Office of the Schools Adjudicator

Determination

Case reference:	**ADA3774**
Objector:	**An individual**
Admission authority:	**The Pioneer Educational Trust for Upton Court Grammar School**
Date of decision:	**11 October 2021**

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, Mrs Talboys and I partially uphold the objection to the admission arrangements for September 2022 determined by the Pioneer Educational Trust for Upton Court Grammar School, Slough.

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 unless an alternative timescale is specified by the adjudicator. In this case we determine that the arrangements must be revised by 31 October 2021.

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 an individual (the objector), about the admission arrangements (the arrangements) for Upton Court Grammar School (the school), a selective academy school for girls and boys aged 11 to 18. The objection is to the following aspects of the arrangements for admission to Year 7:

a) the residence requirements;

b) the catchment area;

c) the feeder schools;

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

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

f) the Centre for Evaluation and Monitoring (CEM) is said to be a disreputable and untrustworthy organisation which cannot be trusted to devise tests that produce an accurate reflection of a candidate's ability.

2. The local authority (LA) for the area in which the school is located is Slough Borough Council. The LA is a party to this objection but has made no representations. The multi-academy trust and the governing board of the school are parties to the objection, as is the objector.

3. This is one of a number of objections to the admission arrangements for September 2022 for 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 a number of these 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.

4. Some of the objections contain aspects which are common to several other objections made this year. We are aware that the objector has also made objections to other schools in previous years about these same aspects. Those objections have been determined by us and by other adjudicators. We have read the relevant previous determinations made by others and taken them into account. Those determinations do not form binding precedents upon us, and we have considered each of these aspects afresh. The approach we have taken is to discuss each of the common aspects in the objections which have been made this year and agree the wording of our determinations in relation to those aspects. Some identical wording will appear in each of the determinations in relation to these common aspects. Where we have reached conclusions on these aspects last year, we have reviewed and discussed those conclusions. However, where the objections submitted this year are largely identical to those submitted last year and we have received no additional information which has caused us to form different conclusions we have tended for the most part to adopt the same or similar wording to that used previously.

5. Where an objection 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

6. The terms of the Academy Agreement between the Pioneer Educational 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 multi-academy trust (the trust), which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 8 April 2021. 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. For the avoidance of doubt, we have only considered the arrangements for admission to Year 7. We have not considered the in-year or sixth form admission arrangements.

7. At the time of the determination of the school's admissions arrangements and at the time the objection was made, the School Admissions Code 2014 (the 2014 Code) was in force. A revised Code came into force on 1 September 2021, which means that the 2014 Code no longer has any effect. Since the objection and the response to it were framed in terms of the 2014 Code, we shall use the references to it which have been made by the parties to the case but will indicate if the new Code differs in any respect. It is of course the revised version of the Code which is now in force.

8. When the arrangements for the school were determined, the 2014 Code, which was 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 School Admissions Code which came into force on 1 September 2021 extended the same 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 us its varied arrangements.

9. We have made our determination in this case on the basis that the admission authority will have varied its arrangements in order to comply with the new requirements set out above.

Procedure

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

11. The documents we have considered in reaching this decision include:

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

b. a copy of the determined arrangements;

c. the objector's form of objection dated 8 April 2021 and supporting documents;

d. the school's response to the objection;

e. court judgments in the cases of Warwickshire County Council v Matalia [2015] EWHC B4(Ch) and Matalia v Warwickshire County Council [2017] EWCA Civ 991;

f. the decision of the Employment Tribunal in the case of S Stothard v Durham University 2500306-19;

g. information provided by the LA about the number of preferences expressed for the school and a map of the school's catchment area;

h. relevant previous determinations; and

i. research papers referred to in the text which were identified by us and shared with the parties for comment.

Objection

12. There are six 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.

13. First, the objector considers that the address requirements are unreasonable. He considers that there is no logic to the requirement that applicants must have been continuously resident at the home address given on the Common Application Form for a period of six months prior to 31 October 2021. The objector also considers that the provisions in the arrangements relating to the circumstances in which temporary addresses will not be considered as the home address are unreasonable. The relevant paragraph of the Code is paragraph 14.

14. Second, it is the objector's view that there is no point in having catchment areas. Paragraph 1.14 of the Code is relevant

15. Third, the objector considers that feeder schools must be named. Also that it is unreasonable to adopt the primary schools in the same multi-academy trust as feeder schools. Paragraph 1.15 of the Code is relevant.

16. Fourth, 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.

17. Fifth, 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.

18. Sixth, the objector considers that CEM is an untrustworthy and dishonest organisation and, as a result, the 11 plus tests set by CEM cannot be relied upon to be a reliable indicator of grammar school ability. Relevant paragraphs of the Code are 1.31 and 14.

Background

19. Upton Court Grammar School is a co-educational grammar school located in Slough, Berkshire. The school was founded in 1887 and converted to academy status in 2011. It has been rated by Ofsted as an outstanding school. The published admission number (PAN) is 165 for admissions to Year 7.

20. As we have said, the objection relates to the admission arrangements for Year 7. The arrangements provide that pupils will be admitted to the school at the age of 11 on the basis of their ability and aptitude, which will be determined by their performance in entrance examinations administered by the Slough Consortium of Grammar Schools. The procedures for testing are outlined in the Slough Consortium of Grammar Schools – a Guide to the 11+ Test document published by the Consortium. The procedure for application and testing is published by the school each year. A standardised score of 111 or above in the entrance test means that an applicant is eligible for consideration for admission to the school.

