



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** ADA3783

**Objector:** An individual

**Admission authority:** The Governing Board of Churston Ferrers Grammar School

**Date of decision:** 11 October 2021

## Determination

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, Mrs Talboys and I do not uphold the objection to the admission arrangements for September 2022 determined by the Governing Board of Churston Ferrers Grammar School for Churston Ferrers Grammar School, Torbay.**

## 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 Churston Ferrers Grammar School, a coeducational selective academy school for pupils aged 11 – 18 for September 2022. The objection is to the following aspects of the admission arrangements for entry to Year 7.

- a) re-use of the same selection tests for late sitters and late applicants;
- b) the use of age standardisation in the selection tests;
- c) the Centre for Evaluation and Monitoring (CEM) is said to be a disreputable and untrustworthy organisation which cannot be trusted to devise tests that produce an accurate reflection of a candidate's ability, therefore it is questionable as to whether the selection tests properly serve this purpose;
- d) additional help being provided to candidates eligible for the Pupil Premium; and

e) dyslexic candidates given up to 25 per cent extra time to complete the selection tests.

2. The local authority (LA) for the area in which the school is located is Torbay Council. The LA is a party to this objection but has chosen not to submit a response. 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 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 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 shall use the references to it which have been made by the parties to

the case but will indicate if the new Code differs in any respect. It is of course the revised version of the Code which is now in force.

8. When the arrangements for the school were determined, the 2014 Code, which was then in force, provided that children previously looked after in England and then adopted or made subject to a child arrangements or special guardianship order should have equal highest priority with looked after children in school admission arrangements (subject to certain exemptions in schools with a religious character). The new Code which came into force on 1 September 2021 extended the same level of priority for looked after and previously looked after children to children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted. All admission authorities were required to vary their admission arrangements accordingly by 1 September 2021. There was no requirement for this variation to be approved by the Secretary of State and no reason for the school to send us its varied arrangements.

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

## Procedure

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

11. The documents we have considered in reaching my 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.
- f. the decision of the Employment Tribunal in the case of *S Stothard v Durham University* 2500306-19;
- g. relevant previous determinations; and
- h. research papers referred to in the text which were identified by us and shared with the parties for comment.

## The Objection

12. 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.

13. First, the objector considers that re-using the same selection tests for late sitters and late applicants renders the testing process subject to abuse, as those who sit the tests in the main round may pass on the questions to those sitting the tests at a later date. The objector argues that this abuse of process, which he suggests is widespread, renders the tests unfit for purpose. Relevant paragraphs of the Code are 1.31. and 14.

14. Second, the objector considers that the use of age standardisation in the selection tests is unnecessary, rendered obsolete by the widespread practice of tutoring and gives an unfair advantage to younger children, particularly those who have been tutored. Relevant paragraphs of the Code are 1.31. and 14.

15. Third, the objector considers that 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.

16. Fourth, the objector considers that it is unreasonable to provide “free tuition” to applicants who are eligible for the pupil premium. The relevant paragraph of the Code is 1.31.

17. Fifth, the objector considers that it is unreasonable to allow dyslexic candidates additional time to complete the selection tests. The relevant paragraph of the Code is 1.31.

## Background

18. The school converted to become an academy in January 2011. It is a co-educational selective secondary school for pupils aged 11 – 18 with academy status. The Published Admission Number (PAN) is 180. The school selects by ability as assessed in two selection tests prepared for the school by the Centre for Evaluation and Monitoring (CEM). It has been rated as Outstanding by Ofsted and is oversubscribed.

19. Since this objection is wholly focussed upon the selection tests, we have not found it necessary to set out the oversubscription criteria. However, it is relevant to explain that applicants eligible for the pupil premium who fall under Category B (applicants with a score of between 131 – 180 in the ranked order list) are given priority under the second oversubscription criterion.

20. The CEM tests are described as assessments of verbal ability (comprehension, vocabulary and verbal reasoning) numerical reasoning and non-verbal reasoning. The arrangements say:

“There is a mix of content in each of the two papers. CEM do not produce commercially available practice material for the tests but parents can download a copy of the familiarisation booklet from the school website. This does give a feel for the appearance of the tests and the range of disciplines tested and answer formats used. The two CEM test scores will be combined.

CEM Tests will be marked externally in accordance with their regulations.

