



## Determination

**Case reference:** ADA3863

**Objector:** A member of the public

**Admission authority:** The academy trust for Westcliff High School for Boys

**Date of decision:** 10 September 2021

### Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2022 determined by the academy trust for Westcliff High School for Boys (admission authority), Southend-on-Sea.

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

### The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a member of the public (the objector) about the admission arrangements (the arrangements) for Westcliff High School for Boys, a selective secondary (grammar) academy school for boys aged 11 to 18, for September 2022. The objection focuses on three key aspects of the arrangements. The first is that the use of the phrase "up to 10%" (of places) is misleading to parents in that it implies that when the numbers in an oversubscription criterion vary, the number of preferential consideration places will also vary, maintaining 10 per cent, and this is not the case. The second is that the arrangements do nothing to assist boys from low-income families in gaining a place. The final part of the objection is that the allocation of places from waiting lists for boys who would be admitted under preferential consideration, is not in order of priority of the oversubscription criteria within the main admission arrangements.

2. The local authority (LA) for the area in which the school is located is Southend-on-Sea. The LA is a party to this objection. Other parties to the objection are the objector and the school's academy trust (the school).

## Jurisdiction

3. 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 academy trust (which is also referred to as the governing board), which is the admission authority for the school, on that basis.

4. The objector submitted her objection to these determined arrangements on 14 May 2021. The objector has asked to have her identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of her name and address to me. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and is within my jurisdiction.

5. In the detailed narrative of the objection, the objector makes reference to arrangements from previous years. My jurisdiction is for the 2022 arrangements for the school only, though reference is made to previous arrangements where necessary to provide context or background to the 2022 arrangements.

6. A revised Code came into effect on 1 September 2021. Since the objection and the responses to it were framed in terms of the 2014 Code, I shall use the references to it which have been made by the parties to the case and will indicate only if the new Code differs in any respect. It is of course the revised version of the Code which is now in force.

7. The arrangements for the school were determined on 15 December 2020. At that date the Code then in force provided that children previously looked after in England and then adopted or made subject to a child arrangements or special guardianship order should have equal highest priority with looked after children in school admission arrangements (subject to certain exemptions in schools with a religious character). The new Code has extended the level of priority for looked after and previously looked after children to children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted. All admission authorities were required to vary their admission arrangements accordingly by 1 September 2021. There was no requirement for this variation to be approved by the Secretary of State and no reason for the school to send me its varied arrangements. I have made my determination in this case on the basis that the admission authority will have varied its arrangements in order to comply with the new requirements as set out above.

## Procedure

8. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
9. The documents I have considered in reaching my decision include:
  - a. the objector's form of objection dated 14 May 2021 and supporting documents (including a spreadsheet containing offer and waiting list data, copies of emails between the objector and the LA, a copy of a Freedom of Information Act request by the objector to the LA, a screenshot of the school's website showing part of the admissions page, a copy of the admissions arrangements for 2022, and a copy of the adjudicator's decision for Westcliff High School for Girls in Southend-on-Sea from 24 October 2019 (case reference ADA3587));
  - b. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
  - c. a copy of the determined arrangements for 2022;
  - d. a copy of the funding agreement between the academy trust and the Secretary of State for Education;
  - e. the response by the school and the LA to the objections;
  - f. a literature review commissioned by the Office of the Schools Adjudicator (OSA) from the Department for Education on the performance of disadvantaged pupils in the 11 plus test.

## The Objection

10. As well as objecting to the arrangements of this school, the objector has objected to the arrangements of another school, namely Southend High School for Boys (SHSB). The objection as it relates to that school is dealt with under a separate determination, case reference ADA3864.

11. The objection focuses on three specific concerns the objector has with the arrangements. For ease of reference, I will refer to these as Issues 1 to 3:

- Issue 1: The use of the phrase “up to 10%” is misleading:

The objector expressed a concern with the wording of the admission arrangements in relation to the allocation of places to boys entitled to preferential consideration (in both of the ‘in priority’ and ‘out of priority’ categories) via the first allocation of places and via waiting lists. The concern is that that wording is misleading to parents in that the use of the phrase “up to 10%” (of places) in the arrangements in each of the two categories implies that when the numbers in a category vary, the number of preferential consideration places will also vary, maintaining 10 per cent of the category

concerned. The objector argues this has not been the case and that the reference to 10 per cent should be removed if it is not to be applied.