21. The arrangements state as follows:

> "Where the number of eligible pupils reaching the required standard in the 11+ tests exceeds the number of places available, places will be allocated according to the following oversubscription criteria in this order of priority:
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> (i) Looked after children and previously looked after children.
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> (ii) Up to 20 places will be offered to applicants who are currently eligible, or have been eligible within the previous six years, for free school meals (Pupil Premium). If the number of applicants in this category is greater than 20, places will be offered in rank order according to 11 plus score, and then distance from the school.
>
> (iii) Children of members of staff who have been employed by Pioneer Educational Trust for 2 years or more prior to the final submission deadline for the Common Application Form (CAF), on 0.5 of full time or above or filling a vacant post where there is a skills shortage, and working at Upton Court Grammar School. The term "staff" refers to any employee who is permanently employed by Pioneer Educational Trust working at Upton Court Grammar School, and excludes those contracted through external agencies.
>
> (iv) Children that are attending, at the time of application, any school that is a member of Pioneer Educational Trust, as the designated feeder schools.
>
> (v) Up to 120 pupils in rank order of performance in the 11 plus tests. If pupils are admitted through criteria 5, 6(i), 6(ii), 6(iii) and 6(iv), this number will reduce accordingly.

(vi) The remaining offers, up to the PAN of 165, for a place will be made by proximity to the school.

In the event of a tie between two or more children with equal proximity to the school, for example if two applicants live in the same block of flats, trustees will exercise their discretion to admit above the PAN.

Tiebreaker:

If applying these criteria results in there being more children within any of the above categories than the number of available places, the tie break will be the distance the pupil lives from the school, measured in a straight line, using the LA's computerised mapping system, with those living closer to the school receiving the higher priority. The distance will be measured from the address point of the pupil's permanent home address to the main school reception of the main school site. Priority will not be given within each criterion to children who meet other criteria. Where there is one remaining place available but the next measured distance is shared equally by more than one applicant, the place will be allocated by lot supervised by an independent person. Where there is one remaining place available and the next child to be considered for admission is one of a multiple birth group, all multiple birth siblings will be admitted even if this exceeds the PAN.

a) An applicant's permanent home address is their normal place of residence, excluding any business address or a relative or childminder's address, and must be the permanent place of residence of the parent/carer with whom the applicant spends the majority of his/her time.

b) Where a child has two homes due to parental responsibility being shared by two people who live apart, the address used will be the one at which the child resides for the majority of nights of the school week (Sunday night to Thursday night) during school term-time, as confirmed by written evidence from both parents/carers. Documentation to confirm the arrangement such as a residence order or other court order may be required. Where this is unclear, disputed, or care is split equally and there is no agreement between the parents (it is not possible to determine which parent is the principal carer), the application considered will be that made by the parent at the address identified on the child's registered General Practitioner (GP) record.

c) Applicants must be resident at that address on the closing date for the Common Application Form on 31 October 2021 and have been continuously resident at the same address since 1 May 2021, i.e. six months prior to the closing date for the Common Application Form. The school may check the authenticity of the address stated; proof of residence or further information may be requested and must be provided.

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

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

If an applicant is unable to sit the test on the designated day, such as due to the child's sickness, parental sickness or transport failure, the school should be advised before 5pm on this designated day, by sending an email the administrator on JUJ@uptoncourtgrammar.org.uk explaining reasons for the applicant missing the test. Please note, in the case of the applicant's sickness, a medical certificate is required. Other circumstances such as religious observance must be advised to the Consortium by deadline of registration.

An alternative testing date will be set, for applicants unable to take the test on the original designated date".

Consideration of Case

22. There are six aspects to this objection. We have divided our consideration of the case into six headings, each of which comprises one aspect of the objection. As we have said, the objector has made objections on some of the same points for other schools. He has helpfully provided us with generic representations on certain aspects of his objections which apply to more than school. Because the representations are generic, our consideration of the points is also generic, and so the text will be largely the same in our 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.

23. The LA has not made a response to this objection.

The requirements relating to an applicant's home address

24. The objector questions the logic of the requirement that applicants must be resident at the home address on the closing date for the Common Application Form on 31 October 2021 and have been continuously resident at the same address since 1 May 2021. He also

questions the logic of the provision that the school may check the authenticity of the address stated. He considers neither are reasonable. He says:

> "Why should a child be living at an address for 6 months before application for it to be used? It serves no purpose given a child does not need to live near the school once they attend. They can just move away, in fact they can move on 1st November 2021 (10 months before entry). Thus, it does not ensure children are local when actually attending the school. Coupled with the feeder school priority it amounts to "local apartheid" as it requires a child to live in the area for 10 months before admission…
>
> This discriminates against people who move into the area after 1st May 2021. Take the policy to boundary conditions to test how unreasonable it is. Assume every school in the country had the same policy. Family F moves from City C to town T, 200 miles away on 2nd May 2021. This means family F's address would be considered as C for all application made local to T even though it is 200 miles away. They would never be in a catchment area of a local school if they ever moved away from area C after 1st May 2021. But families move. They change jobs. They are highly mobile".

