Office of the Schools Adjudicator

Determination

Case reference:	**ADA3812**
Objector:	**Two parents**
Admission authority:	**Rugby High School Academy Trust for Rugby High School, Warwickshire**
Date of decision:	**24 November 2021**

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2022 determined by Rugby High School Academy Trust for Rugby High School, Warwickshire.

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

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 28 February 2022.

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 two parents (the objectors) about the admission arrangements for 2022 (the arrangements) for Rugby High School (the school), a selective academy school for girls aged 11 to 18. The objection was wide ranging but centred on information provided to parents about the academic standard required for admission to the school.

2. The local authority for the area in which the school is located is Warwickshire County Council (the local authority) and it is a party to this objection. Other parties to the objection are the objectors and the Rugby High School Academy Trust (the trust).

3. The objectors made similar objections to four other selective schools in Warwickshire which are considered in determinations ADA3871, ADA3872, ADA3873 and ADA3874.

Jurisdiction

4. 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 on 26 January 2021 by the governing board on behalf of the trust, which is the admission authority for the school, on that basis.

5. The objectors submitted their objection to these determined arrangements on 10 May 2021. The objectors initially asked to have their identities kept from the other parties and met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the regulations) by providing details of their names and address to me. However, they allowed their identities to become known to the other parties by accepting an invitation to a meeting which I convened on 20 September 2021.

6. On their objection form, the objectors referred to 17 provisions of the School Admissions Code (the Code) together with provisions in the School Admission Appeals Code and in the General Data Protection Regulation. They also referred to the admission arrangements for previous years and actions taken by the school and the local authority when applying admission arrangements in previous years. My jurisdiction under section 88H of the Act is solely to decide whether, and if so to what extent, objections made before 15 May 2021 to the admission arrangements of a school for 2022 should be upheld. Admission arrangements for previous years and the implementation of those arrangements are, therefore, outside of my jurisdiction. Some matters raised in the objection were not matters for admission authorities (in the sense that they were not within the admission authority's gift or under its control) and one was the same, or substantially the same as a matter in an objection considered by the adjudicator in a determination reference ADA3502 published on 3 July 2019. Regulation 22 of the regulations prohibits objections raising the same or substantially the same matters within two years of the previous decision.

7. I am, however, satisfied that the other aspects of the objection have been properly referred to me in accordance with section 88H of the Act and are within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

8. Since the arrangements were determined and the objection made, the Code has been revised. The revised Code does not change the content of the Code pertinent to this case beyond renumbering some of the paragraphs. To be consistent with communication

during the consideration of the case references in this determination are to the version of the Code published in 2014.

9. The Code which was then in force at the time the arrangements were determined 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 me its varied arrangements.

10. I have made my 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

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

12. The documents I have considered in reaching my decision include:

a. the objector's form of objection dated 10 May 2021 and attached documents;

b. correspondence with the objectors concerning my jurisdiction and clarifying the scope of the objection;

c. other correspondence with the objectors;

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

e. a copy of the determined arrangements; and

f. comments from the school on the objection and the matters raised under section 88I of the Act.

13. I have also taken account of information received during and after a meeting I convened on 20 September 2021 at the local authority's offices in Warwick. The meeting was attended by one of the objectors, local authority officers and representatives of the school and of the other four schools subject to similar objections from the same objectors. Other than at the meeting, no comments were received from the local authority about this objection.

The Objection and Other Matters

14. The core of the objection was that information included in the arrangements and provided to parents about the academic standard required for admission to the school was insufficient and that this was caused by, or led to, other infringements of the Code.

15. On the objection form the objectors listed 17 paragraphs of the Code as being those which they believed the arrangements contravened. As noted above, not all of these were within my jurisdiction. I considered that consideration of compliance with the following eight were within my jurisdiction: 1.9a, 1.9d, 1.9j, 1.20, 1.32, 1.33, 1.47, 2.14. Elsewhere in the papers sent to me the objectors referred to other paragraphs of the Code not listed on the objection form which they believed were contravened by the arrangements. Of these I considered that concerns relating to paragraphs 14, 1.8 and 1.17 were in my jurisdiction. I will set out the provisions of these paragraphs at the appropriate points in this determination.

