Office of the Schools Adjudicator

Determination

Case reference:	**ADA3778**
Objector:	**An individual**
Admission authority:	**The Governing Board of Stretford Grammar School, Trafford**
Date of decision:	**11 October 2021**

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, Dr Vallely and I partially uphold the objection to the admission arrangements for September 2022 determined by the Governing Board of Stretford Grammar School, Trafford.

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 adjudicators. 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 a person, (the objector), about the admission arrangements (the arrangements) for Stretford Grammar School (the school), a mixed, selective foundation school for pupils aged 11 – 18 for September 2022. The objection is to a number of aspects of the arrangements for admission to Year 7. The local authority for the area in which the school is located is Trafford Council. The local authority is a party to this objection along with the school and the objector.

2. This is one of a number of objections to the admission arrangements for September 2022 for different schools referred to the Office of the Schools Adjudicator by the same objector. Dr Marisa Vallely and I have been appointed as joint adjudicators for 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. There are a number of aspects which are common to many objections. We are aware that the objector has made objections to other schools in previous years about these same aspects. Those objections have been determined by different adjudicators and by ourselves. We have read the relevant previous determinations and taken them into account. Those determinations do not form binding precedents upon us, and we have considered each of these aspects afresh. The approach we have taken is to discuss each of the common aspects in the objections which have been made this year and agree the wording of our determinations in relation to those aspects. Some identical wording will appear in each of the determinations in relation to these common aspects.

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

Jurisdiction

4. As a foundation school the governing board is required to ensure that the admissions policy and arrangements 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 9 April 2021. We are satisfied that the objection has been properly referred to us in accordance with section 88H of the Act and most of the aspects of the objection are within our jurisdiction.

5. We have also concluded that we do not have the jurisdiction to consider the objection to the inclusion of a catchment area in the admission arrangements. This issue was the subject of a determination published by the OSA on 20 August 2019. The determination was ADA3540. Paragraph 3.3 of the Code states that 'The following types of objections cannot be brought… e) objections to arrangements which raise the same of substantially the same matters as the adjudicator has decided on for that school in the last two years.'

6. At the time of the determination of the school's admissions arrangements and at the time the objection was made, the Admissions Code 2014 (the 2014 Code) was in force. A revised Code came into force on 1 September 2021, which means that the 2014 Code no longer has any effect. Since the objection and the response to it were framed in terms of the 2014 Code, we will 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.

7. The arrangements for the school as set out in this determination were determined on 31 March 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.

8. We note that the admission authority appears to have reflected the expected changes in their arrangements. We have not considered those aspects of the admission arrangements. Therefore, nothing in this determination should be taken as indicating that those aspects of the arrangements do or do not conform with the requirements of the new Code.

Procedure

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

10. 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 9 April 2021 and supporting documents and subsequent correspondence;

d. the school's response to the objection and subsequent correspondence;

e. the local authority's response to the objection; and

f. relevant previous determinations, research papers and court judgments referred to in the text.

Objection

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

1) The objector says that CEM is a disreputable and untrustworthy organisation which cannot be trusted to devise tests that produce an accurate reflection of a candidate's ability. The relevant paragraph is 1.31.

2) The objector considers it unfair to give priority in the oversubscription criteria to pupils in receipt of pupil premium. The relevant paragraph is 1.31

3) The objector considers it unfair to provide extra time in the tests for pupils with dyslexia. The relevant paragraph is 1.31.

4) The objector believes it is unfair to age standardise test scores. The relevant paragraphs are 1.31 and 14.

5) The objector believes that it is unfair to use the same test paper in late testing. The relevant paragraph is 1.31.

6) The objector believes that the address requirements are unreasonable. The relevant paragraph is 14.

Background

12. Stretford Grammar School is a mixed, foundation selective school. It caters for pupils aged 11 to 18 and is located in Stretford, Trafford. The school was rated by Ofsted as Good in February 2019. The school has a Published Admission Number (PAN) of 160 for admissions to Year 7. It is oversubscribed.

13. As we have said, the objection relates to the admission arrangements for Year 7. The arrangements provide that all candidates are required to sit an Entrance Test. Parents are told their child's score and whether he or she has met the qualifying standard for entry to the school. The arrangements say that the parent of a child may express a preference for the school through the common applications process. Only candidates who meet the qualifying score in the Entrance Test will be eligible to be considered for admission to the school. The qualifying score is a pre-defined pass mark of 334 but all those attaining up to ten marks lower have their test papers reviewed.

14. Where applications from candidates who have scored the qualifying score exceed the number of places available, the following oversubscription criteria will be applied:

1) Looked after and previously looked after children;

2) Any looked after or previously looked after child Children who have been in state care outside of England and ceased to be in state care as a result of being adopted;

3) Up to 32 places for pupils eligible for the Pupil premium

4) The top 20 scoring candidates;

5) Siblings;

6) Children living in the catchment area;

7) Other children by distance from the school.