25. Paragraph 14 of the Code requires that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. The imposition of residence requirements is a practice used to decide the allocation of school places, therefore paragraph 14 is relevant. Also relevant indirectly is paragraph 2.13 of the Code which provides that: "A school must not withdraw a place once a child has started at the school, except where that place was fraudulently obtained. In deciding whether to withdraw the place, the length of time that the child has been at the school must be taken into account. For example, it might be considered appropriate to withdraw the place if the child has been at the school for less than one term". The effect of paragraph 2.13 is that an applicant who had moved to a temporary address for the sole purpose of gaining priority for admission with no intention of remaining at that address in the longer term would effectively need to live at that particular address from 31 May in the application year until the end of the first term of the admission year to be sure of their child being offered a place (in part because of where the child lives) and keeping that place.

26. In the objector's view the address used should be the address either on the date of application or the address on the first day of term. We asked the school to explain the rationale for the residence requirements. The school told us that "To be able to apply the distance criteria, an address is required to apply the admissions arrangements. For September entry into year 7, the arrangements are applied by local authorities following the closure of CAF applications". The explanation was not particularly helpful. But we are aware that most admission authorities which require continuous residence at the same home address for a prolonged period do so in an attempt to stop parents moving to an area close to the school for a temporary period with the sole purpose of gaining priority for a place at the school.

27. Families move house for all sorts of genuine reasons, including being close to a good school, and this is perfectly reasonable. But some admission authorities become aware that there is a practice of parents moving house for a short period and then returning to the 'real' family home once a school place has been secured. There is also in some cases a practice of applicants giving false addresses which are closer to the school than the 'real' family home. In our view it is reasonable for admission authorities to take steps to deter this practice and to check whether any address provided is genuinely the family's home address.

28. Whilst we can see why the objector would suggest that the address at which a family is living on the first day of term should be defined as the home address, we don't see how an applicant could provide anything but their current address on a registration form or an application form. The rationale for using 1 May in the application year as the relevant date appears to be in order to deter parents from moving closer to the school once their child's test result is known. In a way, there would be no point in a temporary house move before the parents are notified of their child's test score. If the child does not achieve the pre-set pass mark, he/she will not be offered a place at the school. It is logical therefore for the school to use the address at the time of registration as the relevant date. If the family move house after the results are known, this may raise questions about whether the move is a genuine one or not, particularly if there is some evidence suggesting that the move may not be a permanent one. In principle therefore we accept that there are rational reasons for choosing 1 May as the relevant date along with the continuous residence requirement.

29. However, whilst we accept that it is entirely legitimate for admission authorities to take steps to deter applicants from attempting to gain an advantage by moving to a temporary address with no intention of remaining at that address once the child in question has started school, the question is whether it is reasonable to impose a requirement which in practice means that a family would probably need to remain at the same address for a period of 19 months in order to ensure that a school place is properly secured. This is a lengthy period, however it would have no effect upon a family which had a genuine settled intention to live locally to the school, and these are the families which the school wishes to attract. It would adversely affect applicants who had moved house temporarily for the purpose of gaining a place at the school because they would have to pay for, and move to, the temporary address whilst also maintaining the costs of the 'real' family home for a prolonged period. But this, of course, is the intention. The provision is intended to be a deterrent.

30. Where a family move permanently to an address after 1 May in the application year which is intended to be the long-term family home this would not be treated as the family home immediately which would be disadvantageous to the success of any application made in accordance with the deadlines set out in the arrangements. However such applicants would have the option of putting in a late application using their new permanent address, in which case the child would be tested; treated as living at the new permanent address; and placed on the waiting list accordingly. For these reasons, we do not consider that treating 1 May in the application year or making provision to check home addresses to be unreasonable.

31. However, the objector also considers that paragraph d) of the home address provisions is unreasonable given most rentals are either for a six-month period or continuous one month rolling. He says that a family could have moved 200 miles but retained a house 200 miles away either because they could not sell it or rented it out or were refurbishing it. Why should the address 200 miles away be used? The objector says that there is no logic to the policy, and it does not ensure a child lives locally when attending the school as they can move after entry or after 1 November 2021.

32. The website Shelter England states “An assured shorthold tenancy is the most common type of tenancy if you rent from a private landlord or letting agent. The main feature that makes an Assured Shorthold Tenancy different from other types of tenancy is that your landlord can evict you without a reason”. Shelter goes on to state that such tenancies are for a fixed term “often 6 or 12 months” or periodic “rolling weekly or monthly”. Assured shorthold tenancies (ASTs) are made under the provisions of the Housing Act 1988. The tenancy will have an initial term, the minimum being six months, and, when that term expires, the tenancy will automatically continue on a periodic basis (determined by the intervals for paying rent, so usually one week or one month) unless the landlord and tenant enter into a further agreement for some other term. Most residential tenancies are automatically ASTs unless specifically stated to be otherwise. Government guidance, “Tenancy Agreements: a guide for landlords (England and Wales)” states “The most common form of tenancy is an AST. Most new tenancies are automatically this type”. Tenancies will be for a range of terms but often this will initially be for six months and thereafter on a monthly periodic basis, as this gives the greatest flexibility to the landlord. Families with low income and/or in receipt of benefits are most likely to have short tenancies as they are more likely to be in a poor bargaining position.

