Office of the Schools Adjudicator

Determination

Case reference: ADA3675

Objector: An individual

Admission authority: The Governing Board of Marling School

Date of decision: 13 October 2020

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, Mrs Talboys and I do not uphold the objection to the admission arrangements for September 2021 determined by the governing board of Marling School for Marling School, Gloucestershire.

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 Marling School (the school), a selective academy school for boys aged 11 – 16 with a co-educational sixth form for September 2021. The objection is to the following aspects of the arrangements for admission to Year 7:

a) the methodology for setting the qualifying standard for admission and lack of clarity as to how the standard is set;

b) priority being afforded to applicants eligible for the Pupil Premium;

c) re-use of the same selection tests for late sitters and late applicants;

d) the use of age standardisation in the selection tests; and

e) a lack of clarity in the arrangements as to how an application made by a girl who self-identifies as a boy would be treated.

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

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

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

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

Jurisdiction

7. The terms of the Academy Agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing board, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 24 April 2020. We are satisfied the objection has been properly referred to us in accordance with section 88H of the Act and it is within our jurisdiction.

Procedure

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

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

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

b. a copy of the determined arrangements, which include the Supplementary Information Forms;

c. the objector's form of objection dated 24 April 2020 and supporting documents;

d. the school's response to the objection;

e. information provided by the LA;

f. confirmation of when consultation on the arrangements last took place;

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

h. relevant previous determinations, research papers and court judgments referred to in the text which were identified by us and shared with the parties for comment.

Objection

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

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

12. Second, the objector considers that affording priority in the oversubscription to applicants eligible for the Pupil Premium creates an unfairness to applicants who are not eligible, and that it was never the intention of the Government to have a two-tiered system which permits Pupil Premium applicants to be deemed selective on a qualifying score which is lower that the qualifying score for other applicants. In the case of this school, the qualifying standard is the same for all applicants. Relevant paragraphs of the Code are paragraphs 1.39A. and 14.

13. Third, the objector considers that re-using the same selection tests for late sitters and late applicants renders the testing process subject to abuse, as those who sit the tests in the main round may pass on the questions to those sitting the tests at a later date. 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.

15. Fifth, the school admits only boys in Years 7 – 11, and the objector considers that the arrangements are unclear as to whether a girl who self-identifies as a boy could be admitted to any of these year groups. Paragraph 14 of the Code is relevant.

Background

16. Marling School is a single sex boys' grammar school with academy status located in Stroud, Gloucestershire. It is the oldest secondary school in Stroud, having been founded in 1887. The school converted to academy status in 2011 and was rated by Ofsted as Outstanding in November 2013. The school has a Published Admission Number (PAN) of 150 for admissions to Year 7, and a PAN of 50 sixth form places available to external applicants, both male and female. It is heavily oversubscribed. The school has mentioned that 900 applicants (approximately) sit the Entrance Tests for admission to Year 7 each year, and data provided by the LA shows that in 2020, 487 applications were received; in 2019 the figure was 520; and in 2018 the figure was 519.

17. As we have said, the objection relates to the admission arrangements for Year 7. The arrangements provide that all candidates are required to sit an Entrance Test. Parents are told their child's score and whether he has met the qualifying standard for entry to the school. The arrangements say that the parent of a boy who has met the qualifying standard may express a preference for the school through the common applications process. Only candidates who meet the qualifying standard in the Entrance Test will be eligible to be considered for admission to the school. The arrangements say that the qualifying standard is not a pre-defined pass mark, but reflects a candidate's position in the rank order of standardised scores in the Entrance Test.

18. Where applications from candidates who have met the qualifying standard exceed the number of places available, the following oversubscription criteria will be applied:

a. Any looked after or previously looked after boys who have met the qualifying standard.

b. Any boys who appear to have been in state care outside of England and ceased to be in state care as a result of being adopted who have met the qualifying standard.

c. Any candidate attracting Pupil Premium funding (those who have been registered for free school meals at any point in the six years prior to the test day) who have met the qualifying standard.

d. Other qualifying candidates in test rank order.