- Issue 2: Applicants needing a higher score to gain a preferential place than a non-preferential place:

This part of the objection relates to the allocation of four places to the highest scoring out of priority area boys. The objector argues that since children from low-income families tend to score less highly as a cohort on entrance tests than their more affluent peers, these arrangements do nothing to assist boys from low-income families in gaining a place and do not address the underrepresentation of these children in grammar schools.

- Issue 3: The waiting list is not in the order of the priority of the oversubscription criteria:

The objector says that the arrangements provide for a higher priority for preferential candidates who live in the priority area before others living in the priority area and the same for those out of the priority area. The objector argues that boys entitled to preferential consideration appear on both the 'preferential consideration' waiting list and the 'any child' waiting list, and that when the 'quotas' of boys from low-income families have been met, their priority is overlooked on the 'any child' waiting list.

12. The objector refers to paragraphs 14, 1.7 and 1.8 of the Code as being relevant to the issues raised in the objection. Paragraph 14 is relevant in its entirety:

- 14. "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."

However, paragraphs 1.7 and 1.8 of the Code are only relevant in part:

- 1.7 (part). "... the highest priority must be given, unless otherwise provided in this Code, to looked after children and all previously looked after children... Oversubscription criteria **must** then be applied to all other applicants in the order set out in the arrangements."
- 1.8 (part). "Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social ... group ..."

13. I will refer to two other parts of the Code in this determination:

- 139A (now paragraph 141). “Admission authorities may give priority in their oversubscription criteria to children eligible for the early years pupil premium, the pupil premium and also children eligible for the service premium. Admission authorities should clearly define in the arrangements the categories of eligible premium recipients to be prioritised.”
- 2.14 (part) (now paragraph 2.15). “Each admission authority must maintain a clear, fair and objective waiting list until at least 31 December of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria. ...”

## Background

14. The school is an oversubscribed 11 to 18 selective secondary (grammar) academy school located in Southend-on-Sea. The published admission number (PAN) for entry to the school in 2022 is 185. The school is a single academy trust that works closely with other selective schools in the area as part of the Consortium of Selective Schools in Essex (CSSE). The arrangements for the school have included what is referred to as a criterion for “preferential consideration” since 2020. I have been provided with evidence of the consultation undertaken before that criterion was introduced.

15. The admissions arrangements for 2022 were determined by the school’s governing board on 15 December 2020. All admissions are subject to passing the selection test administered by the CSSE. As a grammar school, the school is permitted to keep places empty if not enough candidates reach the required standard of ability for admission. In the arrangements, after admission of boys with Education Health and Care Plans (EHCPs (as EHCPs are now used exclusively rather than ‘statements of special educational need’, I have referred just to EHCPs – it would be helpful if the school adapted the terminology used in the arrangements accordingly)) who have reached the required standard, places are allocated according to the oversubscription criteria, summarised as follows:

- i. Looked after and previously looked after children (LAC/PLAC).
- ii. Boys whose normal / habitual place of residence lies within the ‘priority area’ postcodes which are shown clearly on a map in the arrangements. Up to 80 per cent of the PAN is reserved for boys in this category (148 pupils), referred to in the arrangements as the ‘local quota’. Up to 10 per cent of the local quota (15 out of 148) is designated for boys from within the priority area who are entitled to ‘preferential consideration’. These places are allocated first in this criterion.
- iii. Boys whose normal / habitual place of residence lies outside of the postcode areas shown on the map. Up to 20 per cent of the PAN is reserved for children in this category (37 pupils). Up to 10 per cent of the places remaining

after the full quota in oversubscription criteria ii. has been deducted from the PAN (four out of 37), is designated for boys from outside the priority area who are entitled to 'preferential consideration'. These places are allocated first in this criterion.

16. All remaining places are then allocated to any boys from outside the priority area who have exceeded the pass mark. Places will be offered until the total PAN has been reached. Where places are allocated within any of the categories outlined above, they are done so in rank order of the boys' scores on the selection test, with the highest priority for those with the higher scores.