33. It is acknowledged that some families will take short tenancies near to a school in order to seek to secure a place for a child with no genuine intention to make that property their main residence. It is understandable that admission authorities wish to prevent such families gaining an unfair advantage. It is also acknowledged that a provision requiring tenancies to be for a longer term will help to prevent this. Admission authorities take different approaches to this problem. Some specify circumstances in which they will make further enquiries in order to establish whether the address given is a genuine home address, a short-term tenancy being a common example. Others, as here, make a longer-term tenancy an absolute requirement. In the latter case some families, particularly those that have limited resources, will be excluded despite the home address being genuine. Such families may have had no choice but to accept a short lease. For that reason, we find that the absolute requirement for a lease to be for a term of at least 12 months does not comply with the provisions in paragraph 14 of the Code, and we therefore uphold this aspect of the objection. An applicant must live at the same address for a period of 16 months in order for that address to be treated as the home address and to ensure that the place is not withdrawn. This should be sufficient in terms of a requirement. The term of the lease makes no difference.

Catchment areas

34. The objector dislikes the adoption of catchment areas and has provided a number of reasons for his dislike, albeit that paragraph 1.14 expressly permits the adoption of catchment areas which are reasonable and clearly defined, and provided that the catchment area does not prevent parents who live outside the catchment of the school from expressing a preference for that school. The school has not adopted a catchment area in its arrangements, therefore we do not uphold this aspect of the objection.

Feeder schools

35. The arrangements provide that priority is given to children that are attending, at the time of application, any school that is a member of the Pioneer Educational Trust, as the designated feeder schools. The relevant provision in the Code is paragraph 1.15 which says that: "Admission authorities may wish to **name** a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion must be transparent and made on reasonable grounds" (emphasis added).

36. The objector observes that the feeder schools are not named, and that the provision is unfair, unreasonable and amounts to local apartheid. He says:

> "All children should be treated equally and not disadvantaged because they do not attend a certain primary school (or special club – the MAT). Life chances are diminished depending upon which school a child was allocated 6 years earlier. This cannot be remotely reasonable for state schools, especially a selective school. Transition is at year 7 is based upon a selective test. What relevance is year 4-18? I see no reasonable grounds to give priority to the "Old boys club" of the Pioneer Educational Trust. I have never heard of this organisation."

37. The school has confirmed that the feeder schools are those which make up Pioneer Educational Trust, and that 'Pioneer Educational Trust' is well defined. These feeder schools have been chosen because: "Pioneer Educational Trust is a family of schools, with close links across the schools, with lots of cross-school collaborative work between staff and pupils. Our leadership structures and school improvement priorities are also aligned across schools".

38. The school has also said that use of feeder schools "provides seamless transition between schools and phases, with planned commonality of provision from age 4 to 18, across Pioneer Educational Trust schools". Pioneer Educational Trust schools are said to be located within the area local to the school, with the furthest school being 2.9 miles away. Following the application of oversubscription criteria (i) to (v), there are said to be up to 45 places available for eligible children who live locally to the school, as measured by distance. Also, the tie-break within the oversubscription criteria is always distance in order to ensure the school provides for local children. The school has provided data showing that the number of admissions on application of the feeder school oversubscription criteria are very low (between four to six pupils in the last three years). The data for the last three years shows that applicants admitted under the Pioneer Feeder School criterion are local to the school and frequently live closer than those admitted under other criteria.

39. We accept that the school has rational reasons for selecting the primary schools in the Pioneer Education Trust as feeder schools, and the provision does not appear to impact unfairly on local applicants as the number of applicants admitted under this oversubscription criterion is very low. However, paragraph 1.15 of the Code does require that feeder schools are named. Therefore, we must partially uphold this aspect of the objection. The arrangements will need to be revised to name the relevant feeder schools.

Re-use of the same selection tests for late sitters

40. The school has confirmed that the same tests are used for later sitters, and that there is no evidence to suggest that a candidate sitting the same test at a later date is at an advantage or disadvantage.

41. The objector says that this statement is simply incorrect. The issue (he says) has been settled in the High Court and even if one question is recalled this can provide an unfair advantage, so an injunction was granted.

> "An injunction cannot be granted if what was recalled was trivial and would not provide an unfair advantage. The court accepted they couldn't prosecute children. Thus there is nothing stopping children from passing on content. Many do so, especially to tutors who then teach late sitters with knowledge of content. This cannot be stopped. Many tutors continue to run feedback sessions from students."

42. In a number of the objections he has made this year, the objector has claimed that late sitters are advantaged unfairly. We considered objections on the same point last year in relation to twelve other schools, and the point has also been considered by other adjudicators in previous years. The objector has again suggested that the adjudicator determining these objections is obliged to answer a set of questions. The joint adjudicators have once again 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 (including our own); and we have looked at relevant court and tribunal decisions.

43. The objector has re-submitted much the same evidence in relation to this objection as he produced last year and raises similar arguments. His view is that it is not sufficient for admission authorities to confirm to us that they have seen no evidence that exam candidates pass on information about the content of the tests they have just taken. How would they know whether this is happening or not? The objector suggests various alternatives to using the same tests for late applicants and late sitters and claims that it must be possible to compare the results of two different tests of the same type, albeit that the selection test providers, CEM, claim that it is not possible to compare the results of different tests. CEM (he alleges) is a disreputable organisation and cannot be trusted. The objector's argument centres on the fact that a judge granted an injunction against him to prevent him from publishing information about test content on his website; evidence relating to an information exchange about the content of selection tests for the Birmingham grammar schools; and evidence which he claims discredits CEM. The objector did not make any objections to the arrangements of any selective school about late testing procedures

prior to being prevented by injunction from publishing information on his website relating to CEM selection tests. We understand that this information had, in part at least, been gleaned from his nephew shortly after the boy had sat the selection tests.