Children who are unable to take the tests on 18 September 2021, due to illness or other significant acceptable reasons, (e.g. religious observance) will be offered the opportunity to take the tests on the pre-arranged catch up date which this year will be 1 or 4 October 2021. However, this must be discussed with the school at the earliest opportunity. Children sitting these tests will be considered alongside those children who sat the tests in September 2021.

Requests to take the 11 plus tests, received beyond this time, will only be considered when parents can demonstrate a genuine reason why the tests could not be taken according to the above schedule. For example, bereavement, or other circumstance beyond the control of the parent(s)/guardian(s) prevented a timely registration, or the child moved into the area after the closing date for test registration. Evidence will be required to justify this delay. Testing will take place in December. Children sitting these tests will be considered alongside those children who sat the tests in September 2021.

Late notification of the testing timetable by a child’s current school or otherwise will not be accepted as a reason why timely registration was not possible.

For children whose registration or common application form (or both) were submitted after the closing dates and where they were not considered to be timely, there will be an opportunity to sit the school entrance tests for consideration after the first round of allocations on 1 March 2022. Such cases might be if illness prevented a single parent/carer from returning the form on time, if the reason for lateness is supported in writing by a medical professional involved in the case, or if the applicant has moved into the area after the deadline (evidence will be required). The final decision on whether there are exceptional circumstances will be made by the Admissions Committee.

### SEND Candidates

We welcome applications from candidates with special needs. Special arrangements for the tests will be based on a child’s regular way of working in primary school. For example, large-print test papers for visually impaired pupil, the use of magnifying aids, coloured filters, templates or the provision of a scribe to record the child’s answers. Special arrangement requests, including additional time to a maximum of 25%, (e.g. for those students who have been diagnosed with dyslexia) will only be approved if supported by relevant paperwork (e.g. Educational Psychologists Report). Requests for special arrangements must be made at the same time as a

registration form is submitted and should be accompanied by a Current Education, Health and Care Plan, or other supporting evidence e.g. Consultant letter or an Educational Psychologist report. Each case will be considered on its own merit and current Primary Schools may be consulted. Eligible children with an EHCP, where Churston Ferrers Grammar School is named on the statement, have an entitlement to attend and a decision on this will be reached with the SENDCo and the Local Authority. An eligible candidate is one who has established he/she is of academic ability to benefit from a selective education, by selection test...

## STANDARDISED SCORE

Standardisation is a statistical process that is designed to take account of the fact that older children are at an advantage when taking the entrance test. Standardising the raw score makes it a level playing field for all the children in the year.

The test scores are adjusted to take account of the age of the children at the time they take the entrance test. One taking the test might be born on the first day of the school year (September 1st), while another might be born on the last day (August 31st). With what amounts to a whole year's difference in their ages, the older child is clearly at an advantage; for example, the older child will have an additional year's worth of vocabulary. As children are exposed to new vocabulary at the rate of more than 1,000 words per year, the difference can be very significant for the entrance tests. To remove this unfairness, the marks are adjusted to make them 'standard' for all children, regardless of their age".

## Consideration of Case

21. 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.

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

22. The arrangements make clear that there is a single test date for applicants applying for a place at the school in Year 7 in September 2022 (the normal test date) with sessions in the morning and afternoon. Late tests are arranged on pre-set dates for applicants who are unable to sit the tests on the normal test date due to illness or other significant acceptable reasons, (e.g. religious observance).

23. The objector points out that there is a period of 1.5 hours between the morning and afternoon sessions on the normal test date during which (he says) test content may be passed on to afternoon sitters. The objector's view is that candidates who sit the tests in the morning should be unable to leave until all afternoon candidates are in the hall to ensure no candidate sitting the tests in the afternoon is told the content of the tests. He says that, because the school uses the same test papers for all children who sit the tests on the normal test date and for those who sit the tests at a later date, there is the possibility of information being passed on. Therefore, the tests do not provide an accurate reflection of ability.

24. The objector claims that AE Tuition has openly stated that questions are leaked from children, and has sent us a document authored by AET Tuition (undated) which says: "Information about the examination leaks out from children from every area in which it has been sat, so the content of these tests is already well known. The fact that CEM does not publish materials is immaterial. Publishers are already responding to the challenge of producing preparatory materials".

