



Office of  
the Schools  
Adjudicator

## Determination

<b>Case reference:</b>	<b>ADA3782</b>
<b>Objector:</b>	<b>An individual</b>
<b>Admission authority:</b>	<b>The Governing Board of Mayfield Grammar School Gravesend</b>
<b>Date of decision:</b>	<b>11 October 2021</b>

## 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 Governing Board of Mayfield Grammar School Gravesend for Mayfield Grammar School Gravesend, Kent.**

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

**By virtue of section 88K(2) the 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 Mayfield Grammar School (the school), a single sex selective academy secondary school for girls with a coeducational sixth form for September 2022. The objection is to a number of aspects of the school's selective arrangements, including the tests and arrangements for taking the tests and the approach

used to distinguish between those candidates who have met the academic standard set for admission to the school.

2. The local authority (LA) for the area in which the school is located is Kent County Council. The LA is a party to this objection, and has submitted the information we have requested along with additional helpful comments. Other parties to the objection are the school's governing board and 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 (OSA) 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 academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing board, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 13 April 2021.

7. At the time of the determination of the school's admission arrangements and at the time the objection was made, the Admissions Code 2014 (the 2014 Code) was in force. A revised Admissions Code (the 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. The arrangements for the school as set out in this determination were determined on 18 January 2021. At that date 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 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.

10. We have also used our power under section 88I of the Act to consider the arrangements as a whole.

11. The objector has objected to the admission authority's refusal to allow the school's selection tests to be taken at a later date in circumstances where a candidate is unable to sit the tests on the original test date due to the fact that she is sitting the selection tests for entry to a different school. He considers this to be unreasonable and unfair. This point was considered in paragraphs 36 and 37 of ADA3685 – 3690 which was determined on 16 October 2020 in relation to Mayfield Grammar School Gravesend and other Kent grammar schools. This previous determination can be found at [www.education.gov.uk/schoolsadjudicator](http://www.education.gov.uk/schoolsadjudicator). Regulation 22 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 and paragraph 3.3(e) of the Code state that objections cannot be brought "which raise the same or substantially the same matters as the adjudicator has decided on for that school in the last 2 years". Therefore, it is not within our jurisdiction to consider this aspect of the objection and we have not done so.

## Procedure

12. In considering this matter we have had regard to all relevant legislation and the Code.

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

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

- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 13 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 (the injunction proceedings referred to below);
- f. the decision of the Employment Tribunal of England & Wales 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 Department of Education publications referred to later in this determination;
- i. online conversations about the topic of age standardisation for tests;
- j. descriptions of the operation of the 'Kent tests';
- k. relevant previous determinations; and
- l. research papers referred to in the text which were identified by us and shared with the parties for comment.

## The Objection

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

- a. The oversubscription criteria are said to be both unclear and unfair. Specifically, there is no explanation of how the qualifying score is determined. The objector's view is that the qualifying score should be set in advance of candidates sitting the selection tests. Paragraph 14 of the Code is relevant.
- b. The objector's view is that the admission arrangements fail to comply with the Code because the same selection test papers are used for late sitters. Relevant paragraphs of the Code are 1.31 and 14.
- c. The objector considers that the use of age standardisation operates to confer an unfair advantage upon younger candidates, particularly those who have been tutored. Relevant paragraphs of the Code are 1.31. and 14.
- d. The objector considers that the Centre for Evaluations and Monitoring (CEM) is an untrustworthy and dishonest organisation and, as a result, the 11 plus tests set by CEM cannot be a reliable indicator of grammar school ability. The relevant paragraph of the Code is 1.31.

- e. The objector considers that the adoption of catchment areas per se is pointless and unreasonable. His view is that places should be allocated exclusively on the basis of test scores. The relevant paragraph of the Code is 1.14.

## Other Matters

15. It appeared to us that the intended operation of a number of aspects of the arrangements was unclear. These were Oversubscription Criteria 1 and 2; “the Mayfield procedure”; and the catchment areas.