44. Why (the objector asks) would a court grant an injunction to prevent him publishing information unless that information was capable of providing an advantage? If he is capable of gathering and publishing information which compromises the integrity of the test results, why (he asks) would we not believe that others do the same? If we, as adjudicators, accept that the tests are capable of being compromised (which he says we must accept as a fact), how can we uphold that the test procedures in place operate fairly and produce a true assessment of ability? Even if the first test can produce such an assessment, the procedures used for late sitters render the overall outcome across the whole of the cohort an assessment which cannot be relied upon to be a true assessment. If it cannot be guaranteed that it is possible to keep thousands of children quiet, the integrity of the tests must always be in question. According to the objector, the problem can be fixed easily by using different tests, not allowing late testing, or scoring late sitters as zero. The objector asks why do admission authorities not use identical tests year-on-year if there is no risk of the results being compromised in the way he suggests is widespread practice?

45. All of the schools objected to on the same point this year use verbal and non-verbal reasoning 11 plus 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 plus VR and NVR tests designed by CEM. Schools using the former practice, as this school does, might 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.

46. 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. When we considered this question last year, we adopted the findings upheld by the Court of Appeal in injunction proceedings involving the objector. We re-iterate these findings below and re-adopt them.

- "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…"

47. Based upon evidence given in the course of the court proceedings (which included reference to information in emails from CEM) we accept that any information passed on to candidates sitting late tests is unlikely to make a difference; however a difference of one raw score mark can equate to up to six standardised marks, which could alter a candidate's ranking significantly. We also accept that there is evidence that information has been passed on by some candidates, for example in the form of a screenshot relating to dialogue about the CEM 11 plus tests for the King Edward Consortium Schools taken during the period 2011 – 2016. We have been provided with no more recent evidence but we accept, as the courts also recognised, that children will tell their parents and possibly others something of the content of the tests they have taken.

48. The Administrative Court and Court of Appeal did not dispute the evidence given by Warwickshire County Council in the injunction proceedings against the objector that it was legitimate 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. If the courts had not accepted this argument, there would have been no reason to grant or uphold an injunction, the courts could have simply concluded that an injunction was unnecessary because different tests could be used. CEM has said that it would only be able to compare candidates' performance to provide an ordered age standardised score if the same test is taken. We have no reason to doubt this statement. Additionally, our view is that, if different tests were used for late sitters, this would leave admission authorities vulnerable to arguments of unfairness which simply cannot arise where identical tests are used for late sitters. In making these observations, however, we are not suggesting that use of different tests of the same type for late sitters would necessarily be unfair or unreasonable. There are advantages and disadvantages to each approach, and it is for admission authorities to determine which works best for their schools. The objector made serious allegations last year about candidates being paid by tutors to

pass on questions and answers and wearing hidden cameras. These allegations were unsubstantiated and therefore we could not accept them.

49. The objector has submitted additional evidence in one of his objections, which we have taken to be relevant to all of them. This is an extract from a publication by the London Borough of Redbridge which states:

- "We are aware each year that concerns are raised about candidates telling their tutors the questions in order for them to give those sitting the late tests an advantage.

- Before the tests begin, we ensure that all candidates are reminded not to discuss the tests with other so that they do not reveal the questions. They are reminded that this may give an advantage to other children, reduce their own chances of being admitted to a grammar school and could result in them being disqualified from the test.

- We do not assume that children cannot recall some details of the selection tests, hence our clear statement to parents in writing and to candidates verbally before the test start.

- We make these statements to inform both the candidates and their parents directly in advance of the possible consequences, both legal and personal, of disclosing any information. Parents have been advised of the following: the 11 plus test is subject to copyright; its content must not be disclosed to any third-party including tutors/coaches. The test is for each candidate who must concentrate on their own test performance. Breaches of copyright, (such as answers being given to one or more children or to a third party) will be pursued vigorously by the examination board's legal department and the child will be disqualified."

50. Redbridge has two grammar schools. The late testing arrangements for one of these schools, Ilford County High School, were objected to on 28 March 2019 and 14 April 2020 by this objector. He refers to this publication as evidence that "even the London Borough of Redbridge acknowledges that children recall content". We see it rather as evidence of the serious steps taken to help protect the integrity of the tests. The publication refers to the fact that all candidates are reminded not to discuss the tests. Our understanding is that all examination boards give clear instructions to invigilators. It is in the interests of both CEM and admission authorities to protect the content of the 11 plus tests which are in use. We would be surprised if similar warnings and admonitions are not given as standard practice. Certainly the familiarisation papers we have seen contain a sternly worded copyright notice. Upton Court Grammar School has confirmed that it has seen no evidence of the tests for the school being compromised in the manner suggested by the objector. The school has also said that the points made by the objector have not caused them to think that the tests are not a true test of ability, or that the procedure for late testing could result in an outcome which is unfair or not objective.

51. 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.”

52. 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 plus tests are not fit for purpose which we have considered as separate aspects to the objection.