16. In addition, I considered that the arrangements did not, or may not, conform with the Code in other ways, some of which concerned parts of the Code already referred to by the objectors although for different reasons. Many of my concerns were about the clarity of the arrangements. Where arrangements are not clear, the fairness and objectivity of the arrangements and their conformity with the Code will not be clear. It also appeared to me that the arrangements did not conform with paragraphs 2.17 and 2.17A concerning admission outside of the normal age group.

Background

17. The school as its name suggests is situated in Rugby where there is also a boys' grammar school and a partially selective school as well as some non-selective secondary schools. The school uses the same selection test as the boy's grammar school and the partially selective school. The same test is used by three other grammar schools in Warwickshire and the grammar schools in Birmingham. This enables results to be shared, if parents so wish, between selective schools in the two local authorities.

18. The arrangements are ten pages long and describe an admissions process which is common to the other grammar schools in Warwickshire although each school has its own admission authority with its own oversubscription criteria and other differences in their arrangements. The common process as it exists for admission in 2022 and hence for the purposes of this determination can be summarised as follows:

Date	**Action**
May-June 2021	Year 5 pupils register for the selection test.
August 2021	The local authority sends information packs to parents.
Early September 2021	Pupils take the selection test.

Date	Action
Mid October	Parents are notified of their child's test score, the ranking of that score, the Automatic Qualifying Scores (AQS) and waiting list scores for previous years.
31 October	Parents apply for places on the common application form (CAF).
November 2021 to February 2022	The committee of reference (headteachers and other representatives of the grammar schools) sets the AQS and waiting list scores for each school. The respective waiting list scores represent the minimum required academic standard for each school and the AQS is a higher threshold designed to ensure so far as possible a particular geographic distribution of places. Oversubscription criteria applied to applicants to each school and the co-ordination process is completed.
1 March 2022	Parents notified of offers.

19. The school has a published admission number (PAN) of 120 and oversubscription criteria which can be summarised as:

1. Looked after and previously looked after children
2. Twenty places for children who live in the priority areas who are eligible for the pupil premium because they are eligible for free school meals
3. Fifty places for children who live in "East Warwickshire" who achieve the AQS
4. Children living in the "Eastern Priority Circle" who achieve the AQS
5. Children living inside or outside the priority areas who achieve the AQS
6. Children who achieve the waiting list score.

20. Within each criterion, priority is based on the score in the selection test and, if there is a tie, priority goes to children eligible for pupil premium, then those living closest to the school with random allocation being used as a final tie-breaker.

21. A geographical area, from which children may be afforded priority for admission to a particular school is referred to in the Code as a catchment area. The two priority areas used in the arrangements meet this definition.

Consideration of Case

22. I will begin by considering whether the arrangements conform with those paragraphs of the Code referred to in the objection which I consider to be within my jurisdiction. Where I

am concerned that the arrangements do not conform with the same part of the Code, I will address those concerns at the same point.

Paragraph 14 – Overall fairness, clarity and objectivity

23. This paragraph provides an overarching requirement for admission arrangements: "In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated." Later paragraphs of the Code specify some specific requirements that must be met and provisions that must be included for arrangements to be "fair, clear and objective". If later requirements are not met, then the arrangements as a whole are unlikely to be "fair, clear and objective" and so they will not conform with paragraph 14. It is also possible that while meeting all other requirements of the Code, taken as a whole the arrangements fail to be fair, clear and objective. I will therefore withhold my finding on conformity with paragraph 14 until the end of this determination.

Paragraph 1.8 – Oversubscription criteria

24. This paragraph says: "Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated."

25. The objectors argued that because the oversubscription criteria for the school all refer to either the AQS or the waiting list score and that because these scores are not published in the arrangements, then the oversubscription criteria are unclear.