Consideration of Case

15. We have divided our consideration of the case into six headings, each of which comprises one aspect of the objection. As we have said, the objector has made objections on some of the same points for a number of schools. Our consideration of the points which

have been raised in a number of cases is generic, and so the text will be largely the same in the determinations. It may not be identical as all the schools have different arrangements.

CEM as a reputable organisation

16. The objector has submitted a substantial amount of evidence which he suggests indicates that the Centre for Evaluation and Monitoring (CEM)), which designs the 11 plus tests used by the school, 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 also 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 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 children who had taken the tests, whereas he considers that other individuals and organisations have not been prevented from publishing similar information.

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

18. In response to the objection, the school refers to a number of previous determinations and says 'the school understands that adjudications are not based on case law and that the adjudicator will return to first principles when considering this referral. However, admission authorities must be able to be guided by the published judgements of responsible authorities, such as the Office of the Schools Adjudicator when setting their admission arrangements. This issue has previously been raised in relation to objections raised concerning the Admissions Policy for Alcester Grammar School (ADA3349). CEM is an organisation affiliated to a highly respected University which is used for ability testing by many admission authorities for selective school admissions Paragraph 48 of this determination notes that the adjudicator found 'no valid reason to doubt the quality of the tests that they provide'. Indeed, this point was also raised in reference to the admission procedures for ADA2877 - Rugby High School where the objector argued that the test did not comply with paragraph 1.31 of the code. Whilst the objection may have been worded slightly differently, it does imply that the objector was questioning the integrity of CEM to devise tests to produce an accurate reflection of a child's ability given that the same test for selection by ability is used for later additional sittings. This point has been addressed in the determination of ADA3349, dated 27 July 2018 and the adjudicator noted that paragraphs

18 to 48 specifically address this point. However, if the question is one of trust, then again school would point to the determination for ADA3349 – Alcester Grammar School - which stated that CEM was affiliated to a highly respected University.'

19. In its response the local authority said that the CEM entrance examination has been used for many years by a consortium of grammar schools in Trafford.

20. 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 Education and many others use CEM. GL Education and CEM are the main providers of tests for assessment which lead to grammar school place allocations across grammar schools in England.

21. CEM was originally part of Newcastle and then Durham universities and in June 2019 CEM was acquired by Cambridge Assessment and Cambridge University Press. CEM produces a range of assessment tools for schools and pupils of all ages and conducts research in collaboration with the universities concerning the assessment of pupils. Its materials are widely used across schools and colleges in England.

22. It is clear that the school is satisfied that the tests provided by CEM appropriately identify those pupils who are capable of succeeding in a grammar school environment. It is also satisfied that the marking, validation, standardisation and reporting of the results of these tests is commensurate with the needs of the school. As CEM is a commercial company the school pays fees to CEM to provide these tests. If the trust was not satisfied with the tests or their marking, 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.

23. 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 trust 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 trust, and many other similar trusts and schools are content that the service provided by CEM fulfils the requirements of paragraph 1.31 and that the outcomes are those which the trust 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 element 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.

Priority given to children in receipt of pupil premium

24. The objector accepts that 'pupil premium discrimination appears lawful' by which we take him to mean that it is lawful to give priority in the oversubscription criteria to children

who are in receipt of pupil premium funding. However, he asserts that by accepting 32 pupils who are in receipt of pupil premium irrespective of distance, is not fair. He questions the number of allocated places and asks the question; What number of pupil premium children would be fair?'

25. The local authority stated that 'the memorandum of understanding between the Department for Education and the Grammar School Heads Association sets out our shared ambition for more pupils from lower income backgrounds to apply to, pass the test for, and be admitted to selective schools.'