53. Looking at the second sentence of paragraph 1.31, references to ‘the test’ are, in our view, suggestive 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 for places at the same school. CEM’s evidence supports this. The objector claims that only a corrupt or incompetent adjudicator would accept such evidence from CEM, as he considers CEM to be dishonest. We deal with the objector’s claims against CEM elsewhere. We are aware that CEM refuses to disclose information about its selection tests in order to protect its commercial interests, but it cannot follow automatically that CEM do this because they are dishonest. The objector makes baseless claims of dishonesty and incompetence about a number of individuals and organisations and expects to simply be believed. What the objector is referring to (namely a child who has taken the tests passing on test questions which are made available to others taking the same test at a later date) 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.

54. 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. We remain of the view that there is the possibility of cheating in any examination – GCSEs, A Levels and so on (pupils smuggling in notes for example). The possibility of cheating does not apply exclusively to late testing of 11 plus 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 plus 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.

55. We emphasise that what we are considering here is whether the selection test being used for **this school** in 2021 for admission in 2022 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.

56. 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 (although the practice could lead to arguments or complaints about lack of parity and objectivity). Certainly, if a different 11 plus 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.

57. 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 reasonably practicable. 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 plus tests is of exactly the same ability as an applicant who scores 121 in a different set of CEM VR and NVR 11 plus tests. Our view is that a practice of having all applicants take the same test, albeit up to a few weeks apart, is an objective practice for deciding the allocation of places.

58. 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. 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 may typically be given four questions and must answer three of them. The applicant is likely to remember all of the questions after having taken the examination because there are only four of them. A late sitter with advance notice of the questions could be helped considerably by knowing the questions before taking the examination.

59. Applicants taking CEM VR and NVR tests answer some 250 questions in total. 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 our view remains that the chances of both of these circumstances occurring 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 also need to remember the answer and to use that information knowing this to be cheating. That child would also only benefit if he or she would not have been able to work out the answer him or herself.

60. The evidence produced by the objector indicates that there is a forum which passed on information provided by candidates who had taken the Birmingham Consortium 11 plus tests. There is evidence that some test questions were passed on, but no evidence that these were the correct questions. No answers to questions were conveyed to the parents of any candidates who sat the same tests at a later date. 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. The objector suggests that a clearly intelligent child would not care about passing on test content to a friend because the child would be confident of getting a place in any case.

61. We do not see how any candidate can be confident of getting a place until a place is offered, and our view is that the sort of child envisaged here by the objector (i.e., a child who consistently achieves very high scores in practice tests) would be intelligent enough to know the difference between right and wrong. As the objector knows from his own experience, a person who encourages a child to sit selection tests for schools for which he has no intention of applying in order to pass on information about test content to that person, risks becoming the subject of successful injunction proceedings if he/she makes the information known to others. The evidence which the objector has supplied us about the Warwickshire injunction proceedings and the statement published by the London Borough of Redbridge indicate that admission authorities go to great lengths to protect the integrity of the tests and makes us confident of their ability and willingness to do so.

62. 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 2022 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. Our view is that it is reasonable to operate this practice in order to save cost and create parity of results, as recognised by the courts' willingness to grant an injunction to enable the practice to be continued without risk of compromise. For these reasons we do not uphold this aspect of the objection.

63. The objector submitted additional evidence in the form of CEM's standard terms and conditions. There are clauses in the contract which say that CEM accepts no liability where children discuss the content of tests, and that CEM has a bank of questions which it re-uses. We were aware of that CEM re-uses bank questions, and we would have expected that CEM would insert an ouster clause along these lines in contracts. We have not circulated this information to the parties because it was submitted after the deadline given for responses and we consider it places an unfair burden on schools to keep circulating information to them in addition to the copious amounts of information we have already sent to them. We are not permitted to take information which we have not made all parties aware of. We did read the contract and it makes no difference to our conclusions on this point.

Age standardisation

64. The objector claims that the use of age standardisation in 11 plus tests is based upon the claim that different aged children in the same school year (who are taught the same) score different marks as they are younger. He claims that this conclusion is based upon children who have had no preparation for 11 plus tests. He also claims that age standardisation is a manipulation using an algorithm which is kept secret by CEM and therefore not open to public scrutiny. CEM (he says) simply cannot be trusted. He re-iterates that SATs papers, GCSEs and A levels are not age standardised. He claims that most children who sit 11 plus tests prepare. Many are tutored. Some are prepared in outreach programmes free of charge. Preparation (he says) makes the age standardisation null and void and there is no need for it, and it provides an unfair advantage to younger children. According to the objector, age standardisation is not accurate but merely guesswork. In a nutshell, the argument is that only the child's raw scores in the tests can provide an accurate reflection of ability

> "CEM claim that a child should be able to answer questions from what is learnt in year 5. But all year 5 children learn the same irrespective of age. Children are not streamed by age, but by raw ability in a class. This demonstrates within a year group age is irrelevant to performance. There is no evidence younger year 5 children score lower marks than older year 5 children, if taught the same content. If you teach 10-year-old percentages and the same to a 9-year-old or 11-year-old, they will understand the concept and can answer questions using a method. All 9,10, or 11-year-old children can learn the method, so age is not an advantage. It does not follow an 11-year-old will score higher than a 10-year-old. Teaching a 10-year-old and 16-year-old multiplication tables will not result in a 16-year-old scoring higher marks in a test of tables. Again, age is irrelevant. Since schools do not teach NVR,

all children start at the same point. Practice makes perfect, so again age standardisation is wholly unnecessary. An older child has no advantage".

