



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3777

Objector: An individual

Admission authority: The academy trust for Sir Thomas Rich's Grammar School, Gloucestershire

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 Sir Thomas Rich's School for Sir Thomas Rich's School, Gloucestershire.

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

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case we determine that the arrangements must be revised by 31 October 2021.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by an individual, (the objector), about the admission arrangements (the arrangements) for Sir Thomas Rich's School, a single sex selective secondary school for boys with a coeducational sixth form, for September 2022. The objection is to the following aspects of the admission arrangements for entry to Year 7.

- a) The oversubscription criteria are said to be both unclear and unfair. Specifically, there is no explanation of how the qualifying score is determined.
- b) It is unclear as to whether applicants are ranked on their test scores alone or whether what appear to be the oversubscription criteria are in fact a tie breaker.
- c) Use of a 'similar' test for late sitters.
- d) Use of the same test for late sitters.
- e) The school uses tests provided by the Centre for Evaluation and Monitoring (CEM). The objector asserts that CEM is a dishonest and untrustworthy organisation, therefore the tests produced by CEM cannot be relied upon to produce an accurate assessment of the candidates' ability.
- f) The raw scores of candidates are standardised by age, which produces an unfair advantage to younger candidates.

2. The local authority (LA) for the area in which the school is located is Gloucestershire County Council. The LA is a party to this objection and has submitted the information we have requested and made some additional comments. Other parties to the objection are the school's academy trust 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 9 April 2021. We have also used our powers under section 88I of the Act to consider the arrangements as a whole.

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 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;
- d. the school's response to the objection;
- e. court judgments in the cases of *Warwickshire County Council v Matalia* [2015] EWHC B4(Ch) and *Matalia v Warwickshire County Council* [2017] EWCA Civ 991;
- f. the decision of the Employment Tribunal in the case of *S Stothard v Durham University* 2500306-19;
- g. information provided by the LA about the number of preferences expressed for the school;
- h. relevant previous determinations; and
- i. research papers referred to in the text which were identified by us and shared with the parties for comment.

The Objection

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

13. The objector considers that the arrangements are unclear as to how places are allocated. There is reference to a qualifying score and to applicants being placed in rank order on the basis of their score but there is nothing to say what the qualifying score is or when/how it is determined. This is related to the second aspect of the objection, namely that it is unclear which looked after/previously looked after applicants and applicants eligible for the pupil premium will be admitted. Because these two points are linked, we have considered them together. Relevant paragraphs of the Code are 1.8 and 14.

14. The arrangements say that the school may organise a "similar replacement test" for late sitters. The objector says that, if the school uses a similar test of the same type, this is unreasonable and unfair because the results of the two tests cannot be compared (according to CEM). He also considers that, if the same test is used for late sitters, this is unreasonable and unfair. We have considered these two aspects together. Relevant paragraphs of the Code are 1.31 and 14.

15. 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. 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.

Other Matters

17. The arrangements state that the school will only accept pupils up to the start of Year 10. This appears to contradict the obligations in section 86 of the School Standards and Framework Act 1998 which provide that admission authorities for maintained schools must comply with parental preference unless compliance would prejudice the provision of efficient education or the efficient use of resources. Academies are required by their funding agreements to comply with the Code and the law relating to admissions and so these obligations are relevant. It cannot be assumed that all admissions to Years 10 and 11 would automatically be prejudicial. We are aware that schools find admissions to Years 10 and 11 difficult, but the fact is that some pupils do move schools in Years 10 and 11 and schools are obliged to admit such pupils unless they can demonstrate prejudice in individual cases. This aspect of the arrangements appeared to us to be in contradiction of paragraph 4 of the School Admissions Code. The LA said it would expect schools to apply their admission arrangements to all year groups.

18. The school has acknowledged that the arrangements do not comply with the School Standards and Framework Act 1998 or the Code insofar as the arrangements purport to restrict applications for Year 10 and Year 11 at the school, and has agreed to revise the arrangements so as to remove this restriction. We are grateful to the admission authority for its cooperation in this matter. The revision will need to be made by 31 October 2021.