17. An appropriate final tie break is included in the arrangements. In the event of boys achieving the same mark for the last available place, priority will be given to any child entitled to 'preferential consideration'. Then, if this does not differentiate, to the boy who lives closest to the school as measured in a straight line from the front door of the boy's normal / habitual place of residence to the nearest pupil entrance to the school, with those living nearest being given preference. If that distance is shared, then the place is allocated through a computerised random allocation process, supervised by someone independent of the school.

18. A number of terms are used in the arrangements, and therefore in this determination, which require definition:

- 'Priority area' – this refers to the combined area made up of the postcode areas from which applicants are drawn for places under oversubscription criterion ii.
- 'Out of priority' – any applicants from outside the 'priority area'.

(The term 'priority area' equates to the term 'catchment area' defined in the Code as, "A geographical area, from which children may be afforded priority for admission to a particular school". 'In priority' therefore means 'in catchment' and 'out of priority' means 'out of catchment'. In line with the Code, this determination will refer to the term 'catchment', save for where the objection, documentation and any responses are quoted from).

- 'Quota' – the proportion of places from the school's PAN allocated to each of oversubscription criteria ii. and iii. and then, within each of those criteria, to those children deemed to be given 'preferential consideration'. The quota for oversubscription criterion ii. is referred to as the 'local quota' in the arrangements.
- 'Preferential consideration' – defined in the arrangements as, "Priority admission is available to children who pass the selection tests, are in any of the following categories and indicated this on the CSSE Supplementary Information Form when registering for the tests:

- a) Looked after children and previously looked after children ... ; and those children who appear to Southend on Sea Borough Council to have been in state care outside of England and ceased to be in state care as a result of being adopted;
- b) Children who have a statement of special educational needs or EHCP ...;
- c) Children in receipt of Free School Meals [FSM], or identified as recipients of the Pupil Premium Grant [PPG] ..., at the time of test registration.”

19. It is worth noting that in terms of b), these children must be admitted if they reach the required standard and are not subject to the application of any the oversubscription criteria. So far as boys who fall within category a) there are relatively few such children and wherever they live they must have the highest priority under oversubscription criterion i. if they meet the academic standards for admission. It is therefore boys under c) who will fall to be considered and allocated ‘preferential consideration’ places under oversubscription criteria ii. and iii.

20. The documentation and responses that I have considered from the objector, school and LA refer to five ‘priorities’. These are not to be confused with the ‘priority area’ defined above. The numbering refers to the order in which boys are allocated places at the school using the oversubscription criteria. I use the five priorities in the determination:

- Priority 1 – boys allocated places under oversubscription criterion i.
- Priority 2 – up to 15 in catchment boys under oversubscription criterion ii. who meet the criteria to be considered for preferential consideration.
- Priority 3 – the remainder of in catchment boys under oversubscription criterion ii.
- Priority 4 – up to four out of catchment boys under oversubscription criterion iii. who meet the criteria to be considered for preferential consideration.
- Priority 5 – other out of catchment boys under oversubscription criterion iii.

## Consideration of Case

### Issue 1: The use of the phrase “up to 10%” is misleading

21. The objector considers the use of the phrase “up to 10%” in the arrangements as misleading to parents, in that this implies that when numbers in each oversubscription criterion vary, the number of preferential consideration places will also vary, maintaining 10 per cent of the total. The objector states that this is not the case and goes on to provide the following example:

“At WHSB, there are 15 places available for FSM/PPG in catchment children and 4 places for out of catchment children regardless of whether the number of children admitted in catchment is 150 (10%) or 185 (8%) PAN. [I interject here to say that by this I understand the objector to mean that if 150 children from in catchment are admitted, then 15 of those places will represent 10 percent of the total in catchment children admitted, but if 185 are admitted then 15 of those places will represent only eight percent of the total in catchment children admitted]. This is especially important for out of catchment places whose number varies each year depending on the number of unfilled in catchment places. This was true in 2020, due to unfilled in catchment places, there were an additional 12 out of catchment places at WHSB and 17 at SHSB. Both schools could have raised the number of FSM/PPG [that is those qualifying under criterion ii or iii for preferential consideration] priority places to 5 (10% of 47). They did not, and the 4 and 3 places allocated represent 8% and 6% respectively.”