19. Of relevance to this objection is the section in the arrangements on late-testing. This says:

"If, due to illness or exceptional circumstances (such as accident or sudden bereavement) a child who is registered cannot sit the test on Saturday 12 September, the school may

organise a replacement test date, typically 10 days after the original test date. Parents/Carers must contact Marling School's Admissions Officer in advance of the test day and certainly before the test commences if their child cannot sit the test on Saturday 12 September. The school will require documentary evidence of the exceptional circumstances and may decline to permit a child to take a late test in the absence of such evidence.

Following the March allocation of secondary school places, if Gloucestershire County Council (GCC) receive any requests to go on the Marling School waiting list for candidates who have not sat the Entrance Test, the school will organise a further test in mid-March. Only candidates applying directly to GCC [Gloucestershire County Council] by their deadline will be permitted to take this post-allocation test. Any qualifying candidates will then be placed on the waiting list in order of priority, as listed in Section 11.3".

Consideration of Case

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

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

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

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

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

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

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

25. As mentioned above, the school’s arrangements say that the qualifying standard is not a pre-defined pass mark but reflects a candidate’s position in the rank order. In other words, it is a cut-off score. The School refers us to Determination ADA3372 paragraph 41 and ADA3531 pages 18 – 19. In those cases, the adjudicator held that the Code did not require the process for determining the qualifying score to be set out in the arrangements. We have also looked at ADA3395 which says: “39…I start by saying that the school has chosen to include in its arrangements a reasonable amount of information about how and why the required score to be eligible for a place is determined. Other schools offer much less. There is no requirement to set out this detailed information in order to conform with the requirements of the Code which simply require at paragraph 1.17 that the entry requirements for a selective place and the process for such selection are published and not the detailed rationale for and derivation of those requirements. Again, paragraph 1.31 requires that tests themselves “**must** be clear, objective and give an accurate reflection of the child’s ability and aptitude” but that is rather different from a detailed explanation of how the AQS is set.”

26. Our conclusion on the question of clarity is that, since the entry requirements are set out clearly in the arrangements, this is sufficient to conform to the requirements in paragraphs 1.17 and 14 of the Code.

27. 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 accurate. 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".

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

29. In terms of whether the school's qualifying standard is a reasonable one, the school has helpfully explained to us the process used to determine the standard. "Upon registration for the Gloucestershire Grammar School Test, which is the same test for all 7 grammar schools in Gloucestershire, the parent decides whether they want to have their results shared with Marling School. All those that choose to do so, form the Marling School share cohort. After the test, the results are processed by CEM, who send to the schools within the group a spreadsheet of the school's share cohort with their scores for the individual parts of the test and an overall standardised score. This spreadsheet is then rank ordered by total standardised score and the Headteacher makes recommendations to the Governing Body on where in the rank order the qualifying score might be determined for that year to ensure that qualifying candidates are of a suitable grammar school ability. The Governing Body then make the final decision.

30. The qualifying standard therefore refers to a minimum score/rank which must be attained in order to be considered for entry to the School. The qualifying rank differs from year to year because the test is different each year and the cohort size and ability of candidates differs year on year. The other 6 grammar schools in Gloucestershire use the same process".

31. The School has pointed out that it does not know the ability of the children before the test, however "The School rationally relies upon CEM to set the entrance test at a broadly comparable standard each year". The school says it does not compare the test results of one year group against another. The purpose of the test is to determine admission for each particular year group, and the school sets the qualifying score with reference to the ranked

standardised scores for that year group relying upon the expertise of the head teacher in making a recommendation and the expertise of the governing body in deciding whether to confirm the recommendation. It would be unfair to impose a uniform pass mark each year as the cohort size and ability differs year-on-year. It is appropriate that the pass mark is re-set each year with reference to the individual cohort.

32. The objector does not consider that the head teacher has the expertise to determine the qualifying score. He does not consider that CEM can relied upon to set broadly comparable entrance tests each year. The objector's view is that, in order to determine whether each cohort has grammar school ability, there must be an overarching standard which is consistent, and therefore it is necessary for the tests each year to be comparable.