## Background

16. Mayfield Grammar School Gravesend is a single sex selective academy secondary school for girls aged 11 – 18 with a coeducational sixth form. The Published Admission Number (PAN) for entry to Year 7 in September 2022 is 210. The school is rated Outstanding by Ofsted and is heavily oversubscribed. The number of eligible preferences for the school was 382 in 2019; 457 in 2020; and 644 in 2021. For the avoidance of doubt, we have only considered the arrangements for admission to Year 7. We have not considered the arrangements for in-year or sixth form admissions.

17. We have set out relevant extracts from the admission arrangements below.

“Girls who attain the required standard through the Kent PESE procedure for selection at eleven by reference to ability will be eligible to be considered for admission to the school. Girls who have taken part in the Kent PESE procedure will also be eligible for admission if they reach the required standard through the Mayfield procedure. The Mayfield procedure is an optional, additional opportunity to be assessed eligible...

### Oversubscription Criteria

... If the number of eligible girls who apply is higher than the number of places available, places will be allocated in the following priority order:

1. Looked after and previously looked after children.
2. A brother or sister attending the school at the time of entry to the school.
3. Eligible girls who permanently reside in the postal code areas beginning with the following: DA2.6\*\*, DA2.8\*\*, DA3, DA4, DA9, DA10, DA11, DA12, DA13, ME3, TN15.7\*\*, TN15 6AR, TN15 6AT and TN15 6AS. Priority within this criterion will first be given to girls who are currently in receipt of Free School Meals. Places will be allocated in the order (a) Highest aggregated score in the Kent PESE tests. (b) Proximity home to school.
4. Eligible girls who permanently reside in the postal code areas beginning with the following: DA1, DA2 7\*\*, ME2, TN13, TN14, TN15 except TN15 7\*\*, TN15 6AR, TN15 6AT and TN15 6AS. Priority within this criterion will be as for Criterion 3 above.

5. Eligible girls who do not permanently reside in the areas as detailed in the third or fourth criteria. Places will be allocated in the order (a) Highest aggregated score in the Kent PESE tests home to school. (b) Proximity home to school.

The Mayfield Procedure for Admissions to Year 7. (Optional) September 2022.

The information below should be read in conjunction with the following documents:

The admissions policy and oversubscription criteria for September 2022. The co-ordinated Scheme for Secondary Admissions. 2022/2023 The school will admit girls through the Kent Procedure for Education (PESE).

... The school will also admit girls through the Mayfield procedure where a girl has been unsuccessful in the Kent testing process.

If an applicant wishes their daughter to take the optional Mayfield tests in addition to the Kent PESE tests, they will need to register to do so between 9.00am Tuesday 1st June 2021 and 4.00pm Thursday 1st July 2021.

... In exceptional circumstances, which have been evidenced, late registrations will be accepted but only up to 4.00 pm Friday 9th July 2021...

Testing will take place at Mayfield Grammar School, Gravesend on Saturday 11th September 2021.

The Assessment tests will comprise of:

A computer based test which will assess verbal ability, numerical reasoning and non-verbal reasoning and which will be locally standardised. The overall score will be a weighted average of the age standardised score calculated as

50% of the Verbal age standardised score plus

25% of the Mathematics age standardised score plus

25% of the Non-verbal age standardised score.

An English paper to assess writing skills and which will be marked. (Not computer based or multiple choice).

A minimum standard will be expected on both the Computer tests and the English paper.

The outcome of the tests can be different from that achieved in the Kent PESE testing as there is a greater emphasis on English skills. Further details of the format of the tests will be published on the School website in May 2021 before Registration for the tests opens.

The pass marks will depend on the range of results the local girls achieve on the tests and will correspond approximately with that which would be attained or exceeded by a child who is deemed suitable for a grammar school education.

### Special Arrangements for Access to the Mayfield Tests.

Parents or carers must discuss with their primary school about requesting special arrangements. Requests can only be Requests cannot be considered if received after 4.00 pm Friday 9th July 2021. If circumstances change after this date and special arrangements are needed please telephone Mrs McBride, PA to Headteacher at the school.