Background

19. Sir Thomas Rich's School is a single sex selective secondary school for boys aged 11 – 18 with a coeducational sixth form. Situated in Longlevens, Gloucester, the school is locally known as "Tommies", and was founded in 1666 by Sir Thomas Rich, 1st Baronet. The school converted to become an academy in October 2010. The Published Admission Number (PAN) is 150. The school selects by ability as assessed in selection tests prepared for the school by the Centre for Evaluation and Monitoring (CEM). It has been consistently rated as Outstanding by Ofsted.

20. We set out below the oversubscription criteria and other extracts from the admission arrangements which are relevant to the objection.

"Places are offered to boys who achieve the qualifying score in the test...

The test consists of multiple-choice style questions on verbal ability (e.g. comprehension, vocabulary and verbal reasoning), numerical reasoning and non-verbal reasoning. There are two papers, and the standardised marks are combined to give a total score for each applicant. The total score is used to place applicants in a rank order by which places are allocated. This is not a pre-defined pass mark. The child's position in the rank order of standardised scores reflects his score in the Admissions Test...

During the normal round of admissions, the Local Authority will allocate places based on the School's admissions criteria to those children who meet the qualifying

standard and whose parents express a preference for the School in their Common Application Form (CAF), according to the criteria set out below:

- a. A 'looked after child' or previously looked after child
- b. Boys from families entitled to Pupil Premium (see Note 2)
- c. Other qualifying boys in test rank order.

9. Late Tests

Due to illness, accident or sudden bereavement:

where exceptional circumstances mean a child cannot take the test on the appointed day (for which they are registered) the School may organise a similar replacement test later, usually approximately 10 days after the original test date. In such cases parents must contact the Admissions Officer at Sir Thomas Rich's School to discuss the situation prior to the appointed day when the normal test takes place. The School will require proof of illness or other evidence and may decline to permit a child to take a late test in the absence of such evidence.

Due to other circumstances:

If a parent names the School on their Local Authority Common Application Form, but the child has not yet sat the Grammar Test, the School will make arrangements for the child to sit Admission Tests usually during the Spring Term. If the child is eligible for entry, his name will be placed on the waiting list at the rank determined by the late test result. An application for the child, naming Sir Thomas Rich's as one of the school preferences, must also have been made to the Local Authority. As already detailed in Section 2. Testing Arrangements above, any student registering in two authorities (including Gloucestershire) that share the same test, and attempting to sit a late test in Gloucestershire, will have the first sitting taken as their test score".

Consideration of Case

21. There are six aspects to this objection. We have divided our consideration of the case into four headings, each of which comprises one or more aspects 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 the objector to make comments.

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

22. The arrangements state that the qualifying score is set after the test results are known which, in our view, is entirely acceptable and that the scores are subsequently ranked. The arrangements then say that places are offered to boys who achieve the qualifying score: first to those who are looked after or were previously looked after (1); second to those eligible for the Pupil Premium (2); and thereafter to other boys in rank order (3). Our reading is that boys who achieve the qualifying score and who fall into (1) and (2) would also be offered places in rank order. The school has told us that all of the applicants who have achieved the qualifying score and who fall under (1) and (2) have been admitted to the school, and that the number of boys admitted under each oversubscription criterion for the last three years is as follows:

		Places Offered 2021	Places Offered 2020	Places Offered 2019
1.	Looked after and previously looked after applicants who have achieved the qualifying score.	1	1	0
2.	Applicants eligible for the Pupil Premium who have achieved the qualifying score.	3	3	6
3.	Other applicants who have achieved the qualifying score.	146	146	144
	Total	150	150	150

23. The school has also told us that the 11 plus test results are processed by CEM, who send to the schools within the group which participate in the same testing process a spreadsheet of the share cohort for each school with the scores for the individual parts of the test and an overall standardised score. This spreadsheet is then rank ordered by the standardised score. On receipt of the share cohort standardised scores, a group of senior staff comprising of the Headteacher, the Admissions Officer and the Data Manager reviews the scores and considers what a suitable qualifying score may be. The Headteacher takes this information to the admissions committee (a committee of the school's Trust Board). The admissions committee is guided by the Headteacher "as it is rational to conclude that he has the appropriate expertise to recommend a suitable QS for determination". The admissions committee (of which the Headteacher is the Chair) will scrutinise the information and subsequently determines the qualifying score, which is the minimum score which must be attained in order to be considered for entry to the school. The qualifying score differs from year to year because the test is different each year and the cohort size and ability of candidates differs year on year. The other six grammar schools in Gloucestershire use the same process.