25. The objector claims that there is no evidence which proves that children do not recall content which could make a difference if it was passed on to candidates sitting the same CEM tests. He says: "In previous adjudications the OSA accepted late applicants could be scored zero and still apply to the school (and of course be ranked at the bottom). CEM, evidence based organisation, refuse to undertake a test to determine what children recall. All they need to do is provide a blank piece of paper to children and ask them to write down what they recall. They appear to pressurise their clients not to allow me to this test free of charge. Independent studies have shown children recall vast amounts of content and as one raw score can equate to as many as 6 standardised marks at the age extremes, this is not a sound test if ability as cheating is rife". We pause to say at this point, that we do not dispute that any candidate sitting verbal and non-verbal reasoning tests will recall some of the content of these tests immediately after the test sessions.

26. The objector has also re-sent us screenshots of an exchange of postings on the 11 Plus Exams Forum, which he also sent us last year. He has highlighted in particular a request for feedback on 11 plus tests taken on 9 September 2017 from children who had taken CEM 11 plus tests on that date, however the exchange makes clear that no content would be posted on the Forum until after the date for late testing.

27. The school has confirmed that the same test is used for late sitters and late applicants and that it has no information of any instances of children passing on test content to late sitters.

28. 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.

29. 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.

30. 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?

31. 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 schools choose to 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.

32. 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..."

33. 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.

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

35. 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". ...

36. 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 Churston Ferrers Grammar School has confirmed that it has seen no evidence of the tests for the school being compromised in the manner suggested by the objector. The school has also said that the points made by the objector have not caused them to think that the tests are not a true test of ability, or that the procedure for late testing could result in an outcome which is unfair or not objective.

37. 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.”

38. 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.

39. Looking at the second sentence of paragraph 1.31, references to ‘the test’ are, in our view, suggestive that what is envisaged is one set of tests to be used for all applicants in a particular year group. Although this wording is not conclusive, it is more difficult to argue that the form of selection used produces an objective reflection of ability where different tests are taken by different applicants for places at the same school. CEM’s evidence supports this. The objector claims that only a corrupt or incompetent adjudicator would accept such evidence from CEM, as he considers CEM to be dishonest. We deal with the objector’s claims against CEM elsewhere. We are aware that CEM refuses to disclose information about its selection tests in order to protect its commercial interests, but it cannot follow automatically that CEM do this because they are dishonest. The objector makes 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. The evidence produced by the objector indicates that there is a Forum which passed on information provided by candidates who had taken the Birmingham Consortium 11 plus tests. There is evidence that some test questions were passed on, but no evidence that these were the correct questions. No answers to questions were conveyed to the parents of any candidates who sat the same tests at a later date. The postings took place after the relevant tests had ceased to be used; and the latest post was in 2016. We have not seen any evidence that the Forum is continuing to pass on information obtained from candidates who have sat the Birmingham Consortium Schools tests, or evidence that any similar exchanges of information are in operation for this school. We have not been provided with any evidence that candidates sit the tests for this school wearing hidden cameras or are likely to do so for the school's 2021 admissions tests. The objector suggests that a clearly intelligent child would not care about passing on test content to a friend because the child would be confident of getting a place in any case.

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

48. We do not consider that general allegations of cheating and evidence of exchanges of information about the content of tests after they have ceased to be used provide any basis upon which we can conclude that the practice of re-using the same tests for late sitters for admission to this school in September 2022 is compromised. In the absence of any such evidence, our conclusion is that re-use of the same tests for late sitters does not operate to confer an unfair advantage upon them. Our view is that it is reasonable to operate this practice in order to save cost and create parity of results, as recognised by the courts' willingness to grant an injunction to enable the practice to be continued without risk of compromise. For these reasons we do not uphold this aspect of the objection.

49. 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 copious amounts of 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. We did read the contract and it makes no difference to our conclusions on this point.

### **Age standardisation**

50. The arrangements contain an explanation about why the selection tests are standardised for age which says that, as children are exposed to new vocabulary at the rate of more than 1,000 words per year, the difference can be very significant for the entrance tests. Therefore to remove this unfairness, the marks are adjusted to make them 'standard' for all children, regardless of their age.