Only in exceptional circumstances will late testing be considered for applicants as admission to the school is not exclusively via the Mayfield procedure and the Mayfield procedure is not compulsory. If an applicant is unable to sit the test on the scheduled date due to

- (a) Religious observance, confirmed by a representative of the faith or
- (b) Illness confirmed by a doctor's certificate or
- (c) Parental work commitments supported by documentary evidence from employer a later test date will be arranged.

Taking the Kent PESE or another Local Authority test elsewhere on the same date will not be considered an exceptional circumstance.

Results will be posted to parents by First Class Post in line with the amended KCC PESE assessment process for 2022”.

## Consideration of Case

### The Objection

18. There are five aspects to this objection. We have divided our consideration of the case into five headings, each of which comprises one aspect of the objection. As we have said, the objector has made objections on 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.

19. The LA has provided a general response to the objection, which is succinct and helpful. The LA has explained that it is not in any way involved in the school's own testing and assessment process but can confirm that the threshold scores for the Kent selection

tests are not determined until after children have taken the test and the LA can understand how the cohort as a whole has performed. The same Kent Test materials are used for children who need to be tested after the main cohort. Assessment processes for Kent Grammar schools seek to identify pupils at the higher end of the academic range of the yearly cohort, and results obtained should be comparable throughout the applicant group. The LA's view is that ideally children should all take the same test because using a different test for some applicants would naturally raise questions of fairness.

20. The LA has seen no evidence to suggest that exam candidates retain and pass on information about content to late sitters. It observes that CEM is a well-established test provider used by local authorities as well as individual schools. The LA also observes that age standardisation is widely used in tests which measure attainment and is not seen to confer advantage. It is an established statistical process used in selection mechanisms to compensate for any disadvantage to underage pupils and to put results from several tests on a common scale. "A standardisation reflects children's test results and so the level of adjustment can vary across tests and from year to year, dependent on the observed variance for that cohort".

21. The school has provided us with information about the number of applicants admitted under each oversubscription criteria. The list refers to seven oversubscription criteria, whereas the arrangements have only five. We understand this to be because oversubscription criteria 3 and 6 refer to applicants eligible for the pupil premium within oversubscription criteria 3 and 4. The majority of eligible applicants are admitted by virtue of living in the first priority area.

Oversubscription criteria	2019	2020	2021
1	1	1	1
2	23	25	21
3	1	2	1
4	161	184	174
5	0	0	0
6	2	4	1
7	3	1	24

**Lack of clarity about how places are allocated and how the qualifying score is set**

22. The objector makes several points. He says there is no indication of the pass mark or how it is set. The Mayfield test is a CEM Select Test. CEM claims different tests cannot be



compared. The objector questions how it is possible to set a qualifying score which reflects “grammar school ability”. In order to do this, he claims it is necessary to set the qualifying score in advance. He says:

“What if all candidates are “morons” one year. The school would be full of “morons” as the pass mark will be based upon the spread of students and not actual comparable grammar school ability. It appears the pass mark is manipulated on the basis of the need to fill places. How can it be said, a child passes the Kent test and fails the Mayfield test and is considered as grammar school ability, and a child that fails the Kent test but passes the Mayfield test is also of grammar school ability? Yet, if a child fails the Kent test and does not take the Mayfield test, they are not of grammar school ability and if a child fails the Mayfield test and does not take the Kent tests they are not of grammar school ability. This makes no sense. Failure in one test must mean they are not of grammar school ability. CEM claim its tests cannot be [compared sic] with others. But this is what the school is doing, they are comparing results from non CEM tests to determine grammar school ability. CEM should be asked to explain how this is possible, or reliable. It is not sufficient for an adjudicator to say, “they will find a way to compare tests”. This is a cop out. They must explain exactly how this will be achieved and how accurate this is. Given CEM state they cannot do so the adjudicator must state explicitly if they believe CEM are telling lies that they cannot do so, or the school is telling lies that it can. The issue is binary. One party is not being truthful. The adjudicator is challenged to provide an explicit answer. This is a catch-22 issue”.