22. The school says that the phrasing in the arrangements is very clear and has been subject to misinterpretation by the objector. The 10 per cent proportion of the boys admitted under the allocation for preferential consideration in each of oversubscription criteria ii. and iii. is calculated on the quota and not on the basis of the number subsequently admitted. The school says that the quotas are clearly stated in the arrangements. The form of wording was adopted to allow four local schools to introduce, following consultation, equivalent admission policies (each of which feature the 10 per cent aspect) with identical wording, but with varying PANs and local quota values.

23. I have looked at the oversubscription criteria in the context of the issue raised by the objector and the responses from the school and LA. The objection focuses on the phrase “up to 10%” as being misleading, and therefore not clear, thereby not meeting the requirements of paragraphs 14 and the relevant parts of 1.8. The phrase is used in both oversubscription criteria ii. and iii. The example provided by the objector in relation to this issue is illustrative of the use of the phrase in relation to Priority 4. Therefore, I have taken the focus of the objector’s concern to be oversubscription criterion iii. However, because of the way places are allocated under Priority 5, it is necessary to look at how this works in both oversubscription criteria ii. and iii.

24. Quotas are specified in the arrangements for both oversubscription criteria ii. (80 per cent of PAN – 148 pupils) and iii. (20 per cent of PAN – 37 pupils). The arrangements make clear that these are the upper limits when no boys are admitted with EHCPs or under oversubscription criterion i. (Priority 1). If boys are admitted under those higher criteria, then the overall numbers of places and the numbers available in each of the quotas are reduced. This is best demonstrated with an example. The data provided by the school and LA in relation to actual admissions figures for the last three years shows that no students have been admitted with EHCPs or under Priority 1. In order to illustrate this aspect of the arrangements, Table 1 shows quotas when no boys are admitted prior to oversubscription criterion ii. compared with a notional situation where five boys were to be admitted with EHCPs and 10 boys under Priority 1.



Table 1 – Example of how quota totals can change:

Oversubscription Criteria	Quotas after EHCPs / Priority 1 admissions	Quotas after 15 EHCPs / Priority 1 admissions
ii.	148 (15 under Priority 2)	136 (14 under Priority 2)
iii.	37 (4 under Priority 4)	34 (3 under Priority 4)
<b>Quota Totals</b>	<b>185</b>	<b>170</b>

In this notional situation, the local quota (oversubscription criterion ii.) is reduced to 136 (with 10 per cent for those with preferential consideration providing a quota of 14 for Priority 2). The quota for oversubscription criterion iii. is reduced to 34 (with 10 per cent for those with preferential consideration providing a quota of 3 for Priority 4).

Table 2 shows how this translates to the numbers of places in each of Priorities 2 to 5.

Table 2 – Numbers of places in each of Priorities 2 to 5:

Oversubscription Criteria	Priorities	Initial allocation of places where there are no EHCPs / Priority 1 admissions	Initial allocation of places after the admission of 15 boys with EHCPs and under Priority 1
ii.	2	15	14
	3	133	122
iii.	4	4	3
	5	33	31
<b>Quota Totals</b>		<b>185</b>	<b>170</b>

25. Looking first at oversubscription criterion ii. (where there are no boys admitted with EHCPs or under Priority 1) the total number of boys admitted under Priority 2 is up to 15 boys. This then means an initial allocation of 133 boys under Priority 3. Tables 1 and 2 illustrate one example where the number admitted under Priority 2 could be less than 15. Another example is if there are fewer than 15 applicants for those places. In that circumstance, the remaining places under Priority 2 are transferred to the allocation of places for Priority 3. This means that the allocation of places to Priority 3 could be between 133 to 148 pupils (the latter being where no boys are admitted with EHCPs or under Priorities 1 and 2).

26. Before looking at oversubscription criterion iii., I note here from the arrangements that this criterion is considered full, "... when the quota has been reached, or when there are no more candidates from within the priority area who have passed and have listed the School as a preference, **or the total PAN has been reached**" (bold is my emphasis). Given the way the allocation of quotas to oversubscription criteria is described to work in the arrangements, in particular the reduction in the quotas proportionate to the admissions of

boys with EHCPs and under Priority 1, it is simply not possible to reach PAN under this criterion. The statement in bold is therefore inaccurate.