26. Either it is necessary for the AQS and the waiting list score to be published in the arrangements, and that is a matter I will consider later, or it is not. If the former, then I can find no requirement in the Code for the scores to be published specifically in the oversubscription criteria. It would be possible to meet any requirements there may be to publish these figures by publishing them elsewhere in the arrangements. I do not uphold this part of the objection.

27. The objectors also considered that the oversubscription criteria did not make provision for children subject to the fair access protocol (FAP). The FAP is agreed by the local authority with schools to ensure that, outside of the normal admissions round, unplaced children especially the most vulnerable are offered a place at a suitable school as quickly as possible. Oversubscription criteria are applied during the normal admission round and there is no reason for any link with the FAP which comes into play after places have been allocated in the normal round. Moreover, the FAP is not part of the admission

arrangements of this school or, indeed, any other school. I do not uphold this part of the objection. I deal further with matters relating to the FAP in a later section of this determination dealing with waiting lists.

Paragraph 1.9 - Prohibitions

28. This paragraph of the Code sets out what admission authorities **must not** do in their arrangements. The first of these is "a) place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements". The objectors considered that the pass mark is a condition not included in the oversubscription criteria.

29. Conditionality is, helpfully, defined in the Code and the definition is "Oversubscription criterion that stipulates conditions which affects the priority given to an application, for example taking account of other preferences or giving priorities to families who include in their other preferences a particular type of school (eg where other schools are of the same religious denomination). Conditionality is prohibited by this code." The oversubscription criteria for this school all state that a certain score in the test must be reached to meet each criterion. The numerical value of the score is not stated in the oversubscription criteria which the objectors consider it should be. In discussing conformity with paragraph 1.8 above I have set out above why I do not think it is necessary for the numerical value of the score to be published in the oversubscription criteria. Nor do I consider that the pass mark is a condition within the definition used in the Code. I do not uphold this part of the objection for the same reasons.

30. Paragraph 1.9 also says that admission authorities **must not** "d) introduce any new selection by ability". The objectors argued that setting the pass mark after the test has been taken was new selection by ability. They also argued that testing children before putting them on the waiting list was new selection by ability. The school is a grammar school, and its predecessor school was designated as such under section 104 of the Act. It may accordingly select all of its pupils on the basis of general ability with a view to admitting only those of high ability. As the school is and has for many years been wholly selective it cannot be considered to be introducing any new selection by ability. When and how it selects is not covered by this part of the Code. I do not uphold this part of the objection.

31. The objectors also listed 1.9j on their objection form. This prohibits admission authorities "in designated grammar schools that rank all children according to a pre-determined pass mark and then allocate places to those who score highest, give priority to siblings of current or former pupils". There is no priority for siblings in the arrangements and so I do not uphold this part of the objection.

Paragraph 1.17 – Publication of entry requirements and the selection process

32. Under the heading "Selection by ability or aptitude" paragraph 1.17 of the Code says: "All selective schools **must** publish the entry requirements for a selective place and the process for such selection." This is the core of the objection. The objectors are of the view

that because the arrangements do not contain a number which is the AQS the entry requirements have not been published.

33. It is important to note that in the section of the Code about grammar schools in paragraphs 1.18 and 1.20 the term “standard” is used rather than “mark” or “score”. Where the Code uses the term “score” in paragraph 1.19 and “mark” in 1.9j it is in relation to grammar schools where selection is based wholly on ability which is not the case here as other factors are taken into account such as where the child lives.

34. It is for admission authorities to decide what the academic standard for the school is. For example, it could be the upper quartile of the national ability range, the most able 200 applicants or some other standard. There are variations in the range of ability of different cohorts of children and tests vary in their level of difficulty. The test score representing this standard will, therefore, vary from year to year depending on the content of the test and the cohort of children who sit it.