23. The objector is correct that the arrangements do not set out how the qualifying score is set. The school has explained that it is set after the results are known. It cannot be set beforehand because it is set with reference to the results and the ability of the cohort of girls sitting the tests each year. This is the same for both the Kent selection tests and the Mayfield tests. The school has informed us that the qualifying scores for the Mayfield tests are based on “two parts a minimum overall CEM score and the score from the written English paper, which is produced annually and assessed by qualified school staff. Each girl’s raw score from the CEM computer test is age standardised for each section to obtain a mean standardised score for each section fixed at 100. A total weighted score is calculated by adding together 50 per cent of the Verbal Reasoning score, 25 per cent of the Maths score and 25 per cent of the Non-Verbal reasoning score to achieve a weighted score fixed at 100. Senior staff moderate the English paper scores and determine the minimum combination of the CEM score with the English score that would make a girl eligible for place at the school.

24. When we read the arrangements, we could not understand the inter-relationship between the Kent tests and the Mayfield tests and how the order of priority is determined. We have raised this point with the admission authority using our powers under section 881 of the Act, and we will pick up the objector’s point about comparability of different tests later in this determination in the section entitled “Other Matters”. We deal here first with the objector’s view that the arrangements are not sufficiently clear and second that it is unreasonable to set the qualifying score after the test results are known. 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. Parents should be able to look at a set of arrangements and understand easily how

places for that school will be allocated. Paragraph 1.17 states that all selective schools **must** publish the entry requirements for a selective place and the process for such selection.

25. Since the setting of the qualifying score is a practice used to determine the allocation of places and the score itself is an entry requirement, the question for us to consider is how much information the school's admission arrangements must contain in order to be sufficiently clear. This question is made more complex by virtue of the fact that there are two relevant qualifying scores – the qualifying score as determined by the Kent tests and the qualifying score as determined by the Mayfield tests. Parents need to know which steps they must take and by when, and what their child needs to do in order to be eligible for a place at the school. This information needs to be set out so that parents can look at the arrangements and understand easily how places will be allocated. Our view is that the information can either be in the arrangements themselves or signposted clearly in the arrangements with further detail accessible via a one-click link from the school's website.

26. The arrangements do not set out any information about who sets the qualifying score for the Kent tests or when it is set, but there is a link under the Admissions tab on the school website to the Kent County Council website. This leads to a page relating to the selection tests where there is information about the test scores, standardisation, when parents will be told their daughter's test result, information about the qualifying score and the cut off scores for entry to the school in previous years (the cut-off scores are considerably higher than the qualifying score).

27. The arrangements themselves contain more detailed information about the Mayfield test, including the weightings, the fact that there is greater emphasis on English skills and the fact that the qualifying score is set after the results are known. It is said that the outcome of the tests can be different to that achieved in the Kent tests and that further details of the format of the tests will be published on the school website in May 2021 before registration for the tests opens. It is also said that results will be posted to parents by First Class Post at the same time as parents are notified of their daughter's results in the Kent tests.

28. Our view is that in order for the arrangements to be sufficiently clear, where there is a pre-established pass mark, the arrangements must state what that pass mark is. Where the pass mark is not a pre-established one, the arrangements must say this. They must also say when the pass mark will be set, and when parents will be told whether their child has reached the pass mark. There is no requirement that the pass mark must be set using a particular methodology or that it be set by a specified body. However, the arrangements must be reasonable and operate fairly; therefore, we consider that the pass mark must be set by a competent person or body. There is no requirement that admission arrangements must set out how the pass mark is set, but if they do this the methodology must be described clearly. The arrangements and supplementary information available to parents (via the Kent County Council website) make clear that the qualifying score is set after the results are known and that eligibility for a place at the school is contingent upon an applicant achieving the qualifying score. On the basis of the arrangements themselves, the supplementary information on the school's website and the information signposted on the local authority's website, (which is easily accessible), we find that the process for the allocation of places is

set out clearly for parents and in sufficient detail to comply with the requirements of paragraphs 14 and 1.17 of the Code. We do not uphold this aspect of the objection.