51. The objector claims there is no evidence that children are exposed to new vocabulary at the rate of more than 1,000 words per year, or that the difference can be very significant for the entrance tests. His view is that neither the school nor CEM can possibly know how much individual children would read, so any standardisation for this reason

would simply be based upon guesswork. It is quite possible (he says) that a younger child has a more advanced vocabulary than an older child. Girls mature earlier than boys and CEM do not standardise on sex. The objector's view is that the 'whole year of vocabulary is nonsense' as children in the same year group start reading books (for example Biff and Chip) and progress at a speed they choose for at least five years of primary education. Their progression (he says) is not dependent upon age, but on the effort they put in and their love of reading. They are all in the same year group and taught exactly the same work. The objector claims there is no evidence that standardisation is needed for NVR or Maths.

52. The objector argues that candidates are not numbers or averages. They sit a test to demonstrate their personal ability at a particular time and not their "relative perceived average ability, skewed by an algorithm". The objector points out that SATs, GCSEs and A levels are not age standardised. They are a reflection of ability and not "standardised manipulated guessed average ability". 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 age standardisation null and void. There is no need for it and it provides an unfair advantage to younger children... The objector emphasises that 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

53. In response to this aspect of the objection, the school has confirmed that standardisation is used to allow a level playing field for candidates of all ages as candidates develop rapidly at the age at which they sit the tests and a month's difference in age can make a huge difference to their academic ability.

54. Age standardisation is a process carried out after the tests have been taken, therefore it could be said to be a procedure used to determine the allocation of places. Paragraph 14 of the Code requires that such procedures must be fair, clear and objective. Dealing first with the question of clarity, our view is that the arrangements state clearly that age standardisation is used and the reasons for using it.

55. 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.

56. Second, the objector submitted a Freedom of Information (FOI) request to the school. In response, the school provided a table of pupils' months of birth by year group. The objector attaches a paper showing some statistical analysis of these data and also the same data shown on a bar chart. He then compares these data with figures for months of birth in the 27 states of the European Union from 2000 to 2009. The charts show that the relatively small sample from the school does not match the huge data set from the European Union in terms of the distribution of births across months of the year. We do not believe that these papers have any relevance to the issue of the use of age standardisation.

Age standardisation is not a method which sets out to ensure that an equal number of children by month of birth are admitted to a particular school or that the number admitted reflects the proportion of children born in that month. How many children in a year group were born in a particular month is not relevant to the standardisation process. The process makes allowance for those pupils who are born later in the school year and the number or proportion of these children will differ from year to year and school to school. The allowance is applied through the age standardisation process to individual children not to the cohort as a whole.

57. 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?

58. 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”.

59. 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.

60. 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.

61. 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.

62. 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 tests to VR and NVR tests (tests of cognitive ability as opposed to attainment). The following conclusions were reached:

**“National achievement test scores should be age-adjusted to account for the fact that children born at different times of the year have to sit the tests when they are different ages.**

These age-adjusted scores should be used to calculate school league table positions, to determine entry to schools that select on the basis of ability, and potentially to assign pupils to ability groups within schools. Some studies have overcome this difficulty by focusing on outcomes measured at around the same age for individuals beyond the end of compulsory schooling, which breaks the perfect correlation between age at test and age at school entry. For example, Black, Devereux and Salvanes (2008) identify the impact of school starting age on IQ scores taken as part of men’s enrolment to military service at around age 18 (as well as the likelihood of teenage pregnancy and earnings) using Norwegian administrative data. **They find that starting school younger has a small positive effect on IQ scores, as well as on the probability of teenage pregnancy. By contrast, they find a large and significant positive effect on IQ scores arising from sitting the test at an older age”** (our emphasis).

63. 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.

64. 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.

65. 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.

66. 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.

67. 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) 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).

68. 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.

69. 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.

70. 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.

71. 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**

72. 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.

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

issue, as above we have tended largely to repeat what we said last year in respect of the issue in question.

74. The school has confirmed that it is happy with the content of the CEM 11 plus tests, and that the tests provide an accurate assessment of ability. CEM was chosen as the test provider between the other experienced admission authorities which the school works with.

75. 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 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.

76. 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.

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

78. 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.

### **“Free Tuition” for Pupil Premium Candidates**

79. In the Admissions section on the school’s website appears the following statement: “If your child is eligible for Pupil Premium/Free School Meals, we are pleased to be able to offer access to an additional online package of around 10 hours familiarisation material, that has been developed by the King Edward Foundation of Birmingham Grammar Schools, especially for Pupil Premium students. If you indicate Pupil Premium on the application form, once we have verified this with your primary school, we will send you a logon code especially for you, so you can access the material on the online platform hosted by FROG”.