27. I will now move on to look at the process for determining quotas for oversubscription criterion iii. A proportion of the PAN is allocated, in this case 20 per cent of the PAN after students under Priority 1 have been allocated places. Where there are no boys allocated places with EHCPs or under Priority 1, the total quota for oversubscription criterion iii. is set at 37. The quota for those out of catchment boys with preferential consideration (Priority 4) is then set at 10 per cent of that total (a maximum of four pupils). The total remaining when the number allocated to Priority 4 is deducted from the overall quota for oversubscription criterion iii. is then allocated to out of catchment boys under Priority 5. Table 2 shows this to be 33 pupils initially, which will reduce dependent on the number admitted with EHCPs and under Priority 1, and which could increase dependent on the factors I will now turn to.

28. The arrangements explain the way that places are allocated under oversubscription criteria iii. as:

“The 10% of places designated for ‘preferential consideration’ ... from outside the priority area are allocated, in rank order of marks, to those exceeding the pass mark: candidates who score higher marks will be allocated places before those who pass at a lower level. Then, all remaining places are allocated, in rank order of marks, to any applicants from outside the priority area who have exceeded the pass mark: candidates who score higher marks will be allocated places before those who pass at a lower level. **Places will be offered until the total PAN has been reached.**”  
(Bold is my emphasis).

29. The arrangements make clear that it is to the total of Priority 5 that places that remain are added after those who reach the academic standard and fulfil a higher criterion have been allocated places. First, if there are fewer boys allocated under Priority 3 than its capacity, then the places available under Priority 5 are increased by the amount unallocated under Priority 3. The same occurs if all places available under Priority 4 are not filled. It is not the case, as the objector submits, that places not filled under oversubscription criterion ii. are added to the quota for oversubscription criteria iii. and the quota for Priority 4 recalculated.

30. The school and the LA have both provided the same data for the allocations on National Offer Day (NOD) for 2020 and 2021, shown on Table 3, which illustrate how the school’s arrangements have worked in the two years since the arrangements were changed to include preferential consideration in the oversubscription criteria.

Table 3 – Total places offered on NOD in 2020 and 2021:

(Oversubscription) Criteria	Priorities	2020	2021
EHCPs	-	0	0
i.	1	0	0

<b>(Oversubscription) Criteria</b>	<b>Priorities</b>	<b>2020</b>	<b>2021</b>
ii.	2	10	3
	3	128	144
iii.	4	4	4
	5	43	34
<b>Total Offers</b>		<b>185</b>	<b>185</b>

31. In respect of oversubscription criteria ii., the data for NOD in 2020 shows that fewer than 15 boys were offered places under Priority 2. The remainder (five places) were added to Priority 3 (increasing the total to 138 places that could be allocated under that priority). Only 128 places were offered under Priority 3. This means that 10 places were then added to the total for Priority 5 (increasing the number of out of catchment boys who could be offered places to 43). The data for 2021 shows a situation where the number of boys offered places under Priority 2 was much lower (three pupils). The remaining 12 were added to the total number for Priority 3 (meaning 145 places could be offered). The number of places offered was one less than the capacity. This remaining place was then added to the number of places available under Priority 5, making a total of 34 possible places that could be offered to out of catchment boys (which were all then offered).

32. In its response, the LA says that this process is well understood by primary and junior school headteachers in the borough, though concedes it may be that headteachers in schools out of the catchment area are not as clear. A significant number of telephone queries to the LA Admissions Team in relation to the arrangements for the school are from out of catchment area parents. The LA say that most callers seem satisfied with the explanation of the arrangements.

33. In summary, I have understood the arrangements in respect of oversubscription criteria ii. and iii. to describe a three stage process. The first is the calculation of quotas to oversubscription criteria ii. and iii and then to Priorities 2 and 4. These quotas are smaller where boys with EHCPs or under Priority 1 have been allocated to places. The second stage is the initial calculation of numbers of places within the quotas, calculated under stage 1, in each of Priorities 2 to 5. Priorities 2 and 4 from this point forward have fixed upper limits. Then the final stage is the allocation of applicants to whom these places will be offered. Depending on the numbers under each priority, it may necessitate the reallocation of places to Priority 3 (from Priority 2 and up to the local quota limit) and Priority 5 (from oversubscription criterion ii. and Priority 4, the upper limit of which is the PAN). I find that arrangements in respect of the oversubscription criteria meet the requirements of the relevant parts of paragraph 1.7 of the Code.