29. We turn now to the question of whether setting the qualifying standard after the test results are known is unreasonable. The objector's view is that setting the qualifying standard after the tests have been taken does not establish grammar school ability. It is merely a method of ensuring that the school fills to its PAN. The objector considers that an appropriate grammar school standard should be set, and those applicants who do not meet the standard should not be admitted. A pre-set pass mark may not have the effect of establishing year-on-year consistency of ability where it operates alongside oversubscription criteria because the offer of a place will not be wholly dependent upon the test score. A pass mark which is set annually after the results of the tests are known will inevitably be set only with reference to the candidates who have taken the tests. In our view both are reasonable, and neither results in an unfair outcome. The objective of the arrangements for this school is not to admit applicants of the highest level of ability, it is to admit looked after children, siblings of children already attending the school and local children (with higher priority given to applicants who are eligible for the pupil premium) who meet, or exceed, a minimum required standard of academic ability. This is a permissible and lawful objective.

30. The purpose of setting a qualifying score is to establish a minimum standard, which is the appropriate standard for this school. Each year the number of applicants sitting the tests and the ability of those applicants will be slightly different, not least as the number of children in the relevant age group in any part of the country will be different from year to year. It is also possible that, notwithstanding the extensive work undertaken to benchmark the tests against those used in previous years, the level of difficulty of the tests will be slightly different. All these factors will affect the level at which the qualifying standard is set, but none of them renders the test less fair. We do not uphold this aspect of the objection.

31. However, we do uphold the objector's point that the arrangements are unclear about how the results of the Kent tests and the results of the Mayfield tests are compared. In fact, as we now know, the results of the two tests are not compared because they do not need to be, but because the arrangements are insufficiently clear about how places are allocated, we do understand why the objector had considered that they would be. We deal with this point in more detail later.

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

32. The school has explained that it has a very low number of late sitters (usually only one or two each year) and has never seen any evidence that information is passed from those sitting the tests on the main test date to applicants sitting the tests at a later date. As mentioned above, the LA uses the same tests for late sitters. The school says that it does not use different tests for late sitters because it considers that the outcomes could not be standardised and would not therefore be comparable. Advance knowledge of the English paper would not assist a late applicant without the context known, and the computer tests consist of more than 160 items. The school therefore questions how much an applicant could retain and pass on to any advantage, particularly without the context being known. Requests

to sit the tests at a later date are only granted in exceptional circumstances and most girls prefer to sit the tests on the main test date with their friends.

33. The objector says the school would not know whether information was being passed to late sitters:

“Why would they? They cannot know what is said behind closed doors. To openly state content may result in an injunction. How is the situation monitored? Do they record and track all children? Are children given a frontal lobotomy? Do they bug children, parents and tutors and record what they say? Why not use the same test every single year if there is such confidence?”.

He argues that the point has been settled in the High Court that children do recall content that can make a difference to late sitters, despite what CEM state.

34. 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. We are not required to answer questions posed by the objector or anyone else. We are charged with considering and determining his objections and, in that context, whether or not the school’s arrangements conform to the requirements relating to admissions. That said, 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.

35. 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.

36. 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?

37. 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.

38. 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 enjoined to take down the content of the website...”

39. 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.

40. The Administrative Court (of the Queen’s Bench Division of the High Court of Justice) and the 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.

41. 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 others 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. ...

42. 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. The admission authority for the 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.

43. 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.”

44. Our view is that what paragraph 1.31 requires is that **the test itself** must be clear, objective and give an accurate reflection of the child's ability (in the case of selective schools). So, in order to comply with paragraph 1.31, the particular test used by the school must fulfil these requirements. There is no reference here to **the procedures for taking the tests**, (requirements in relation to procedures fall under paragraph 14, as we will explain later). Paragraph 1.31 is a requirement that the selection test must be fit for purpose. The

objector suggests several reasons why CEM 11 plus tests are not fit for purpose which we have considered as separate aspects to the objection.

45. 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 does this because it is a dishonest organisation. The objector makes unsubstantiated claims of dishonesty and incompetence about a number of individuals and organisations and expects simply to 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.

46. 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 etc (pupils smuggling in notes etc). 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.

47. 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.

48. 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.

49. 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.

50. 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.

51. 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.

52. 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 for entry in September 2022. 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.