26. In its response to the objection, the school said 'The school Admission Policy for 2022 states that if the school is oversubscribed then places will be awarded based on the oversubscription criteria. The Pupil premium oversubscription is Category 3 and follows: - Looked After Children and all previously Looked After Children. Children who have been in state care outside of England and ceased to be in state care as a result of being adopted. Category 3 states: - Pupil premium - 32 Places will be allocated to students on Pupil premium, irrespective of distance. Candidates, on Pupil premium, with equal scores to the lowest candidate in this allocation will also be offered places. This has existed as Category 3 since 2018 and has been widely consulted upon. At no point has an objection been raised within the school community to the place of this criteria within the oversubscription criteria list or its inclusion within. In fact, when the school consulted on its bid to apply for Selective Schools Expansion Fund (SSEF) funding with a view to increasing places for students in receipt of Pupil premium no objections were raised and many parents supported the application. Furthermore, Pupil premium remains part of the over subscription criteria as Stretford Grammar School was successful its SSEF bid in 2019. This successful bid, accepted by the DfE, required school to review its admissions policy in order to support social mobility and to increase students from disadvantaged backgrounds through its work within the community. Hence category 3 was reaffirmed. More recently we have asked for a variance on this point from: Pupil premium - 32 Places will be allocated to students on Pupil premium, irrespective of distance. Candidates, on Pupil premium, with equal scores to the lowest candidate in this allocation will also be offered places, to: Pupil premium - 32 children, eligible for the pupil premium, who achieve the test pass mark of 334 will be allocated places, in order of test score. Pupil premium students with equal scores to the lowest candidate in this category will also be offered places. If there are fewer than 32 children in this category, then pupil premium children scoring more than 324 will be prioritised in order of test score until the 32 places are filled.

27. Whilst we await determination of this variance, no objections were made in the consultation and as such it must therefore be considered that the community in which the school resides does not view its inclusion as unfair. The school has increased its intake to 160 students year on year having previously only offered to 128 students. The increase in capacity, as a result of the funding, means that students will not lose out due to the inclusion of this criteria, as without it the school would not have been extended to accommodate 160 students (32 additional places in each of Years 7 to 11). Indeed, if the places are not fulfilled by students in receipt of Pupil premium due to not enough students passing in any given year who are in receipt of Pupil premium, then subsequent oversubscription criteria will be invoked and students in Category 4 and below will be admitted. Finally, the Sutton Trust and the Education Endowment Fund who have worked in

close partnership with the DfE cite the difficulties of students accessing grammar schools who are from disadvantaged backgrounds due to the affordability of tuition and the proximity of home to grammar schools. Therefore, Pupil premium in Category 3 means that students from disadvantaged backgrounds are not disadvantaged as a result of their postcode.' This variation request was approved and was published on the OSA website on 27 July 2021. (VAR2160).

28. "Many children and young people living in our most deprived communities do significantly worse at all levels of the education system than those from our least deprived communities. This is often referred to as the 'attainment gap'." This is a quote from a DfE paper which led to the introduction of the concept of Pupil premium funding. The funding was introduced in 2014. The DfE's paper introducing pupil premium funding states that evidence shows that children from disadvantaged backgrounds:

- generally, face extra challenges in reaching their potential at school, and
- often do not perform as well as their peers.

The pupil premium grant is designed to allow schools to help disadvantaged pupils by improving their progress and the exam results they achieve.

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

- been registered for free school meals (FSM) at any point in the last 6 years;
- been looked after by the local authority (in care or accommodated) for one day or more; or
- ceased to be looked after through adoption, or via a Special Guardianship, Residence or Child Arrangements Order.

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

- choose from which group or groups (Early Years Pupil premium (EYPP), Pupil premium or Service Premium (SP) recipients) to give priority:
- specify a number or percentage of their published admission number of PP pupils who will be given priority. For example, this can be representative of the number of disadvantaged children resident in the school's local area; or they can prioritise a certain percentage of local eligible children;

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

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

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

31. In May 2018 the DfE published a Memorandum of Understanding (MoU) between the DfE and the Grammar School Heads Association. (GSHA) This was updated in March 2020. In this MoU both parties have a shared ambition to see more pupils from lower income backgrounds applying to, passing the test for, and being admitted to selective schools.

32. It was agreed specifically that admission authorities can consider lowering the selection test pass mark for children eligible for the pupil premium. The MoU stated that "this is a decision for the individual school's admission authority. A number of grammar schools already set a lower pass mark for disadvantaged children. Any authorities who take this approach should ensure this still provides sufficient rigour to ensure those children can thrive within the highly academic environment of a grammar school."

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

- increased number of selective schools effectively prioritising disadvantaged children in their admissions arrangements, with a view to all GSHA member schools doing so by the scheduled end of the Parliament.

- an upwards trend of numbers of disadvantaged children applying to selective schools.

- an upwards trend of numbers of disadvantaged children being admitted to selective schools.

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

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

36. It is clear that Government policy is to encourage improved access to grammar schools for disadvantaged pupils, and that schools are encouraged to give priority to disadvantaged pupils in their admission arrangements' oversubscription criteria. Any priority given to PP pupils in oversubscription criteria means that others, lower down the criteria, have a lower priority. The purpose of introducing oversubscription criteria is to ensure that some groups of children are given higher priority than others where a school has more applications than there are places available. The Code makes clear that schools are able to include reasonable oversubscription criteria, and that this of itself is not unreasonable. There are no suggested or limited proportions required in the Code for the number or proportion of pupils who are prioritised under this criterion. Neither does it constitute unfairness.