33. The school considers 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 head teacher has made clear that 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 this particular school. In achieving these entirely legitimate objectives it is clearly sensible for the persons with detailed knowledge of the school, such as the head teacher and governing board, to be influential in this process.

34. 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. Whilst there are inherently likely to be variations between different cohorts, it would be unusual for them to be as extreme as is suggested by the objector.

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

high academic ability. They do not have to fill all of their places if applicants have not reached the required standard.

36. However, many grammar schools choose not to have admission arrangements which are based solely on achieving the highest scores in a selection test, and this is provided for in the primary legislation governing admissions and explicitly permissible under the Code. Indeed, grammar schools which are academies are required to provide education for pupils who are drawn wholly or mainly from the area in which the school is situated. For this and other reasons these schools frequently employ oversubscription criteria based upon catchment areas and proximity to the school. 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.

37. The effect of this is that applicants who are not looked after or disadvantaged, or who do not live reasonably close to the school, may not be offered places even though their scores are higher than those who are offered places. It is not for us to tell grammar school admission authorities that they should admit wholly on the basis of rank order performance in selection tests; whether or not they should have other oversubscription criteria; whether they must set the pass mark before or after the tests; who must set it; or what must be taken into account in setting it. It is for us to reach a conclusion about whether the arrangements which are in place operate fairly and reasonably.

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

39. For some schools, the pass mark is set by the governing board on recommendation of the head teacher. For other schools, the pass mark is set by a committee comprised of persons with knowledge of the operation of the 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.

40. The purpose of setting the qualifying standard is to establish a minimum standard, which is the appropriate standard for this school. Each year the number of applicants sitting

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

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

42. In our view, the person best placed to make this judgment is somebody with detailed knowledge of the school. Therefore, the head teacher is well placed to judge the appropriate qualifying standard and make a recommendation to the governors. This appears to us to be a fair and objective method. For these reasons, we do not uphold this aspect of the objection.

Unfairness to applicants not eligible for the Pupil Premium

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

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

45. He suggests that pass marks be set at a level above which pupils are of ‘grammar school ability’ and therefore any pupil below that level, either Pupil Premium or non-Pupil Premium, would not be deemed suitable to attend the school. He concludes that any priority provided for Pupil Premium pupils discriminates against, and is unfair to, a child who is not eligible for the Pupil Premium. The school’s arrangements do not provide priority for PP

pupils on a lower pass mark. All applicants must achieve the same qualifying score in order to be eligible for a place.

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

• been registered for free school meals (FSM) at any point in the last 6 years;

• been looked after by the local authority (in care or accommodated) for one day or more; or

• ceased to be looked after through adoption, or via a Special Guardianship, Residence or Child Arrangements Order.

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

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

• choose from which group or groups (Early Years Pupil Premium (EYPP), Pupil Premium or Service Premium (SP) recipients) to give priority:

• specify a number or percentage of their published admission number of PP pupils who will be given priority. For example, this can be representative of the number of disadvantaged children resident in the school’s local area; or they can prioritise a certain percentage of local eligible children;

• limit priority to specific eligible sub-groups. For example, restrict the admissions priority to children currently in receipt of Free School Meals or children eligible for PP in the school’s catchment area;

• decide the ranking given to the priority (after looked after and previously looked after children); or

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

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

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

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

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

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

53. It is clear that Government policy is to encourage improved access to grammar schools for disadvantaged pupils, and that schools are encouraged to give priority to disadvantaged pupils in their admission arrangements' oversubscription criteria. Any priority given to Pupil Premium pupils in oversubscription criteria means that others, lower down the criteria, have a lower priority. The purpose of introducing oversubscription criteria is to ensure that some groups of children are given higher priority than others where a

school has more applications than there are places available. The Code makes clear in paragraph 1.8 that schools are able to adopt reasonable oversubscription criteria, and that this of itself is not unreasonable. Neither does it constitute unfairness.

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

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

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

56. 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.

57. 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.

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

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

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

60. 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…".

61. 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.

62. 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."

63. 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.

64. 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.

65. 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.

66. 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.