34. In my view, I find that the phrase “up to 10%” appropriately describes how preferential consideration quotas are set for Priority 2 under oversubscription criterion ii. and Priority 4 under oversubscription criterion iii. I further find that the arrangements clearly

explain the way that places are allocated under the oversubscription criteria, both in the way the quotas are first calculated and then how the numbers of places are assigned to the priorities. I find that the way the oversubscription criteria are set out and applied meet the requirements of paragraph 14 and the relevant parts of paragraph 1.8 of the Code. I therefore do not find the use of the phrase “up to 10%” to be misleading and do not uphold this part of the objection.

### Issue 2: Applicants needing a higher score to gain a preferential place than a non-preferential place

35. I now turn to the second of the three issues raised by the objector. The objector argues that children from low-income families tend to score less highly as a cohort on entrance tests than their more affluent peers. In considering this more general point, I turned to the findings of a literature review commissioned by the OSA which looked at the performance of disadvantaged pupils in the 11 plus test. The conclusions of this review are as follows:

“At all ages there is a gap in test performance between economically disadvantaged pupils and their more affluent peers. Results of KS2 tests in 2018 show that there is a 20 percentage point difference in the proportion of pupils reaching the expected standard in all of reading, writing and maths, and a gap of 8 percentage points for pupils reaching the higher standard. It is therefore reasonable to expect a gap in pupils passing the 11-plus test as well. However, there is a consistent finding that even for pupils with comparable attainment in standardised national tests (KS2), disadvantaged pupils are less likely to attend grammar schools.”

(The full review, including references to the literature and links to the studies and excerpts from a relevant Education Select Committee report, has been shared with all parties in this case).

36. The review concludes that there is a gap in test performance between advantaged and disadvantaged children and that there are likely to be a number of reasons for this. My role is not to go into this further, but I note the findings which are a useful context to the general point the objector has raised as part of this issue.

37. The objector goes on to say that the allocation of four places to the highest scoring out of catchment boys (under Priority 4), results in a child needing a higher score to gain a preferential place than a non-preferential place. In relation to this point, the objector provided a spreadsheet which contained an anonymised dataset of results for those boys offered a place at the school (and the resulting waiting list, which will be covered under Issue 3). The date of entry to the school of the boys on the dataset was assumed by me to be 2020 (because the email chain between the objector and the LA accompanying the objection in which issues raised by the dataset are discussed is dated August 2020), though this is not specified anywhere in the objection or the documentation. I have assumed that although this dataset accompanied the objection, it must have originated from the LA. In the more detailed narrative of her objection, the objector further illustrates the issue she raises, as follows:

“The lowest scoring out of catchment preferential consideration place allocated to WHSB was 356.69. Although on initial allocation the lowest score for a non-preferential place was higher (366.17 [actually 366.71]), there were 5 in catchment and 57 out of catchment declined places. The child scoring 62<sup>nd</sup> on the waiting lists scored 353.09.”

(‘Declined places’ are defined by the LA as those that have been withdrawn after NOD. The reasons for withdrawal are various. Examples from the LA include: the withdrawal of an application; if an application is refused; if an application is no longer required).

38. I have looked at the dataset provided by the objector. I can see the data are largely as the objector presents. However, an argument is not made out that a boy needs a higher score to gain a preferential place than a non-preferential place. In the dataset, the 11 plus scores of boys offered places under Priority 4 (that is boys who live out of catchment and are entitled to preferential consideration) on NOD ranged from 356.69 to 388.94. First, these scores were not higher than all boys who were offered places under Priority 5 on NOD (the highest score admitted was 404.75 and there are several boys ranked under that score but above the highest score for boys offered places under Priority 4). Secondly, although it is the case that the lowest of the boys’ scores under Priority 4 places was higher than the lowest score of the boys admitted under Priority 5, I am of the view that the objector has confined her understanding of how the allocation of boys to Priority 4 places is applied to the scores for the year in the dataset. That situation is not in itself representative of how places might be allocated under the arrangements in different years. I note here the LA’s response to this part of the objection:

“The 4 places ... for out of priority children with preferential consideration are awarded to the children that quality [sic] for this criteria and are ranked in academy [sic] merit order. Therefore it could be that the allocated children in this category have scored lower on the 11+. This category provides an opportunity to children from lower income families an opportunity to gain admission before all the out of area.”