37. In the case of PP pupils' inclusion in the oversubscription criteria we are of the view that prioritising PP pupils who achieve the pass mark over those who are not PP pupils is reasonable. Indeed, it is a practice which is encouraged by Government policy and Guidance and is compliant with the Code. Paragraph 1.39A of the Code expressly permits schools to give priority to PP pupils. It states "Admission authorities may give priority in their oversubscription criteria to children eligible for the…. pupil premium….".

38. We do not therefore uphold this element of the objection.

Extra time for pupils with Dyslexia

39. The objector says that it is unfair to allow an extra 25 per cent of time for pupils who are dyslexic. The local authority made no comment on this aspect of the objection. In its response the school said 'Given that part of the test requires students to process information under timed conditions, students only receive 25% extra time where a test for dyslexia undertaken by a specialist assessor for processing speed identifies a need or where it is demonstrated that this is the normal way of working in primary school. This is to ensure that those students who struggle with processing speed are not disadvantaged. Every effort is made to ensure that time is only awarded to those students with the correct evidence in order to ensure that students are treated fairly and consistently. Where the above information is not provided at the time of the exam then additional time is not awarded and parents of those students are advised of the appeal process. As such, every reasonable attempt is made to address our responsibilities within The Equality Act 2010 which requires the school to make reasonable adjustments where a candidate, who is disabled within the meaning of the Equality Act 2010, would be at a substantial disadvantage in comparison to someone who is not disabled. As detailed above, it is our belief that where a student's processing skills falls below the levels expected to process information quickly, as part of the timed test, then applying 25% extra time for these students is a reasonable adjustment.

40. ’We are reminded that the Equality and Human Rights Commission’s guidance on the Equality Act states at paragraph 2.32 ‘A school that is using a permitted form of selection is not discriminating by applying this form of selection to disabled children who apply for admission, provided that it complied with its duty to make reasonable adjustments for disabled applicants during the assessment process.’

41. We are of the view that the school clearly demonstrates the need for the identification of candidates who are classed as ‘disabled’, and this includes those diagnosed as dyslexic. We are also of the view that the school’s processes in this regard are clear and comprehensive.

42. Paragraph 1.31 of the Code is reported in full in paragraph 23 of this determination and we are satisfied that providing reasonable adjustments for children with dyslexia in the tests (by giving them additional time to complete the tests) ensures that the candidates will be able to demonstrate their true ability. We therefore do not uphold this element of the objection.

Age standardisation of test scores

43. The objector claims that the use of age standardisation in 11 plus tests is based upon the claim that differentaged children in the same school year (who are taught the same) score different marks as they are younger. He claims that this conclusion is based upon children who have had no preparation for 11 plus tests. He also claims that age standardisation is a manipulation using an algorithm which is kept secret by CEM and therefore not open to public scrutiny. CEM (he says) simply cannot be trusted. He re-iterates that SATs papers, GCSEs and A levels are not age standardised. He claims that most children who sit 11 plus tests prepare. Many are tutored. Some are prepared in outreach programmes free of charge. Preparation (he says) makes the age standardisation null and void; 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.

44. The objector asserts that “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”.

45. 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.

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

47. The local authority made no comment on this aspect of the objection. The school responded that 'age standardised test scores aim to mitigate against any lost learning between September and August babies and the spectrum of ages between these two groups. Researchers at the Institute for Fiscal Studies (IFS) examined whether there was a link between the month in which a child is born and what they tend to do when they leave school. They studied three data sets, which represent the records of 48,500 children and teenagers in England. They found children born in August were 20% less likely than their classmates born 11 months earlier, in September, to go to Russell Group universities – the topflight that includes Oxford and Cambridge. They were more likely to study vocational courses instead. Indeed, a previous study by the IFS, published in 2007, showed August-born children were significantly less likely to be academically successful than their September-born classmates. As such, studies have informed the use of standardised test scores to offset the perceived advantaged gained by September students. Whilst the objector cites the fact that there is no age standardisation at GCSE and A Level, the above studies discuss gaps in attainment at such stages of their career but also point to the fact that such gaps are more pronounced at an earlier age. Furthermore, the objector states that age standardisation has no place due to the fact that all students, regardless of age, can be taught a method and that practice makes perfect. It was for this reason that Stretford Grammar considered joining the CEM consortium in Trafford. Stretford Grammar is a school whose socio-economic makeup is not typical of Grammar Schools. Often it is ranked third in relation to all other Grammar Schools for the number of students who are admitted from disadvantaged backgrounds. What appealed to the school through joining the CEM consortium was the potential for the test to be less teachable and as a result provide less

advantage to those students who profited for the arguments made by the objector: that of tutoring so that practice makes perfect.'