67. 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.

68. 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 were 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.

69. 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.

70. 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.

71. 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.

72. 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.

73. 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.

74. The objector has provided evidence in the form of a Twitter feed about the CEM 11+ tests for the King Edward Consortium Schools. This appears to be an exchange of information between members of the 11+ Exams Forum. The Forum is an organisation which provides advice to parents whose children are intending to take the CEM 11+ tests. The information in the Twitter feed relates to tests taken from 2011 – 2016. There is no evidence that this exchange of information is continuing. The information in question appears to have been passed on by candidates who had taken the tests. However, it also appears that the King Edward Consortium of Schools were in discussion with the Forum about these postings, and were not concerned that they would prejudice the integrity of the selection tests because comments about a particular set of tests were not being posted whilst those tests were still being used for late applicants. The postings took place after the

relevant tests had ceased to be used; and the latest post was in 2016. We have not seen any evidence that the Forum is continuing to pass on information obtained from candidates who have sat the Birmingham Consortium Schools tests, or evidence that any similar exchanges of information are in operation for this school. We have not been provided with any evidence that candidates sit the tests for this school wearing hidden cameras or are likely to do so for the school's 2021 admissions tests.

75. We asked the school what the cost would be of using a different set of tests of the same type. The school has said that CEM will not give a cost figure for a second test as CEM develop each test specifically year on year. The school has explained why it uses the same tests: "The money to fund the testing comes from the overall Dedicated Schools Grant (DSG) which is based on per pupil funding to provide for existing pupils' education. Ultimately this money is a cost to the public purse. Whilst the Objector correctly notes that the funds have already been allocated to the school (under the DSG), were a separate test to be provided for late sitters (leaving aside the fact that the late sitters could not fairly be part of the same cohort as the two tests would not be comparable) that would require the school to spend more of its DSG on the testing which in turn would mean less funding to spend on the education of its pupils. In any event, given CEM's confirmation that it would only be able to compare candidate's performances to provide an ordered age standardised score if the same test is taken, it would be inherently unfair to have a different test taken by later candidates".

76. 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.

77. 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

78. 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.

79. 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.

80. 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.

81. 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."

82. 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.

83. 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.

84. The school has said in response to the objection:

> "The age standardisation process is devised by Centre for Evaluation and Monitoring (CEM). It is part of their process to ensure that younger applicants (who may be up to 364 days younger than the eldest applicant, equating potentially up to 1/10th younger) are not unfairly disadvantaged. If there was no age standardisation the elder applicant/s would have a significant advantage over the younger applicant. The standardisation process is a tried and tested process seeking to establish as fair a process as is possible. The idea behind the process is not to provide younger applicants with an advantage but rather to neutralise any advantage that might be conferred upon the older applicant.
>
> Ultimately, for practical reasons it is not possible for each applicant to sit the entrance test on precisely the same day in their life. For example, you cannot have a system whereby each applicant sits the test at the age of (say) 10 years 5 months as that would result in a chaotic process. Even if you were to devise a system that catered for this remarkable example, it would be rendered useless where, for example, an applicant could not sit the test on his/her designated day due to religious reasons or illness.
>
> The School is unable to comment on whether age standardisation is not used in 'other examinations and tests' as the Objector's wording is too broad. The other widely used Grammar School Entrance Test is produced by GL Assessment and this test is also age standardised e.g. for the Buckinghamshire Grammar Schools. Whilst it is true that age standardisation is not used at GCSE or A Level, it must be remembered that all applicants are, circa, 6 years older and the disparity that age standardisation seeks to neutralise is less marked the older a person is. Furthermore, GCSE and A Level examinations are tests of knowledge and understanding in specific subjects, not (as eleven plus tests seek to be) tests of ability…

GCSEs and A levels focus on single specific subjects which have specific study frameworks for those exams, hence being tests of knowledge and understanding. The CEM 11+ test has no specific study framework, and no published practise materials other than some limited familiarisation materials, so there is no measurement of knowledge against such a framework. It is a test of ability".

85. 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?

86. 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".

87. 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.

88. 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".