39. It is the case that the arrangements include a specific quota for out of catchment boys with preferential consideration. This means that the scores of those boys are entirely independent of those admitted under Priority 5. As long as the scores under Priority 4 are higher than the pass mark on the selection test, it is of no relevance (at the point of offer) whether scores can be higher or lower than those under Priority 5 (I deal with this issue in respect of waiting lists later, under Issue 3).

40. The objector’s final point is that the arrangements do nothing to assist boys from low-income families to gain a place and do not address the underrepresentation of these children in grammar schools. It is, of course, the case that prior to the introduction of preferential consideration quotas in 2020, scores for disadvantaged boys would have been placed in rank order alongside those of their more affluent peers. I turn to the school’s response to this issue, as follows:

“... we can confirm that the criteria in question were introduced to clearly signal and to achieve increased numbers of pupils, applying to and entering the school, from

disadvantaged backgrounds. There has been a measurable effect in that regard, with pupils applying who would not have done so otherwise, and with pupils being admitted under these criteria who would not previously have secured a place. Most significantly, for those in the 'priority area' there remains the capacity - as numbers of applicants rise - for even more 'preferential consideration' pupils to secure places, even if they have lower qualifying scores than all others securing places. The policy clearly indicates an overt commitment to the admission of those from less-advantaged circumstances that would be far less obvious if the criteria were to be re-ordered.”

41. My role in this case is to determine whether the admission arrangements of the school comply with the law and the Code and if not in what ways they do not. I find that the objector has not made out in her argument that the arrangements break the law or breach the Code. In the school’s response, it is said that their intention has been to address the very issue that has been highlighted by the objector; that children from low-income families tend to score less highly as a cohort on entrance tests than their more affluent peers and the result of that being, as laid out in the literature review, that disadvantaged pupils are less likely to attend grammar schools. The school has, since 2020, included specific provision for the admission of boys with preferential consideration both in and out of catchment. The school says its arrangements were amended in 2020 to provide an increased opportunity for disadvantaged boys to gain a place at the school. After checking the arrangements contain the appropriate definitions required, I find that they conform to paragraph 139A of the Code (paragraph 141 in the current Code). Taking into account the fact that I have already found the way the oversubscription criteria are set out and applied to be clear (and that applies to this issue in that this also pertains to the application of the oversubscription criteria), I further find that the arrangements in respect of the second issue are clear and meet the requirements of paragraph 14 and the relevant parts of paragraph 1.8 of the Code. I therefore do not uphold this part of the objection.

### Issue 3: The waiting list is not in the order of the priority of the oversubscription criteria

42. The final issue raised by the objector concerns the priority order of the school’s waiting list. In particular, the objector is concerned that the allocation of places from the waiting list is not in order of the priority of the oversubscription criteria, as is required under paragraph 2.14 of the Code (2.15 in the current Code). In later correspondence, the objector further clarified the issue she was raising in respect of this issue:

“Children entitled to preferential consideration appear on both the "preferential consideration" waiting list and the "any child" waiting list. It is therefore their priority which is overlooked on waiting lists. Children on the waiting list for preferential consideration places were not offered any declined places due to a cap on preferential consideration places in the arrangements for initial allocation (3/4 or up to 10%), which does not apply to the "any in/out of area child" category due to their category being "up to the PAN" on initial allocation. A parent would assume that "up to the PAN" means "up to 185" (initial allocation) and that the allocation of declined places from the waiting lists would honour the priority order of the oversubscription

criteria (consistent with section 1.7 of the Code) and the wording of the paragraph entitled "waiting lists" in the admissions arrangements."

43. I have taken note of the specific requirement under paragraph 2.14 of the Code (2.15 in the current Code) for an admission authority to "...maintain a clear, fair, and objective waiting list". A waiting list is defined in the Code as, "A list of children held and maintained by the admission authority when the school has allocated all of its places, on which children are ranked in priority order against the school's published oversubscription criteria." My interpretation of this definition is that an admissions authority is required to keep a single waiting list or a series of sub-lists (for each oversubscription criteria) where children on the list would appear in ranked order. The latter situation is one which appears to apply to the way the school keeps, or at least describes, its waiting list.