35. The admission authorities for some grammar schools do publish the score which children must achieve in the selection test to show that they meet the academic standard for admission to the school in their arrangements and this score remains the same every year. This is achieved by applying a mathematical formula to the scores so that the mark representing the standard is constant. The required score will always then be represented by the same mark, say 120. But this does not mean that the score 120 necessarily represents precisely the same level of difficulty or achievement each year for the reasons I give above. Other grammar school admission authorities do not publish the required score in advance but do inform parents what it is when they send out the selection test results before 31 October telling parents whether or not their child has met the standard. In this case, neither of these approaches is possible.

36. From the arrangements and discussion at the meeting I understand that the waiting list score represents the level of ability required to cope with the academic environment of the school. The AQS is a higher threshold which is set to ensure children from particular geographic areas have priority for places at the school. It is therefore not possible to know what the AQS will be until it is known where the children applying to the school live. This information will not be known until after applications have been made and so cannot be published in advance.

37. I can find no requirement in the Code for the test score, which represents the required academic standard, to be published in the arrangements and I have already explained that even if the score remains the same year on year, the standard may not. I will now consider whether the Code requires that the academic standard for the school must be explicitly stated in the arrangements, or if it is sufficient to state that there is such a standard.

38. I think that either approach is acceptable, each under its own conditions. Where an admission authority decides to publish the standard in its arrangements, it must do so clearly and an admission authority which decides not to describe the standard in its arrangements must provide in the arrangements information so that a parent or other

interested party could find out easily what the standard was, for example in an appendix or through a direct link on a website. This is an example of where admission authorities must strike a balance in their arrangements between making them clear and giving details which some parents may be interested in, but which may obscure the key elements which all parents need to know.

39. The first paragraph of the arrangements says, “Admissions are based on a process of selection having regard to students’ academic ability.” This is followed by a section in the arrangements headed “Eligibility and Priority for Entry in Year 7”. This begins by saying “Eligibility for admission is based on a student’s home address” and “on the child’s gender being female”. While the second is true, a girl living anywhere could attend the school (if they meet the required academic standard), it is their priority, not eligibility, for a place which depends on their home address. This section of the arrangements may be a natural place to explain that only girls who have reached the required academic standard are eligible for the school, but the arrangements do not do so at this point. There is a further section headed “Eligibility” on the fourth page concerning eligibility based on age which I will address later in this determination. However, the oversubscription criteria on the second page of the arrangements all include the need to meet either the AQS or the waiting list score and are followed by several pages describing the testing process. I think it will be absolutely clear to parents that to be admitted to the school it must be demonstrated by taking a test that an academic standard must be met to be eligible for admission.

40. On page 5 of the arrangements there is a heading “Setting the Automatic Qualifying Score”. This says:

> “The Committee of Reference has an overriding discretion to set the Automatic Qualifying Score and the minimum score for the waiting list as it considers appropriate to ensure that those offered places, and those on the waiting list, have the level of ability required to cope with the academic environment of the school.
>
> The Committee will consider the descending score order and the number of children applying for each school (living within the priority areas and who registered before the closing date) and set the Automatic Qualifying Score using the score obtained by the fiftieth candidate (in score order) in Category 3 as a benchmark. The Automatic Qualifying Score will be set at a level which allows fewer than 50 applicants to be given priority under Category 4.
>
> The Committee of Reference will also consider the scores of students just below the automatic qualifying score and determine for each school the minimum score for the waiting list for that year.”

41. From this it would appear that the admission authority has decided to set out what the academic standard required for admission to the school is in the arrangements. That standard is represented by the waiting list score which is just below that of the 50 most able applicants in each of the two priority areas as measured by the selection test. The AQS is the score which represents the academic standard of the 50 most able girls who took the tests and have applied for a place in each of those areas.

42. In my view it is not necessary for the AQS or waiting list score to be stated in arrangements. The academic standard required for admission to the school is stated in the arrangements and I consider the requirements of paragraph 1.17 are met. I do not uphold this part of the objection; I will, however, consider whether this definition is consistent with other aspects of the arrangements later.