48. Age standardisation is a process carried out after the tests have been taken, as opposed to a proponent of the tests themselves, therefore it could be said to be a procedure used to determine the allocation of places. Paragraph 14 of the Code therefore requires that age standardisation must be clear and objective. Dealing first with the question of clarity, the arrangements state: "The raw scores will be age standardised and the ranking is determined by the aggregate of the age standardised scores of both tests". There is a more detailed explanation of the process and its purpose in the Guide. Our view is that this is sufficiently clear to comply with paragraph 14. We do not consider it necessary for the arrangements or any additional materials linked to the arrangements to describe the methodology used by CEM to standardise the raw score results for age.

49. 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:

50. 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?

51. 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".

52. The objector points out that other major assessment events such as SATs and 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.

53. The difference between Verbal and Non-verbal reasoning tests and many other types of tests is that success cannot be achieved simply by repeating specific learned information. For example, to do well in the comprehension questions, it will be necessary to have a wide vocabulary and the ability to deduce answers correctly 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.

54. 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.

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

56. 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.

57. 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.

58. 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.

59. 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.

60. We are also aware that many pupils receive additional preparation through tutoring for the 11 plus tests. A literature review commissioned by the Office of the School Adjudicator (OSA) which has been shared with all parties, 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." However, there is nothing in the law or the Code which forbids the use of paid tutoring or additional coaching. Indeed, the law relating to admissions and the Code apply to admission authorities, local authorities, governing boards and adjudicators. But they do not and could not interfere with what parents choose to do in supporting their children's learning whether through commercial tutoring or other means. We are unaware of the scale of additional tutoring/mentoring/support for pupils in the primary schools local to the school. But, even if, as the objector suggests, it is widespread, it does not follow that this renders the use of age standardisation 'null and void'. Coaching and tutoring are used to gain an advantage. Age standardisation does not confer an advantage to younger children, it places them on an equal footing with older children in order to determine an objective assessment of ability.

61. In summary we are of the view that there is substantial and compelling research which shows that 'summer born' children are at a disadvantage when being tested for ability towards the end of their primary education and that the application of an age standardised weighting to the test scores reduces this disadvantage and makes the tests 'fairer' and more objective. 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.

62. 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 + 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.

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

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

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

65. The local authority commented that; 'It is important that admission authorities ensure all selection test papers are secure and all question papers are locked up at night or collected daily by the test provider. Children should not be permitted to take question papers home after they have sat a test. If sufficient care is taken, it should be possible for the intellectual property of test agencies to be protected even where children are allowed to sit late and in-year paper selection tests at home, or overseas where they are out of the country and unable to return, for good reason, in time to sit the test. Admission authorities should talk to their test providers about such tests when a selection test in a test venue, an online test or teacher assessment of a candidate's ability is not an option. Again, question papers should be collected after the test.' The school quotes from previous determinations which have not upheld the objection to the same tests being used for late testing. No details of any late testing procedure are set out in the school's admission arrangements but in the timetable for testing, which is on the school's website, it explains that if a child is ill on the day of the test an alternative date will be arranged. We presume that the school uses the same test on the alternative days and therefore we consider we have sufficient information to determine this element of the objection.

66. 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 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 which were still in use. This information was gleaned from his nephew immediately after having sat the selection tests. 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?

67. All 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 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.

68. The objector's view is that re-use of the same tests for applicants seeking admission to selective schools is not compliant with the Code because children recall the content of the tests and may pass it on to late sitters. When we considered this question last year, we adopted the findings upheld by the Court of Appeal in injunction proceedings involving the objector. We re-iterate these findings below and re-adopt them.

- "It is doubtless the case that some children who have sat a selection test will tell their parents, and possibly some others, something about it, but there is no good reason to think that any, let alone, much information has become generally known or available…;

- Any reasonable person knows that unauthorised disclosure of the content of an examination or test yet to be taken in a way that may come to the attention of candidates about to sit that examination risks undermining the purpose and integrity of the examination or test, and that such information is therefore confidential…;

- There is a difference between a child telling a parent and a parent telling another parent about test content, and the posting of such material on a public website;

- If all, or part of test content is disclosed, there is at least a risk that the integrity of the tests and public confidence in them would be compromised…;

- Candidates sitting the tests and their parents are under a duty of confidentiality, so that if the parent of a child who had recently taken the selection tests was to publish the questions on a website knowing that other children are about to take the same test, the parent could be injuncted to take down the content of the website…"

69. 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 is indeed 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. The Administrative Court and Court of Appeal did not dispute the evidence given by Warwickshire County Council in the injunction proceedings against the objector that it was legitimate for schools to use the same tests for late applicants in order to ensure consistency of standards and to avoid the additional cost of commissioning separate tests for each occasion. It 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.