53. 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 (ie, 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.

54. 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 costs 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.

55. Late in our consideration of these cases, 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 that CEM re-uses bank questions, and we would have expected that CEM would insert a limitation 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 information we have already sent to them. We are not permitted to take into account information which we have not made all parties aware of. Therefore, although we read the contract, we did not take it into account in our decision-making.

### **Age standardisation**

56. 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, 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. He says:

“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”.

57. 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.

58. Second, the objector submitted a Freedom of Information Act 2000 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 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.

59. The school says that there is much historical evidence to show that younger girls in a year group do not do as well as their older peers and may have begun school at a later date. The year's difference between children born on 1 September and 31 August would the school says be "best catered for by conducting selection tests at exactly the same age but for obvious reasons this is not practical. Data is therefore adjusted to provide an age adjusted corrected score". The school says that it has in the past monitored the performance of applicants with reference to their month of birth and has seen no advantage to younger applicants.

60. 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?

61. 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”.

62. The objector points out 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.

63. 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.

64. 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.

65. There is significant and compelling research evidence that children who are ‘summer born’ perform less well in tests of ability than children born at other times of the year. This gap is clear in primary aged children and remains an issue even into the later stages of secondary school. A study by the Institute of Fiscal Studies entitled ‘When You Are Born Matters; The Impact of Date of Birth on Child Cognitive Outcomes in England’ collates many previous pieces of research and looks at the reasons why summer born children perform less well. The paper also puts forward some suggestions about mitigating this effect. The objector questions its relevance to CEM 11 plus tests. However, we note that the authors refer to 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. 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”.**

66. 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.

67. 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.

68. 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.

69. 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.

70. We are also aware that many pupils receive additional preparation through tutoring for the 11 plus tests. A literature review commissioned by the OSA from the Department for Education 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 considers the review to be poorly written even though it supports his view about tutoring). However, there is nothing in the law or the Code which forbids the use of paid tutoring or additional coaching. We are unaware of the scale of additional tutoring/mentoring/support for pupils in the primary schools local to the school. However, 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.

71. 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.

72. 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.

73. 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.

### **CEM as a reputable organisation**

74. 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.

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 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.

75. In response to the objection, the school said that CEM was chosen as the test provider for the Mayfield tests in 2014 following discussions with CEM and research into the tests. The school needed to use a different test provider to the one used by the local authority (GL Assessment). The school monitors the progress of children entering the school and would have chosen a different test provider had it appeared to them that the tests were not producing an accurate level of ability. The school rightly says that it is not in the interests of the school or the applicant to be misplaced in a grammar school. There is no evidence in relation to achievement or progress of cohorts being admitted since 2014 that overall standards have changed as a result of using CEM materials.

76. 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 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.

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

78. 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.

79. 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.

### **The school's catchment area**

80. The objector observes that the school has two separate postcode-based catchment areas, which he considers to be unreasonable and unfair because it pushes the prices of houses up in these areas and discriminates against those who cannot afford to live in the area or cannot live in the area for other reasons. He says that the school has not explained the logic of using them or why they are reasonable in the 21st century when people are mobile and there is no requirement to live in these areas once the school term begins. He asks what exactly is the purpose of the catchment area and how does it achieve that purpose? In his view places should be allocated on ranked scores alone, irrespective of where the child lives. He claims that this is the fairest way to allocate places on a test of ability.

“Every child in England should have an equal chance to access any grammar school, irrespective of where they live, and they can move if they wish. Local apartheid is a selfish and shameful aim. There would be uproar if Oxford University only admitted local children or gave them priority”.

81. We will deal with the objector's general objection to catchment areas here. We did question the rationale for the adoption of the school's specific catchment area using our jurisdiction under 88I of the Act, and we deal with this later in the section entitled “Other Matters”.

82. The objector maintains that the adoption of catchment areas encourages parents to “game the system” (our terminology). The objector observes correctly that a parent who wants their child to have priority for a particular school can buy or rent a property situated within the catchment area for that school. The parent would generally only need to do this for one term because, once the child has been admitted to the school, the place cannot be withdrawn after the end of the first term. The objector considers it is an interference with the privacy rights of families to dictate where they must live, and for how long. He also claims that catchment areas advantage wealthy applicants because houses close to schools which are much sought after can command high purchase prices. Also, renters are more easily mobile than house owners.