24. Paragraph 1.8 of the Code requires that oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. The first question for us to consider is whether the oversubscription criteria are clear. Our view is that they are. We did wonder whether the order of priority within oversubscription criteria (1) and (2) was sufficiently clear because it is not specified within the criteria themselves; however, the arrangements say that the results are placed in rank order. Therefore, it seems to us that reading down the list of standardised marks, the first place would be allocated to the highest scoring looked after/previously looked after applicant achieving a qualifying score, the second place would be allocated to the next highest looked after/previously looked after applicant achieving a qualifying score and so on until there were no more looked after/previously looked after applicants who had achieved the qualifying score. The next place would then be offered to the highest scoring applicant eligible for the pupil premium achieving a qualifying score and so on. Accordingly, our view is that the order of priority is sufficiently clear to comply with paragraph 1.8.

25. Paragraph 14 of the Code requires that the practices and the criteria used to decide the allocation of school places are clear. Since the setting of the qualifying score is a practice used to determine the allocation of places, the next question for us to consider is how much information the school's admission arrangements must contain in order to be sufficiently clear. Parents need to know which steps they must take and by when, and what their child needs to do in order to be eligible for a place at the school. This information needs to be set out so that parents can look at the arrangements and understand easily how places will be allocated. Our view is that the information can either be in the arrangements themselves or signposted clearly in the arrangements with further detail accessible via a one-click link. On the school's website, there is a tab entitled Admissions which displays a wealth of information about the process for admissions to Year 7. There are links to various other documents such as the Gloucestershire Grammar Schools Information Booklet, the school's prospectus and test familiarisation materials. The test date is displayed, and it is said that parents will be notified by email of the son's test result before the deadline for submission of the Common Application Form. The information is set out clearly and succinctly, and there is a named contact and email address and telephone number provided in case parents have further questions. We were impressed; the school not only meets but goes beyond what is required and this will doubtless be helpful to parents

26. Our view is that in order for the arrangements to be sufficiently clear, where there is a pre-established pass mark, the arrangements must state what that pass mark is. Where the pass mark is not a pre-established one, the arrangements must say this. They must also say when the pass mark will be set, and when parents will be told whether their child has reached the pass mark. There is no requirement that the pass mark must be set using a particular methodology or that it be set by a specified body. However, the arrangements must be reasonable and operate fairly; therefore, we consider that the pass mark must be set by a competent person or body. There is no requirement that admission arrangements must set out how the pass mark is set, but if they do this the methodology must be

described clearly. The arrangements and supplementary information available to parents make clear that the qualifying score is set after the results are known and that eligibility for a place at the school is contingent upon an applicant achieving the qualifying score. It is also clear that an eligible applicant's priority for admission is determined by whether he falls within oversubscription criteria 1) or 2) and by his order in the ranked list. The school's website makes clear when parents will be notified of their son's result. On the basis of the arrangements and supplementary information, which is easily accessible, we find that the process for the allocation of places is set out clearly for parents and in sufficient detail to comply with the requirements of paragraph 14 of the Code. We do not uphold these aspects of the objection

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

27. The arrangements say 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). They also say that the school may organise a "similar replacement test" later, usually approximately 10 days after the original test date. The objector considers that it is unclear as to which organisation supplies the late test. He says:

"CEM are on record as stating they cannot compare tests. How will scores be compared then? It is not acceptable for the adjudicator to say "they will find a way". This would be a cop out. There must be a clear way that is stated to parents with the process and the comparison has to be approved by CEM. The adjudicator has to declare whether CEM are a bunch of charlatons [sic] and different tests can be compared or the school is making up a comparison which cannot be [sic] done with any accuracy. Catch-22. The only solution is to not hold a late test and record as zero. There is no explanation what happens with the people who game the system and claim they cannot sit a test on a Saturday for "fake" religious reasons (their parents are seen driving cars - this is banned as it is work. The children then gain content and sit the test). Do these children sit the same test or a different test? It is not clear. The only solution is a week day test."