70. 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.

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

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

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

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

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

72. 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. 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 has confirmed that it has seen no evidence of the tests for the school being compromised in the manner suggested by the objector. The admission authority 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 nor objective.

73. 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."

74. 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.

75. 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. CEM's evidence supports this. The objector claims that only a corrupt or incompetent adjudicator would accept such evidence from CEM, as he considers CEM to be dishonest. We deal with the objector's claims against CEM elsewhere. We are aware that CEM refuses to disclose information about its selection tests in order to protect its commercial interests, but it cannot follow automatically that CEM do this because they are dishonest.

76. 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.

77. 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 for example). The possibility of cheating does not apply exclusively to late testing of 11 plus candidates. Forms of cheating other than candidates passing on questions to other candidates who take the test at a later date are possible. For example, a rogue employee at CEM or an A Level examining board could give away the questions before the test or examination is taken. The person at the school/local authority who is responsible for keeping the CEM 11 plus tests confidential could give the questions to candidates in the first round of testing before they sit the tests. The fact that candidates may cheat does not render the test itself unclear, not objective, or not a true reflection of ability. Cheating is always a possibility.

78. We emphasise that what we are considering here is whether the selection test being used for **this school** in 2021 gives an accurate reflection of a candidate's ability. In order

that we can ensure that we have explained our role with absolute clarity, we considered the hypothetical possibility that we had evidence which we considered to be proof that there is a systemic practice of cheating in place which is subverting the test scores for late applications to this school. Our view is that, even if we had such proof, which we do not, this would not mean that **the test itself** does not conform to paragraph 1.31.

79. 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 was used for late sitters, what we have described as cheating would not be possible in the way the objector describes. However, we need to make clear here that it is not our function to suggest that one method or process might be 'better' than another, and we cannot require an admission authority to adopt a particular form of test or procedure for conducting a test. Our role is confined to determining whether the admission arrangements comply with the Code.

80. 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 a few months apart, is an objective practice for deciding the allocation of places.

81. 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 will 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.

82. 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 need to use that information knowing this to be cheating.

83. 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.

84. The objector suggests that a clearly intelligent child would not care about passing on test content to a friend because he is confident of getting a place. We do not see how any candidate can be confident of getting a place until a place is offered, and our view is that the sort of child envisaged here by the objector (i.e., a child who consistently achieves very high scores in practice tests) would be intelligent enough to know the difference between right and wrong. As the objector knows from his own experience, a tutor 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 tutor, 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.

85. We do not consider that general allegations of cheating and evidence of exchanges of information about the content of tests after they have ceased to be used provide any basis upon which we can conclude that the practice of re-using the same tests for late sitters for admission to this school in September 2022 is compromised. In the absence of any such evidence, our conclusion is that re-use of the same tests for late sitters does not operate to confer an unfair advantage upon them. Our view is that it is reasonable to operate this practice in order to save cost and create parity of results, as recognised by the courts. For these reasons we do not uphold this aspect of the objection.

86. 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 an ouster clause along these lines in contracts. We have not circulated

this information to the parties because it was submitted after the deadline given for responses and we consider it places an unfair burden on schools to keep circulating information to them in addition to the copious amounts of information we have already sent to them. We are not permitted to take information which we have not made all parties aware of. We did read the contract and it makes no difference to our conclusions on this point.

Unreasonable address requirements.

87. The objector has two issues with the school's arrangements on address requirements. Firstly, in the section in the arrangements which deal with families who move into the area after the closing date for applications. The arrangements state; 'candidates who move into the area (as defined by criterion 5 of the oversubscription criteria) after the closing date for applications and who submit an on-time application to their Local Authority including Stretford Grammar School as a preference will be given consideration from the address given on the application to sit the Entrance Test until after the first round of offers. Thereafter, the new address will only be considered if and when the following evidence and legal documentation in relation to the change of residency have been supplied to the school:

I. Evidence and legal documentation to the effect they have purchased or exchanged contracts on a property is produced and proof of disposal of the previous home.

II. For leasing agreements, a minimum of 24 months is required and legally supported documentation produced and proof of disposal of the previous home.

III. The applicant and his/her parents/carers became resident at the new home.'

88. The objector says that a 24-month agreement is unreasonable for a lease agreement. He says that less than 55 per cent of leases are granted for 24 months or more. The majority are for 6 months and then become rolling. He says this discriminates again most renters and social groups.

89. Secondly, he objects to the section of the arrangements which deals with when a child's parents are separated. The arrangements state; "In the case of parents who are separated:

- where child-care arrangements are shared between two addresses in the catchment area, the child will be considered as living in the catchment area;

- where one of the addresses is outside the catchment area, the child will be regarded as living outside the catchment area".