83. Our view is that there remain many sensible reasons for having catchment areas, which is why paragraph 1.14 of the Code expressly permits schools to have them provided they are designed so that they are reasonable, clearly defined, and the arrangements do not prevent parents who live outside the catchment from expressing a preference for the school. We disagree with the objector's argument that catchment areas are no longer relevant. Children do need to get to school every day and it is in their interests not to have difficult

journeys which mean that they spend hours travelling to and from school. That is not to say that parents do not choose to send their children to schools which are some distance from the family home where they perceive these schools to be better than the schools closer to home. But this is far from ideal. Secondary school pupils, particularly in selective schools, will have substantial amounts of homework, many will want to participate in extra-curricular activities and most will want to develop friendships in the area in which they live. Our view is that the rationale for adopting catchment areas remains as relevant today as it ever was.

84. Indeed, academy schools such as Mayfield Grammar School are required by their funding agreements and by section 1A of the Academies Act 2010 to provide education for pupils who are “wholly or mainly drawn from the area in which they are situated”. Admission authorities of schools which are oversubscribed are able to give higher priority to some applicants provided this is in accordance with the Code, and the adoption of catchment areas as a means of doing this is entirely lawful provided the catchment area itself is not manifestly irrational or adopted for spurious or arbitrary reasons. The objector questions the underlying rationale for having a catchment area *per se* and the logic of having two priority areas, beyond this he does not allege that the catchment area for this school is not clearly defined or unreasonable, and we find no evidence of this. Accordingly, we do not uphold this aspect of the objection since catchment areas which are clear and reasonable are permitted expressly by paragraph 1.14 of the Code.

## **Other Matters**

### Clarity of oversubscription criteria 1 and 2

85. Oversubscription criteria 1 and 2 do not refer to ‘eligible girls’. We were unclear therefore as to whether this means that any applicant who is a looked after or previously looked after child or a sibling would be given priority regardless of whether she has reached the qualifying standard in the selection tests.

86. The school has said that the description of eligibility is covered in the first three paragraphs of the arrangements which of course is true, but since oversubscription criteria 3, 4 and 5 refer specifically to ‘eligible girls’ whereas 1 and 2 do not, this gives the appearance that 1 and 2 may have wider application. The school has agreed to make the necessary revisions. We are grateful to the school for its cooperation in this matter.

### The inter-relationship between the Kent test and the Mayfield test

87. It appeared to us that an applicant may be eligible for admission if she reaches the qualifying standard in either the Kent tests or under the Mayfield procedure, but there is no explanation of the inter-action between the two sets of tests. Oversubscription criteria 3, 4 and 5 refer to ‘eligible girls’ which appears to mean a girl who has reached the qualifying standard in either the Kent tests or the Mayfield procedure. Our understanding of the arrangements was that all eligible girls must have taken the Kent tests, but that some eligible girls will only have reached the qualifying score in the Mayfield tests. The arrangements say that the scores may be different in the different tests, but we were unable to understand where an applicant who has different scores and has reached the qualifying standard in each

test would feature in the order of priority or the nature of the inter-relationship between the two test results.

88. The school told us that all girls must have taken the Kent tests and indeed this is clear from the arrangements. Oversubscription criteria 3, 4 and 5 provide that priority within those criteria is determined by a) highest score in the Kent tests and b) proximity of home to school. All eligible girls who have only achieved the qualifying standard in the Mayfield test are ranked according to their aggregated Kent test score. The school says that they end up being distributed throughout the ranking list as it is possible to achieve “a variety of aggregated scores” but not meet the minimum threshold in one or more areas in the Kent test. The results from the Mayfield test do not affect the ranking, which is based exclusively on the score in the Kent test.