89. 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.

90. 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.

91. 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.

92. 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.

93. 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.

94. 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.

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

96. 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.

97. 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.

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

An application by a girl who self-identifies as a boy

99. The objector suggests that the arrangements are unclear about how an application made by a girl who self-identifies as a boy would be dealt with. Paragraph 14 is relevant. The school has responded as follows:

"The School is a boys' school for years 7 – 11, and (as of September 2019) has a co-educational 6th Form. Eligibility for admission is by reference to sex. The fact that the School admits girls into the 6th Form does not mean that it loses its single-sex status for Years 7 – 11.

The Equality Act 2010 ("the Act") at s85(1) requires the responsible body of a school not to discriminate against a person in the arrangements it makes for deciding who is offered

admission as a pupil; the terms on which it offers to admit the person as a pupil; or by refusing to admit the person as a pupil.

Schedule 11 of the Equality Act 2010 ("the Act") disapplies s85(1) of the Act in the case of single sex schools. Schedule 11 explains that a single-sex school is a school which (a) admits pupils of one sex only; or (b) would be taken to admit pupils of one sex only.

The ability of a person to apply for a gender recognition certificate is set out in The Gender Recognition Act 2004. Section 1 states that a person of either gender who is aged at least 18 may make such an application. To use the Objector's example, a girl who wishes to self-identify as a boy is unable to change her gender (or sex) by way of formal process until the age of 18.

Section 9 of The Gender Recognition Act 2004 states (emphasis added): (1) Where a full gender recognition certificate is issued to a person, the person's gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman).

On that basis, it is lawful for the School not to cater in its admission arrangements for a girl who wishes to self identify as a boy at the age of 10 (or younger) and who wishes to apply to join the School or indeed in older year groups up to Year 11 in secondary transfer. As a girl (legally), she is not eligible for admission to the School.

The admission arrangements of the School make it clear that it is a selective boys' grammar school. That is lawful and clear".

100. We agree with the school's analysis. The arrangements are clear that the school is a single sex boys' school for Years 7 – 11. A girl who self-identifies as a boy would not be eligible for admission to these year groups and would not be capable of obtaining a gender recognition certificate to acquire a different gender in order to be eligible. The school has explained the law correctly, and we find no reason for the arrangements to say anything other than what they do say in order to be clear, which is that the school is a boys' school with a co-educational sixth form. We do not uphold this aspect of the objection.

Summary of Findings

101. We find that the arrangements are sufficiently clear about the setting of the pass mark. We consider it reasonable to set the pass mark after the results of the tests are known and with reference to the cohort of each individual year's intake. We find that affording priority to PP pupils is expressly permitted by the Code and therefore not something we can interfere with. In any event, our view is that giving priority to PP pupils is entirely reasonable and does not cause unfairness.

102. We find that it is reasonable to re-use the same tests for late sitters and late applicants because it achieves parity of results and saves costs. It is arguable that this practice could operate unfairly if late applicants were to cheat, but as the objector has not

produced any evidence that there is an established process of cheating in operation at this school, we have no basis upon which to reach a conclusion that the re-use of the same tests creates an unfairness here.

103. We find that the arrangements are sufficiently clear that the tests results are standardised by age. We are of the view that age standardisation does not create an unfairness to older applicants and that its use remains necessary albeit that some applicants are coached. The objector has not produced any research to counter the 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 support his claim that it diminishes the achievement gap due to age.

104. Finally, we find that the arrangements are sufficiently clear about how an application by a girl who self-identifies as a boy would be dealt with. Quite simply, such a girl would not be eligible for a place. This is legally permissible, and therefore it is not for us to comment upon whether this is fair and reasonable. For the reasons given, we do not uphold any of the aspects of this objection.

Determination

105. In accordance with section 88H(4) of the School Standards and Framework Act 1998, Mrs Talboys and I do not uphold the objection to the admission arrangements determined by the governing board of Marling School for Marling School, Gloucestershire.

Dated: 13 October 2020

Signed:

Schools Adjudicator: Marisa Vallely

Schools Adjudicator: Ann Talboys