80. The objector’s view is that it is unreasonable and unfair not to allow all candidates free access to the familiarisation material and other assistance which is made available to pupil premium candidates. He considers that this package should be available to every child even if it means some have to pay. It provides an unfair advantage, particularly when pupil premium applicants also have priority in the oversubscription criteria. The objector points out that state schools are not permitted to prepare for 11 plus tests, and that the school is breaking these rules: “There can be no reason not to provide a logon to all candidates. What next, will familiarisation material from CEM be provided only to pupil premium children? Where will this end? This behaviour forces non-pupil premium to seek private tuition”.

81. The school has said in response that grammar schools have “statutory responsibilities” to identify the needs of disadvantaged candidates and to identify ways to support them. The school says it does not provide free tuition, but FROG enables candidates eligible for the pupil premium to access material to familiarise themselves with the tests as the school is aware that more advantaged candidates have this support.

82. “Many children and young people living in our most deprived communities do significantly worse at all levels of the education system than those from our least deprived communities. This is often referred to as the 'attainment gap'.” This is a quotation from a 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. The pupil premium is additional funding given to state 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 mainstream schools, 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 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.

83. 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, Pupil Premium or Service Premium) to give priority. The school has chosen to give some degree of priority to applicants who fall under Category B who are in receipt of free school meals or otherwise eligible for pupil premium funding at the time of taking the selection tests and those eligible for free school meals at any time in the previous six years.

84. 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. 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.

85. 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.

86. 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. The DfE has also actively encouraged selective schools to give priority to pupil premium applicants on lower pass marks and to provide free assistance to these applicants to help familiarise them with the test papers and procedures. Because the parents of pupil premium applicants are unlikely to be able to afford private coaching, these measures may go some way towards encouraging more pupils eligible for the pupil premium to apply and placing them on a more equal footing with other applicants who have been coached. Paragraph 1.39A of the Code expressly permits schools to give priority to pupil premium pupils. It states "Admission authorities may give priority in their oversubscription criteria to children eligible for the.... pupil premium....".

87. In this case the objector has not objected specifically to the fact that pupil premium applicants are given priority in the oversubscription criteria, the objection focuses upon the fact that these children are provided with assistance under the FROG programme which is

not made available to other children. Our view, therefore, is that paragraph 1.31 is the applicable paragraph. As we have said, this paragraph imposes a requirement that selection tests must be clear, objective, and give an accurate reflection of the child's ability. Our view is that these requirements relate to the test itself, which must be a true test of ability. The question, therefore, is whether assistance under the FROG programme renders the tests inaccurate or unobjective because only some candidates are given this assistance.

88. This is a difficult question to answer. If considered objectively, any form of additional familiarisation, practice or coaching could be said to provide an advantage. Therefore, there is an argument that, for selection tests to be truly objective, all candidates must be required to sit them without any additional help, or only with exactly the same additional help. But this is simply not a realistic possibility. We are acutely aware, as is the DfE, that additional help is widely available and that some families provide this for their children, whilst others do not. There may be all sorts of reasons why some parents do not access additional help, for example: lack of awareness of the help available; inability to pay for private tutoring; language difficulties; poor parenting skills; lack of ability on the part of parents to provide the help themselves; less focus on the value of education.

89. We have referred previously in this determination to the conclusions of the literature review commissioned by the OSA which looked at disadvantaged pupil performance in the 11 plus test and confirmed that pupils who have been tutored are more likely to access a grammar school, and that children in households with larger incomes are more likely to have access to tutoring. We have also observed that additional help such as familiarisation, test practice and tutoring is not precluded under the Code. Whilst a purist view might be that, in order to obtain a truly objective assessment of grammar school ability, all candidates should sit selection tests with no additional help at all, we cannot consider the objection in this context because it does not reflect reality.