89. The arrangements contain no information about the format of the Kent test, therefore we did some further reading of the information available on the Kent County Council website and learned that the Kent test comprises two papers. An English and Maths paper and a VR and NVR paper. Each lasts an hour. There is also a 40-minute writing task which will only be marked in borderline cases and will be considered alongside the child’s schoolwork to determine whether he/she is of grammar school ability. The overall pass mark is set each year after the results are known. Applicants are given three standardised scores for English, Maths and VR/NVR, and it is necessary to achieve a minimum score in each of these areas.

90. So, for example, in 2020, an applicant needed a score of 332 or more with no single score lower than 108. The highest possible score was 423. We now understand that an applicant might have had an overall score of 340 but that this would not have been a qualifying score if the applicant had scored only (say) 100 in Maths. Such an applicant would be considered eligible for a place at Mayfield if she had achieved the qualifying score in the Mayfield test and would be ranked on a score of 340. Although the arrangements do indeed say that applicants are ranked on their Kent score, their operation would not have been clear to us without the school’s helpful explanation. Indeed, we note that the objector’s reading of the arrangements was that there would be some comparison of the Kent score and the Mayfield score which is to some degree understandable in the circumstances, and which is why we have partially upheld the first part of the objection. The arrangements need to be revised to include additional information about the operation of the Kent tests in order to make them sufficiently clear.

#### The rationale for the catchment area

91. We looked at the map of the first and second Priority Areas, which is clear. We asked the school to explain why the Priority Areas have been drawn as they are. We noted that in particular the areas extend mainly to the south, east and west. We asked whether this is because the river forms a natural boundary to the north; whether the northern boundary of the Priority Areas is also the county boundary; and whether any part of either of the Priority Areas are outside the Kent County boundary.

92. The school has said that its goal is to be a local school for local girls. Most of the postcodes referred to in the oversubscription criteria fall within the County of Kent in areas

surrounding the school, though some are in Medway and Bexley. The catchment area does not comprise the county itself. The school has said it does not wish to be a super-selective school admitting only the highest scoring girls from a wide area. We accept from the school's detailed explanation of the rationale for the adoption of the overall catchment area. We have not set this explanation out in full here due to the length of this determination, but we have shared it with the parties and invited them to comment. Our conclusion is that the school's catchment area is a reasonable catchment area adopted for rational reasons. It is certainly clearly defined by using postcodes and does not operate to prevent applicants who live outside Kent from applying for places at the school.

#### Additional point relating to oversubscription criteria 3, 4 and 5

93. We also note that oversubscription criteria 3, 4 and 5 provide that places will be allocated in the order (a) Highest aggregated score in the Kent PESE tests (b) Proximity of the child's home to school. We have taken (b) to be a tie breaker within each of these oversubscription criteria, but this is by no means clear. We could not see how priority could be determined by both rank order of score and proximity. We also wondered whether the school, having established a ranked order list of eligible girls, then re-arranged the list of eligible girls in proximity order, so that priority was ultimately determined by proximity of home to school and not by highest scores. The arrangements are capable of being determined either way, and therefore need to be revised in order to comply with the requirements of paragraph 1.8 of the Code.

### Summary of Findings

94. We uphold part of this objection, namely that the arrangements are unclear as to the method of allocating places and so do not comply with paragraph 14 of the Code. We also found that oversubscription criteria 3, 4 and 5 were not expressed with sufficient clarity to comply with the requirements of paragraph 1.8 of the Code. We consider that the arrangements are sufficiently clear as to the setting of the qualifying score. We do not find the late testing arrangements to be in breach of paragraph 1.31 or 14 of the Code. We do not find that the use of age standardisation renders the test results an inaccurate assessment of ability. Neither do we find that the tests are not an accurate assessment of ability because they are provided and marked by a dishonest and disreputable organisation.

### Determination

95. 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 Governing Board of Mayfield Grammar School Gravesend for Mayfield Grammar School Gravesend, Kent. We have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the way set out in this determination.

96. 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.

97. 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 determined by the Governing Board of Mayfield School Gravesend for Mayfield School Gravesend, Kent.

Dated: 11 October 2021

Signed:

Schools Adjudicator: Marisa Vallely

Schools Adjudicator: Ann Talboys