admission number". The reference should be to the Published Admission Number (or PAN), and the arrangements will need to be revised so that the correct terminology is used throughout.

111. The term "registered carer" is not defined in the arrangements, and the term is therefore unclear. The school was made aware that this appeared not to comply with paragraph 14 of the Code. According to the school, the term means "someone who is responsible for the child with their GP or as a registered carer of children – for instance a parent or foster carer". We remain unclear as to the meaning of the term despite this explanation, and the arrangements will need to be revised to define it clearly.

112. The SIF referred to in oversubscription criterion 5 appeared not to be published as part of the arrangements. Footnote 4 on page 5 of the Code makes clear that "Admission arrangements means the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered". It was explained to the school that this appeared not to comply with the requirements in paragraph 14 of the Code. We subsequently found the SIF on the school's website in the section entitled Year 7 admissions. There was also a link in this section to some 'frequently asked questions' (FAQs) which contained some useful information about the process of determining eligibility. We would observe that it may be confusing to parents to have the admissions policy in a different place to the Year 7 admissions section which contains the SIF and the FAQs.

113. The definition of children who are looked after and formerly looked after is correct, save that Residence Orders have been replaced by Child Arrangements Orders. The school has agreed to correct this when it is next required to revise the arrangements.

114. The arrangements for admission in 2021 were not published on the school's website or the local authority's website. The school has now rectified this. We are grateful to the school for its cooperation in this matter.

## Summary of Findings

115. In summary, and for the reasons set out above, we find the arrangements do not explain the process for selection with sufficient clarity and will therefore need to be revised. We find that affording priority on the basis of eligibility for the Pupil premium is lawful and permissible under the Code. We do not find that affording priority to these applicants operates to cause an unfairness to applicants on higher scores who have been ‘displaced’. We find that re-use of the same tests for late sitters is reasonable and we have found no evidence that this practice causes an unfairness to applicants for this school who sit the tests in the first round. We find the use of age standardisation in the selection tests to be reasonable. We do not find that the use of this practice operates to cause an unfairness to older children.

116. We find that there are other aspects of the arrangements which do not comply with the Code and will need to be revised. The admission authority must ensure there are reasonable arrangements in place for publicising the dates for the selection tests (even if the local authority manages this process on behalf of the school, it is the school’s responsibility to ensure that the process operates in accordance with the requirements of the Code). The admission arrangements for the school must state correctly what the relevant process is. Parents must be able to look at the arrangements and understand that their child will be eligible for selection if the parents register the child to sit the tests; the process for registration and the test dates should either be set out in the arrangements or clearly signalled and accessible via a one-click link.

117. We find that the terms “standard prescribed”, “deemed selective”, or “eligible for a place” will need to be defined. Parents need to be able to understand easily that their child will be eligible for selection if they reach the qualifying standard in the tests or are deemed selective by a Review Panel; that qualifying standard is set after the test results are known; and that parents will be notified of the qualifying standard together with their child’s score. (We note that for this year only, parents will need to express a preference for the school before they know whether their child has reached the qualifying standard).

118. We find that the references to the “intended admissions” for the year commencing September 2021 and “planned admission number” will need to be replaced with the statutory terminology as referred to in the Code, namely the **Published Admission Number** (PAN). We find that the SIF must be published alongside the admission arrangements or clearly signalled and accessible via a one click link. We find that the term “registered carer” needs to be defined clearly. Finally, we find that the definition of children who are looked after and formerly looked after needs to be revised in order to reflect the fact that Residence Orders have been replaced by Child Arrangements Orders.

## Determination

119. 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 Beths Grammar School for Beths Grammar School, Bexley.

120. We have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

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

Dated: 13 October 2020

Signed:

Schools Adjudicator: Marisa Vallely

Schools Adjudicator: Ann Talboys