90. Therefore, the question we need to ask ourselves is whether, in a context where we know that children who are more advantaged are more likely to access a grammar school and are more likely to have access to tutoring, the provision of additional help with familiarisation to children who would not otherwise receive that help renders the tests less objective or an inaccurate test of ability. When asked in the context of reality, the answer becomes quite different because the purpose of the help is specifically to render the outcome of the tests more objective – to redress an imbalance which is influencing the outcome of grammar school selection tests in favour of more advantaged children who have been tutored. The assistance provided under the FROG programme is not an equivalent to the many hours of individual private tuition which some children from households with larger incomes receive, but a degree of familiarisation with the format of the tests and the types of questions is likely to be beneficial to children who may have never seen a verbal or non-verbal reasoning test paper. As the objector rightly observes, state schools do not ‘teach’ these sorts of tests.

91. Our view is that additional familiarisation for disadvantaged candidates may not go far enough in achieving an equal playing field for all applicants sitting the selection tests but



may help to some degree in rendering the tests a more accurate and objective measure of ability in the context in which they operate. The objector has mentioned unfairness, which is relevant under paragraph 14 of the Code. We considered whether providing additional help to Pupil Premium applicants is a practice or procedure used to determine the allocation of places. It could be said to be a procedure used to determine eligibility, but the allocation of places takes place after the tests have been taken, therefore we do not consider paragraph 14 to be relevant. If we are wrong about this, and we are required to consider the question of whether the provision of free assistance under the FROG programme operates unfairly to applicants who are not offered such help, our view (for the avoidance of doubt), is that this is not unfair.

92. It is not unfair to provide applicants eligible for the pupil premium assistance with familiarisation free of charge because it is unlikely that these applicants would otherwise receive any additional help, whereas children whose parents have the ability to help them to practice verbal and non-verbal reasoning tests or provide them with private tuition are more likely to receive such help. At the very least, the parents on higher incomes have a choice as to whether or not to have their children tutored privately and we are aware that many choose to do so. The parents of disadvantaged children do not have this choice. We do not uphold this aspect of the objection.

#### **Additional Time Allowed for Dyslexic Candidates to complete the Selection Tests**

93. The arrangements say that candidates with a disability may be provided with various forms of assistance and that “special arrangement requests, including additional time to a maximum of 25%, (e.g., for those students who have been diagnosed with dyslexia) may be approved if supported by relevant paperwork (e.g. Educational Psychologists Report)”.

94. The objector says that the CEM tests comprise individually timed sections, which are effectively mini speed-tests and which most children simply cannot finish. It is unfair therefore to allow a group of students up to 25 per cent extra time in each section. “If a person is “slow”, this is their problem to deal with. If one group is deemed to require extra time, all children should be given extra time. This way “slow” reader can finish, and fast readers can check their answers. But, most children do not finish each section anyway so they should be permitted to do so”.

95. His view is that allowing extra time to candidates with dyslexia provides an unfair advantage to a small group and is not an accurate reflection of ability. “The ability of the dyslexic is what they can answer in the same time, as others not when give 25% more time in a test that is time pressured. Dyslexia is now a badge of honour and offers the best life advantage - 25% extra time in all exams (11+, GCSE and A levels). It is a scam. People read at different speeds. “Dyslexia” is a spectrum, so not all those with the badge of honour are equally “dyslexic”, so why should all get 25% extra time? Classes are available to train children how to be labelled “dyslexic” and gain a life advantage. There are now a record number of people with the badge of honour in the UK. Why shouldn’t everyone get 25% extra time, this way even the slowest readers can finish a test and show their ability”.

96. The objector asks why a candidate should get 25 per cent extra time in a non-verbal reasoning test when these tests entails minimal reading? Why in maths when these tests entail minimal reading? Should fast readers get less time in an exam, as it is unfair they are fast? He claims that the 11 plus tests “are there to differentiate between children and not be skewed by giving some children extra time and standardising scores using guesswork”. The school’s response is that it has followed the requirements of the Code and SEN Guidance in allowing extra time for dyslexic candidates.

97. Again, paragraph 1.31 is relevant. The question is whether providing extra time for candidates who have dyslexia to complete the selection tests renders the tests unobjective and not an accurate reflection of ability. The arrangements say that assistance may be offered for different forms of disability, but the objector has chosen to focus upon dyslexia.

98. The NHS website ([Dyslexia - NHS \(www.nhs.uk\)](http://www.nhs.uk)) explains that “Dyslexia is a common learning difficulty that can cause problems with reading, writing and spelling. It’s a specific learning difficulty, which means it causes problems with certain abilities used for learning, such as reading and writing. Unlike a learning disability, intelligence isn’t affected.