44. The school, responding to the objection, said:

"The waiting lists for the school are managed entirely with regard to the relevant quotas and rank ordering. The objector's view that 'low-income families [...] are overlooked' is a misunderstanding. Those who qualify for preferential consideration appear, suitably ordered, on both ranked lists for their area. If a place becomes available as a result of a vacancy in the 'quota' for preferential consideration, then the next on that list is admitted (up to the declared number); if a place opens up in the non-preferential category, the next on that list is admitted (irrespective of whether they are or are not entitled to preferential consideration)."

45. As is apparent from this response, that the school do perceive there to be, if not to actually keep, sub-waiting lists for each of oversubscription criteria ii. and iii. It also appears that applicants who meet the criteria for preferential consideration in either, may appear in both the sub-lists for Priorities 2 and 3 (for in catchment applicants) and Priorities 4 and 5 (for out of catchment applicants). When boys with preferential consideration under the sub-list for Priority 2 or 4 appear on the sub-list for Priority 3 or 5, they appear at a point on the list where their test score places them relative to the scores of applicants without preferential consideration. Overall, this means that when the waiting list is viewed as a whole, boys in Priority 2 and 4 appear twice.

46. The objector feels that the situation, where applicants with preferential consideration under Priority 4 who are placed on the Priority 5 sub-list and re-ranked amongst those without, is not concordant with the paragraph 1.7 of the Code. This situation would equally apply to those under Priority 2, when they are placed on the Priority 3 sub-list. The objector is of the view that applicants with preferential consideration should also be at the top of the Priority 3 and 5 sub-lists in order to comply with paragraph 1.7 of the Code.

47. The Code requires that children on a waiting list are to be 'ranked in priority order', which means that a child's place on a waiting list or sub-lists is determined by priorities laid out in the arrangements. Paragraph 1.7 of the Code requires that the oversubscription criteria provide the order in which children are allocated places and therefore it is the oversubscription criteria that lay out the priorities and their order of implementation. My understanding of the arrangements is that, in order to prioritise the allocation of places for

those with preferential consideration, the lists of applicants meeting the criteria for inclusion in oversubscription criteria ii. and iii. are reorganised. This is carried out in such a way that boys with preferential consideration are separated and placed in groups (Priorities 2 and 4) and allocated places first over those applicants remaining (and who are then placed under Priorities 3 and 5). I understand that the arrangements set out a process whereby applicants are sorted, reordered, and re-ranked through the application of the oversubscription criteria to meet the specific goal of increasing opportunities for boys with preferential consideration to gain places at the school. I have already found the arrangements to be compliant in this regard.

48. The school and LA both confirm that places on the waiting list are allocated in the order of the five priorities as laid out in the arrangements. I do not uphold the part of the objection where the objector states that the priority of these boys is overlooked on the ‘any child’ waiting list as they are looked at first under Priority 4 under oversubscription criterion ii. (and Priority 2 under oversubscription criterion iii.), as well as having a second opportunity to be admitted to the school from their relative position on the waiting list under Priorities 3 and 5. Given preferential consideration applicants are already prioritised under Priorities 2 and 4, there is no need to then go on to re-prioritise those applicants under Priorities 3 and 5 on the waiting list.

49. However, I do uphold this part of the objection in that the arrangements do not explain clearly how the allocation of places on the waiting list works. Specifically, the arrangements do not say that they will, effectively, duplicate the preferential consideration applicants such that they are afforded two opportunities to be selected from the waiting list. The current explanation of the way the waiting list will be applied could lead to a different reading of the arrangements. The school will need to address this in order to be compliant with the parts of paragraphs 14, 1.8 and 2.14 of the Code relating to the clarity of the arrangements.

## Summary of Findings

50. The objector raised the following issues in respect of the arrangements: that the use of the phrase “up to 10%” is misleading; that applicants need a higher score to gain a preferential place than a non-preferential place; and that the waiting list is not in the order of the priority of the oversubscription criteria. For the reasons laid out in this determination, I do not uphold these parts of the objection.

51. Arising from the third issue raised by the objector, I find that the explanation of the waiting list in the arrangements is not clear on how the allocation of places on the waiting list works in terms of the duplication of applicants who meet the criteria for preferential consideration. The school will need to address this.

## Determination

52. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2022



determined by the academy trust for Westcliff High School for Boys (admission authority), Southend-on-Sea.

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

Dated: 10 September 2021

Signed:

Schools Adjudicator: Dr Robert Cawley