90. The objector says this is unreasonable and asks the question; 'if one address is in the catchment area why isn't the child regarded as living in the catchment area?'

91. The local authority made no response to this aspect of the objection, The school provided the following detailed explanation; 'Every effort is made by school to prevent the use of fraudulent or deliberately misleading addresses and, as such, this point was

addressed in the adjudication of ADA3375 which found that the requirement to provide evidence of disposal of a previous home and the length of the lease not to be unreasonable. The objector also raises the issue of the address used where parents are separated. The policy states: In the case of parents who are separated: - where child-care arrangements are shared between two addresses in the catchment area, the child will be considered as living in the catchment area; - where one of the addresses is outside the catchment area, the child will be regarded as living outside the catchment area. If there are more applicants than can be accommodated at a school in the relevant category, the average of the distances of the two addresses from the school will be used for the purposes of determining priority for admission. The objector deems this wording to be unfair yet no one within the immediate school community has objected to this definition of the home address to be used in the case of separated parents. Indeed, once again, the policy seeks to apply fairness to the use of addresses where it is difficult to determine which the main address that the student resides in, in order to be fair to the wider community of the school. Again, arrangements are designed to prevent the use of fraudulent or intentionally fraudulent addresses. It is a fact that admissions authorities up and down the country contend with problems of false addresses being given by parent/carers to increase a child's chances of gaining a place at a particular school and, as such, the above aims to reduce such issues and is reasonable in aiming to make the criteria of residency transparent. Once testing is complete school provides Trafford LA with the information of those students who have met the standard. Trafford LA then apply the oversubscription criteria of the school if there are more applications than places. In doing so they will have regard for the above. Their approach is detailed below which they do on behalf of the school. Furthermore, in relation to shared residency, the premise "that in all circumstances", where there are shared care arrangements and one address lies outside the catchment area of the school, the child is treated as resident outside the catchment area, is incorrect since this criterion is not applied to all children where there are shared care arrangements. Rather it is the case that applications are considered from the address submitted by the applicant. No question is asked, and no reference is made to the fact that the parents may be separated and share the care of the child. The only question asked of the applicant is "Are you resident at the same address". It would never be the case that a child who lived outside the catchment area with their father every other Saturday night and inside the catchment area with their mother for the rest of the week would be treated as living outside the catchment area for the mother's address. Rather this child would be considered as normally resident at the mother's address. In those cases where proof of residency is requested, then a mother in such a circumstance would certainly be able to provide the required evidence. Proof of residency is not requested in every case. Firstly, it may only be requested if the preferred school is routinely oversubscribed. In the event of oversubscription, the LA then checks other data held by the Council which usually confirms the information submitted. Only where the address cannot be confirmed are parents asked to provide proof of residency. This might be evidence that the child is registered with a local GP or a letter showing that the applicant receives benefits for the child, it may be that the child routinely attends a local nursery or the preferred school's nursery etc. The list of evidence is not prescribed and parents are free to submit any evidence they think appropriate so long as it demonstrates that the child lives at the address used for the purpose of the application. In the case of the secondary transfer, children are considered from the address held by the primary school as the home address. Again, no question is asked and no reference is made to the fact that

the parents may be separated and share the care of the child. The only question asked of the applicant is “Are you resident at the same address”. Although it is case that Trafford is only the admission authority for 1 of its 19 secondary schools, and that school is not oversubscribed, this stance is still used by the other schools. Only in the case where the parents advise the LA, or the school, that there are shared care arrangements, are the circumstances further explored. In some instances, schools will request proof of residency and often it is at this point, when the applicant cannot prove that the child is resident, that the claim of shared residency is made. Usually, it is found that the child is actually normally resident at another address which is further away from the preferred school and in most cases the application is the considered from that address. Only in the event that the claim is substantiated, for example by a court order or specific issues order, is the criteria applied. It should also be noted that none of the records held, since co-ordination began, show that an application, submitted through another LA, has ever been made on the basis of shared residency. Neither is it the case that an application has ever been forwarded to another LA to be considered on the basis of shared care(residency). Where the shared residency criterion is applied, it does provide a small advantage in the process, since the distance from home to the preferred school is reduced by the fact that one parent lives closer to the preferred school. However, this small advantage does not disadvantage those children that live in the catchment area all the time and may also have parents that are separated themselves. As a result, these occasions that the criterion is used is rare since the parents are not asked and have usually agreed, between themselves, where the application will be made from and if it is the case that residency is genuinely shared then each parent will likely also be able to provide any evidence that the child is resident at either one of the addresses. Whilst the vast majority of applications are submitted with the correct information, it is also accepted that misleading applications are a continuing problem. Trafford is committed to ensuring that the allocation of places is fair for everyone and is done in accordance with the published oversubscription criteria. Therefore, when considering the issue of shared residency claims, the LA must act as the representative for other parents, who cannot know the circumstances, to ensure that they are not unfairly disadvantaged in the admissions process. Finally, if unsuccessful, applicants are advised of their right to appeal to an Independent Appeal Panel. The Independent Appeal Panel will consider all the information and the appeal submission from the parent before deciding whether or not the Admission Authority, the LA in this case, has acted correctly and, importantly, has acted reasonably. If it is the case that an Independent Appeal Panel considers that admission arrangements were not applied correctly, or that the decision was unreasonable then they must overturn the decision and allow the appeal.’