28. The objector has objected to the school using the same tests and the school using similar but different tests. The school has confirmed to us that the same tests are used, therefore we do not need to consider what the position would be if the school were using similar tests. Our jurisdiction is in relation to the arrangements which are in operation; however, adjudicators have consistently found that it can be lawful and in conformity with the Code for an admission authority to use either approach provided it can rationally justify the approach taken. Had the school told us that it used similar tests for late sitters, as opposed to the same tests as those used for applicants who sit the tests on the normal test date, we would have asked the school to explain why it considered that the scores in the two different could be compared fairly. Since the school uses the same tests for late sitters, we do not need to consider the alternative position.

29. 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.

30. 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.

31. 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?

32. All of the schools objected to on the same point this year use verbal and non-verbal reasoning 11 plus tests (VR and NVR tests) designed by CEM. Some use exactly the same set of tests for the first round of testing as they do for all subsequent testing rounds for entry to Year 7, and some use a different set of tests of the same type for the purposes of late testing. By this we mean a different set of 11 plus VR and NVR tests designed by CEM. Schools using the former practice, as this school does, might argue that it is unfair to use a different test, albeit a test of the same type, because it is necessary to compare like with like in order to ensure parity of results and therefore fairness. CEM does not publish its test papers, and those administering the tests are required to hold them confidentially and only to disclose the papers to candidates at the time the tests are taken.

33. 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..."

34. 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.

35. 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.

36. 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".

37. 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. Sir Thomas Rich's 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.

38. 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."

39. 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.

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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.

47. 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.

48. 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 (that is 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.

49. 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.

50. 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 of that CEM re-uses bank questions, and we would have expected that CEM would insert an ouster clause along these lines in contracts. We have not circulated this information to the parties because it was submitted after the deadline given for responses and we consider it places an unfair burden on schools to keep circulating information to them in addition to the copious amounts of information we have already sent to them. We are not permitted to take information which we have not made all parties aware of. We did read the contract and it makes no difference to our conclusions on this point.

Age standardisation

51. The objector claims that the use of age standardisation in 11 plus tests is based upon the claim that different aged children in the same school year (who are taught the

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

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

52. 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.

53. 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.

54. The school has said that the age standardisation process is devised by CEM as part of their process to ensure that younger applicants (who may be up to 364 days younger than the eldest applicant, equating potentially up to 1/10th younger) are not unfairly disadvantaged. If there was no age standardisation the elder applicant/s would have a significant advantage over the younger applicants. The school's view is that the standardisation process is:

“a tried and tested process seeking to establish as fair a process as is possible. The idea behind the process is not to provide younger applicants with an advantage but rather to neutralise any advantage that might be conferred upon the older applicant. Ultimately, for practical reasons it is not possible for each applicant to sit the entrance test on precisely the same day in their life. For example, a system whereby each applicant sits the test at the age of (say) 10 years 5 months would result in chaos. Even if you were to devise a system that catered for this remarkable example, it would be rendered useless where, for example, an applicant could not sit the test on his/her designated day due to religious reasons or illness”.

55. The school has referred us to a determination [ADA3281] in March 2018 wherein the adjudicator concluded that the process was unfair where there was no age standardisation. That conclusion was, as it happens and as the determination makes clear, supported and informed by expert analysis commissioned by the OSA from the Department for Education's professional statisticians. The school has also referred us to one of our own determinations [AD3675] in October 2020 which concluded 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’.’ The school acknowledges that previous determinations are not binding but is of the view that these previous determinations are rational conclusions – in other words there is greater unfairness in having no age standardisation than any nominal (if any) unfairness caused by age standardisation.