65. The objector submitted two papers in later correspondence in this case. First, a paper produced by the National Foundation for Educational Research (NFER) and written by Schagen in 1990. This paper considers different statistical methods of age standardisation. The paper concludes that some methods are more secure than others but, in our opinion, (and contrary to the view expressed by the objector) it does not discredit the use of the age standardisation process.

66. Second, the objector submitted a Freedom of Information (FOI) request to the school. In response, the school provided a table of pupils' months of birth by year group. The objector attaches a paper showing some statistical analysis of these data and also the same data shown on a bar chart. He then compares these data with figures for months of birth in the 27 states of the European Union from 2000 to 2009. The charts show that the relatively small sample from the school does not match the huge data set from the European Union in terms of the distribution of births across months of the year. We do not believe that these papers have any relevance to the issue of the use of age standardisation. Age standardisation is not a method which sets out to ensure that an equal number of children by month of birth are admitted to a particular school or that the number admitted reflects the proportion of children born in that month. How many children in a year group were born in a particular month is not relevant to the standardisation process. The process makes allowance for those pupils who are born later in the school year and the number or proportion of these children will differ from year to year and school to school. The allowance is applied through the age standardisation process to individual children not to the cohort as a whole.

67. The school says that it has chosen to use tests which are standardised by age to ensure that pupils are not disadvantaged because of their age. Candidates with widely differing dates of birth may have different levels of maturity and may have had different lengths of time in the earliest years in school. The school's view is that age standardisation is required to ensure all candidates are treated equally. The school refers us to one of our previous determinations last year on this issue.

68. In considering whether the use of age standardisation is objective, what we have been told is that the very rationale for using age standardisation is objectivity. When considering age standardisation last year, our view was that CEM (as opposed to the admission authority) 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?

69. 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".

70. The objector said that 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 objectivity and reasonableness 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. In doing so, we emphasise that we are not passing any judgement on the arguments for or

against age standardisation of other tests, but we note that those other tests serve different purposes.

71. The difference between VR and NVR 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.

72. If maturity is developed over time, it would seem to us that children may not all be able to 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 plus 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.

73. There is significant and compelling research evidence that children who are 'summer born' perform less well in tests 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. The objector questions its relevance to CEM 11 plus tests. However, we note that there is research referred to about the British Ability Scales (BAS) tests, which were conducted during survey interviews when the child was aged around 5 and 7. At age 5, the BAS tests covered vocabulary, picture similarity and pattern construction. At age 7, they covered reading, pattern construction and maths, and are a similar type of tests to VR and NVR tests (tests of cognitive ability as opposed to attainment). The following conclusions were reached:

> "**National achievement test scores should be age-adjusted to account for the fact that children born at different times of the year have to sit the tests when they are different ages.**
>
> These age-adjusted scores should be used to calculate school league table positions, to determine entry to schools that select on the basis of ability, and potentially to assign pupils to ability groups within schools. Some studies have overcome this difficulty by focusing on outcomes measured at around the same age

for individuals beyond the end of compulsory schooling, which breaks the perfect correlation between age at test and age at school entry. For example, Black, Devereux and Salvanes (2008) identify the impact of school starting age on IQ scores taken as part of men's enrolment to military service at around age 18 (as well as the likelihood of teenage pregnancy and earnings) using Norwegian administrative data. **They find that starting school younger has a small positive effect on IQ scores, as well as on the probability of teenage pregnancy. By contrast, they find a large and significant positive effect on IQ scores arising from sitting the test at an older age" (**emphasis added)**.**

74. 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 plus, 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 new vocabulary at the rate of more than 1000 words per year, the difference can be very significant for the 11 plus tests. Age standardisation removes this potential unfairness, and the marks are adjusted to make them 'standard' for all children regardless of their age.

75. We are of the view that age standardisation removes some of the potential unfairness for summer born children in the 11 plus tests and therefore its inclusion in the admission arrangements for these schools is fair. We also consider that the purpose of using age standardisation is to attain an objective assessment of the ability of a cohort of children which is not skewed by age and its associated advantages. As CEM says, this is in order to enable meaningful comparisons of ability within the cohort of children sitting the tests therefore age standardisation provides a more extensive assurance of objectivity.

76. The objector makes the point that age standardisation is made 'null and void' by the extensive preparation which children receive before the 11 plus tests. He maintains that "Most children who sit tests prepare. Many are tutored. Some are prepared in outreach programmes free of charge." We accept that preparation and tutoring may improve the test scores for an individual child, but the objector has not produced any evidence to substantiate the statement that it renders the need for age standardisation redundant. Logically, if all pupils are tutored and improve their scores because of preparation or coaching, then the attainment gap between summer born children and others would remain the same - albeit at slightly higher score levels.

77. 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.

78. We are also aware that many pupils receive additional preparation through tutoring for the 11 plus tests. A literature review commissioned by the Office of the School Adjudicator which looked at disadvantaged pupil performance in the 11 plus 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." (The objector is critical of this review even though he does appear to agree with its conclusions on the effects of tutoring).

79. 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 local to the school. But, even if as the objector suggests it is widespread, it does not follow that this renders the use of age standardisation 'null and void'. Coaching and tutoring are used to gain an advantage. Age standardisation does not confer an advantage to younger children, it places them on an equal footing with older children in order to determine an objective assessment of ability.

80. 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 puts the comparison between the test scores on a fairer and more objective footing. 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 plus tests negates the need for the age standardisation weighting, and we do not uphold this aspect of the objection.