92. We will consider the two issues in order; first the situation where a child has shared residence with parents who are separated, one of which is in the catchment area and the other of which is not. The arrangements state that the out of catchment address is used in the allocation of places and yet the school explains that this is usually not the case and that this section of the arrangements is very rarely used. If this is the case, then the procedure which is actually in operation is not described clearly and therefore this aspect of the arrangements does not comply with paragraph 14 of the Code. Accordingly, this requires amendment and we uphold this element of the objection.

93. Secondly, one of the criteria needed to meet the definition of home address is that where the family live in rental accommodation, there must be a tenancy of at least 24 months duration. The website for Shelter England states “An assured shorthold tenancy is the most common type of tenancy if you rent from a private landlord or letting agent. Assured shorthold tenancies (ASTs) are made under the provisions of the Housing Act 1988. The tenancy will have an initial term, the minimum being six months, and, when that term expires, the tenancy will automatically continue on a periodic basis (determined by the intervals for paying rent, so usually one week or one month) unless the landlord and tenant enter into a further agreement for some other term. Most residential tenancies are automatically ASTs unless specifically stated to be otherwise. The main feature that makes an AST different from other types of tenancy is that your landlord can evict you without a reason”. Shelter goes on to state that such tenancies are for a fixed term “often 6 or 12 months” or periodic “rolling weekly or monthly”. Government guidance “Tenancy Agreements: a guide for landlords (England and Wales)” states “The most common form of tenancy is an AST. Most new tenancies are automatically this type”. Tenancies will be for a range of terms but often this will initially be for six months and thereafter on a monthly periodic basis, as this gives the greatest flexibility to the landlord. Families with low income and/or in receipt of benefits are most likely to have short tenancies as they are more likely to be in a poor bargaining position.

94. It is acknowledged that some families will take short tenancies near to a school in order to seek to secure a place for a child with no genuine intention to make that property their main residence. It is understandable that admission authorities wish to prevent such families gaining an unfair advantage. It is also acknowledged that a provision requiring tenancies to be for a longer term will help to prevent this. Admission authorities take different approaches to this problem. Some specify circumstances in which they will make further enquiries in order to establish whether the address given is a genuine home address, a short-term tenancy being a common example. Others, as here, make a longer-term tenancy an absolute requirement. In the latter case some families, particularly those that have limited resources, will be excluded despite the home address being genuine. Such families may have had no choice but to accept a short lease. For that reason, we find that it is not fair to make a lease of longer than six months an absolute requirement. We find the absolute requirement for a lease to be for a term of 24 months does not comply with the provisions paragraph 14 of the Code and we therefore uphold this element of the objection.

Summary of Findings

95. We cannot comment on the objector’s assertion that CEM is a disreputable company. The Code is clear that it is up to individual admission authorities to determine their arrangements and in doing so this school chooses to use CEM. The school is satisfied that the tests it uses can adequately provide a list of pupils who are capable of succeeding in a grammar school and we are of the view that the school’s admission arrangements comply with paragraph 1.31 of the Code. We do not therefore uphold this element of the objection

96. We uphold the objection to the clarity of the arrangements about which address is construed as the home address in cases where parents are separated and have shared care and the required duration of tenancy agreements which is needed in order for the address at which the family are living to be treated as the home address. These require amendment.

97. We are of the view that the arrangements conform to the Code and the law in all the other respects identified by the objector and therefore we do not uphold the following elements of the objection;

- Priority given to pupils in receipt of pupil premium
- Extra time provided in tests for children with dyslexia
- Age standardisation of test scores
- The use of the same test in late testing arrangements

Determination

98. In accordance with section 88H(4) of the School Standards and Framework Act 1998, Dr Vallely and I partially uphold the objection to the admission arrangements for September 2022 determined by the Governing Board of Stretford Grammar School, Trafford.

99. 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 adjudicators. In this case we determine that the arrangements must be revised by 31 October 2021.

Dated: 11 October 2021

Signed:

Schools Adjudicator: Ann Talboys

Schools Adjudicator: Marisa Vallely