56. 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?

57. 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".

58. 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.

59. 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.

60. 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.

61. There is significant and compelling research evidence that children who are ‘summer born’ perform less well in tests of ability than children born at other times of the year. This gap is clear in primary aged children and remains an issue even into the later stages of secondary school. A study by the Institute of Fiscal Studies entitled ‘When You Are Born Matters; The Impact of Date of Birth on Child Cognitive Outcomes in England’ collates many previous pieces of research and looks at the reasons why summer born children perform less well. The paper also puts forward some suggestions about mitigating this effect. The objector questions its relevance to CEM 11 plus tests. However, we note that there is research referred to about the British Ability Scales (BAS) tests, which were conducted during survey interviews when the child was aged around 5 and 7. At age 5, the BAS tests covered vocabulary, picture similarity and pattern construction. At age 7, they covered reading, pattern construction and maths, and are a similar type of tests to VR and NVR tests (tests of cognitive ability as opposed to attainment). The following conclusions were reached:

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

These age-adjusted scores should be used to calculate school league table positions, to determine entry to schools that select on the basis of ability, and potentially to assign pupils to ability groups within schools. Some studies have

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

62. 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.

63. 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.

64. 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.

65. 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.

66. 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). 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.

67. 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.

68. 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.

69. 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

70. 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.

71. 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 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.

72. In response to the objection, the school said that it is happy with the content of the 11 plus tests. It has used CEM for the 11 plus tests for nearly seven years and is satisfied that the cohorts that are admitted year on year are of suitable academic ability for the standards demanded at the school. The school is happy that the content of the 11 plus tests are a suitably rigorous examination of children seeking to be admitted to a grammar school. The school is satisfied that the 11 plus tests produce an accurate reflection of ability. The school is a member of a group of seven selective schools in Gloucestershire. All of the schools in the group have used CEM as the 11 plus test provider for circa seven years. In short, the school is satisfied with the service from CEM and the standard of test provided. The LA has said that it has no comment to make relating to the testing arrangements which are administered by the school directly.

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

74. 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.

75. 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.

76. Paragraph 1.31 of the Code says that ‘Tests for all forms of selection **must** be clear, objective and give an accurate reflection of the child’s ability or aptitude, irrespective of sex, race or disability. It is for the admission authority to decide the content of the test, providing that the test is a true test of aptitude or ability’. It is entirely up to schools and other admission authorities to decide who writes and marks their 11 plus tests and this school has decided that CEM is an appropriate company to use. It is not within our jurisdiction to agree or disagree that CEM is a reputable organisation - our jurisdiction relates to whether the testing arrangements for this school comply with paragraph 1.31 of the Code. It is clear that this school, and many other similar schools are content that the service provided by CEM fulfils the requirements of paragraph 1.31 and that the outcomes are those which the school requires. We have seen no evidence which persuades us that the tests do not conform to the Code at paragraph 1.31, and we do not therefore uphold this aspect of the objection. We think it is important that we emphasise that we have seen nothing to make us doubt the suitability of the tests provided by CEM.

Summary of Findings

77. We do not uphold any aspect of this objection. We consider that the arrangements are sufficiently clear as to the operation of the oversubscription criteria and the setting of the qualifying score. We do not find the late testing arrangements to be in breach of paragraph 1.31 or 14 of the Code. We do not find that the use of age standardisation renders the test results an inaccurate assessment of ability. Neither do we find that the tests are not an accurate assessment of ability because they are provided and marked by a dishonest and disreputable organisation. There was one other matter which we identified as being in breach of the Code and other legislation. The school has agreed to revise the arrangements to remove the relevant provision. We are grateful to the school for its cooperation.

Determination

78. 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 Sir Thomas Rich's School for Sir Thomas Rich's School, Gloucestershire.

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

80. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination [unless an alternative timescale is specified by the adjudicator. In this case we determine that the arrangements must be revised by 31 October 2021.

Dated: 11 October 2021

Signed:

Schools Adjudicator: Marisa Vallely

Schools Adjudicator: Ann Talboys