A person with dyslexia may:

- read and write very slowly,
- confuse the order of letters in words
- put letters the wrong way round (such as writing "b" instead of "d")
- have poor or inconsistent spelling
- understand information when told verbally, but have difficulty with information that’s written down
- find it hard to carry out a sequence of directions
- struggle with planning and organisation.”

99. This is an extremely basic description of a form of learning difficulty which, as the objector rightly says, will vary in degree of severity and symptoms. This is presumably why the arrangements provide that “up to” 25 per cent extra time may be provided and that the request must be supported by an educational psychologist. This is clearly not a scam. It appears to be a genuine attempt by the school to provide for **the additional needs** of applicants with disabilities and learning difficulties in order to create a level playing field with other candidates. As the NHS website says, dyslexia does not affect intelligence but it may cause a person to read and write very slowly, struggle with planning and organisation and have difficulties in carrying out a sequence of directions.

100. VR and NVR tests involve reading and comprehension and require candidates to follow instructions. As the objector says, most candidates do not have enough time to finish

all of the sections in the tests, therefore a candidate who is slow in reading and following instructions will be disadvantaged by the format of the tests as compared to other candidates but will not necessarily have a lower ability than those other candidates. The objective of the tests, as required by paragraph 1.31 of the Code, is to produce an objective and accurate assessment of ability. Our view is that the prospect of this objective being reached is improved significantly by taking steps to ensure that candidates who have the ability to benefit from a grammar school education at the school are able to avail themselves of the opportunity to attend the school because they are able to demonstrate their true level of ability in the selection tests. We have no hesitation, therefore, in concluding that the provision of additional time to complete the tests and the other forms of assistance referred to in the arrangements render the tests a more objective and therefore more accurate reflection of the ability across the cohort of candidates who sit the tests than would be the case if such assistance were not available.

101. Also, in some of the other objections we have considered this year on the same point, admission authorities have drawn our attention to some guidance on the Equality Act 2010 (the 2010 Act) published by the Equality and Human Rights Commission's which states that: "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." Since the provision objected to for this school appears to provide for reasonable adjustments to be made for candidates with a disability, we have concluded that it has been made in order to fulfil a requirement under the 2012 Act.

102. As above, the objector has mentioned unfairness, which is relevant under paragraph 14 of the Code. We did consider whether the Code imposes specific requirements of fairness in relation to the provision of additional help to specific candidates. Our view is that it does not. Allotting extra time to complete the tests is not a procedure used to determine the allocation of places. It could be said to be a procedure used to determine eligibility, but the allocation of places takes place after the tests have been taken, therefore we do not consider paragraph 14 to be relevant. If we are wrong about this, and we in fact are required to consider the question of whether the provision of assistance to candidates with disabilities and the allocation of additional time to dyslexic candidates operates unfairly to applicants who are not offered such help, our view (for the avoidance of doubt), is that this is not unfair.

103. It is not unfair to provide additional time or other forms of assistance to candidates who have disabilities or learning difficulties on the basis of a request which is supported by a specialist professional who would need to be familiar with the nature of the needs of the child in question. This provision is intended to place these candidates on an equal footing with other candidates. What would be grossly unfair would be to expect candidates with learning difficulties and disabilities to enter a competition for school places without making reasonable adjustments to ensure that their ability is assessed accurately. We do not uphold this aspect of the objection.

## Summary of Findings

104. We do not uphold any aspect of this objection. We do not find the late testing arrangements to be in breach of paragraph 1.31 or 14 of the Code. Neither do we find that the use of age standardisation, the provision of additional help with test familiarisation or the provision of additional time for the completion of the selection tests to dyslexic candidates renders the tests an unobjective or inaccurate assessment of ability. We do not find that the selection tests in operation for this school are unfit for purpose due to the fact that they are designed and marked by CEM.

## Determination

105. In accordance with section 88H(4) of the School Standards and Framework Act 1998, Mrs Talboys and I do not uphold the objection to the admission arrangements determined by the Governing Board of Churston Ferrers Academy for Churston Ferrers Academy, Torbay.

Dated: 11 October 2021

Signed:

Schools Adjudicator: Marisa Vallely

Schools Adjudicator: Ann Talboys