81. The objector refers to the fact that the Key Stage 2 Standard Attainment Tests are taken a few months prior to the 11 plus 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 plus tests. GCSEs – also mentioned by the objector – are taken by pupils each year at age 16, but they can be and are taken by younger children and by adults of all ages.

82. We are therefore of the view that age standardisation is appropriately used in 11 plus tests, and we do not uphold this aspect of the objection.

The Centre for Evaluation and Monitoring (CEM) is said to be a disreputable and untrustworthy organisation which cannot be trusted to devise tests that produce an accurate reflection of a candidate's ability

83. The objector has submitted a substantial amount of evidence which he suggests indicates that CEM is not a reputable organisation. It follows from this that, in the objector's view, the tests designed by CEM are not fit for purpose. The objector argues that whatever is said by CEM about the re-use of the same tests for late applicants and late sitters and age standardisation is not to be trusted. He also claims that CEM hides behind the protection of its commercial interests in order not to disclose information about the nature of its 11 plus tests and the testing process which might enable them both to be properly scrutinised. It is important to the objector that an injunction was secured against him to prevent publication of information about the CEM 11 plus tests which we believe was provided to him by a person (or persons) who had taken the tests, whereas he considers that other individuals and organisations have not been prevented from publishing similar information.

84. We have previously seen and considered the relevance of the decision in the employment tribunal case concerning Susan Stothard and the judgments in the various court cases which the objector has been involved in. We have also previously considered contributions to an 11 plus exams online forum and correspondence relating to online postings from 2011 - 2016 by various contributors. The objector has sent us a report from the Times Education Supplement website which refers to a Guardian article in which CEM withdraws a previous claim that its 11 plus tests assess "natural ability" and various correspondence with Warwickshire County Council. We have, of course, re-read all of this information very carefully because we understand its importance and significance to the objector, but where nothing has been submitted which has altered our view on a particular issue, as above we have tended largely to repeat what we said last year in respect of the issue in question.

85. The school has confirmed that it is satisfied with CEM and the content of the 11 plus tests, which are "a valid method of assessing pupils" for the purpose of grammar school entry.

86. The Code is clear that it is for admission authorities to formulate their admission arrangements and the choice of 11 plus test is part of that. Looking at grammar schools across the country they fall into three categories in terms of who produces and marks the tests. Some grammar schools produce their own test, or do so in conjunction with other schools, some grammar schools use the tests produced by GL Assessment and many others use CEM. GL Assessment and CEM are the main providers of tests for assessment which lead to grammar school place allocation across grammar schools in England.

87. CEM was originally part of Newcastle and then Durham universities and in June 2019 CEM was acquired by Cambridge Assessment and Cambridge University Press. CEM produces a range of assessment tools for schools and pupils of all ages and conducts

research in collaboration with the universities concerning the assessment of pupils. Its materials are widely used across schools and colleges in England.

88. It is clear that the school is satisfied that the tests provided by CEM appropriately identify those pupils who are capable of succeeding in a grammar school environment. It is also satisfied that the marking, validation, standardisation and reporting of the results of these tests is commensurate with the needs of the school. As CEM is a commercial company the school pays fees to CEM to provide these tests. If the school was not satisfied with the tests or their marking, then they could decide to use another company or produce their own tests. This they have not done because they are content to pay the fees to CEM and are confident that the process allows them to identify their pupils accurately. It is certainly the case that the pupils selected for entry to the school achieve high results in public examinations, which suggests the intake is a good fit for the grammar school environment.

89. Paragraph 1.31 of the Code 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'. It is entirely up to schools and other admission authorities to decide who writes and marks their 11 plus tests and this school has decided that CEM is an appropriate company to use. It is not within our jurisdiction to agree or disagree that CEM is a reputable organisation - our jurisdiction relates to whether the testing arrangements for this school comply with paragraph 1.31 of the Code. It is clear that this school, and many other similar schools are content that the service provided by CEM fulfils the requirements of paragraph 1.31 and that the outcomes are those which the school requires. We have seen no evidence which persuades us that the tests do not conform to the Code at paragraph 1.31, and we do not therefore uphold this aspect of the objection. We think it is important that we emphasise that we have seen nothing to make us doubt the suitability of the tests provided by CEM.

Summary of Findings

90. We find that it is reasonable to use 1 May 2021 as the date determining an applicant's home address and for the school to make provision in the arrangements that the home address may need to be verified, however we do not find that it is reasonable to treat the address where an applicant is living as the home address where the applicant is renting the property for a term of less than 12 months. We find that the school has not adopted a catchment area. We find that the school has a reasonable basis for the adoption of primary schools in the Pioneer Education Trust as feeder schools, however we also require that the feeder schools must be named in the arrangements. 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.

91. 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 research produced by the objector does not 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.

92. We do not find CEM to be a dishonest or untrustworthy organisation or that the selection tests produced by CEM are not an accurate assessment of ability.

93. On the basis of the above findings, we partially uphold this objection.

Determination

94. In accordance with section 88H(4) of the School Standards and Framework Act 1998, Mrs Talboys and I partially uphold the objection to the admission arrangements for September 2022 determined by the Pioneer Educational Trust for Upton Court Grammar School, Slough. 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 unless an alternative timescale is specified by the adjudicator. In this case we determine that the arrangements must be revised by 31 October 2021.

Dated: 11 October 2021

Signed:

Schools Adjudicator: Marisa Vallely

Schools Adjudicator: Ann Talboys