Paragraph 1.20 – Priority for looked after and previously looked after children

43. This paragraph of the Code says: "Where admission arrangements are not based solely on highest scores in a selection test, the admission authority **must** give priority in its oversubscription criteria to all looked after children and previously looked after children who meet the pre-set standards of the ability test."

44. The objection was that without the AQS being published in the arrangements this requirement was not met. I have discussed this matter in the previous section of this determination and for the reasons set out there I do not uphold this part of the objection. However, I have other concerns about conformity with this part of the Code.

45. The first oversubscription criterion reads: "Looked-After and all previously Looked-After Children who achieve the automatic qualifying score for this school for this particular year of entry or a mark above it, or a mark up to 15 marks below it." I would commend an admission authority for setting a lower academic standard for able children whose background may have prevented them from achieving the same level in the selection test as they might have been able to do in other circumstances. However, the minimum academic standard for admission to this school is represented by the waiting list score, not the AQS.

46. The local authority provided me with details of the waiting list score and the AQS for the last three years.

	2019	2020	2021
AQS	208	211	210
Waiting list score	206	205	205

In practice, the waiting list score has never been less than 15 marks below the AQS and so any looked after, or previously looked after girl reaching the waiting list score would have been given the correct priority. However, it is not impossible (and lack of detail in the arrangements about the relationship between the waiting list score and the AQS makes it harder to judge the probability) that the waiting list score could be more than 15 marks below the AQS in which case the requirements of paragraph 1.20 would not be met. Although the school said it always would be the case, no reason has been given as to why the waiting score could not be more than 15 marks below the AQS. The arrangements must be clear that if the difference between the AQS and the waiting list score was more than 15

marks, then a looked after or previously looked after girl who met the waiting list score would be admitted.

47. Similarly, the arrangements say ""Children with a Statement of Special Educational Needs or Education, Health and Care (EHC) Plan naming the school who meet the required standard for entry (Automatic Qualifying Score) must be admitted and this could reduce the number of places available." It is the waiting list score which a child with an EHC Plan naming the school must meet for admission. Also, statements of special educational need no longer exist having been replaced by EHC Plans and so referring to them makes the arrangements unclear. This point was acknowledged by the school.

Paragraph 1.32 – Informing parents of test results

48. This paragraph says "Admission authorities **must**:

> a) ensure that tests for aptitude in a particular subject are designed to test only for aptitude in the subject concerned, and not for ability;
>
> b) ensure that tests are accessible to children with special educational needs and disabilities, having regard to the reasonable adjustments for disabled pupils required under equalities legislation, and
>
> c) take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on **31 October** so as to allow parents time to make an informed choice of school - while making clear that this does not equate to a guarantee of a selective place."

49. The objection was that because the arrangements say that in mid-October parents will be told the child's test score and the AQS and waiting list scores for previous years, part c) is not complied with. Parents will not know by the time they make their application whether or not their child has met either of the standards for 2022.

50. I have explained above that because the required standard is based on the number of applicants from specified geographical areas, it cannot be set until after 31 October which is the deadline for applications to be made. I have been provided with the AQS and the waiting list score for the last three years which are shown above.

51. The Code requires that "all reasonable steps" are taken. In these circumstances I am satisfied that all reasonable steps are taken and that knowledge of the AQS and waiting list score which have little variation for the last three years and the child's score would allow parents to make informed choices. I do not uphold this part of the objection.

52. At the meeting another issue arose which I will refer to under this section as it concerns paragraph 1.32b. The arrangements require that requests for adjustments to the selection test so they are accessible to children with special needs and disabilities should be made by 11 June 2021. This is 19 days before the closing date to register for the test. When at the meeting the objector questioned the need for this earlier date, the local authority (which organises the test) said that the earlier date was necessary for practical

reasons. It would seem to me that requiring parents of children with disabilities to, in effect, register for the test earlier than other children could be a breach of equalities legislation and that the practical reasons for the earlier deadline would need to be significant to justify it. I note in this context that the tests are not actually held until September.

Paragraph 1.33 – Adjusting test scores

53. This paragraph says: "Admission authorities **must not** adjust the score achieved by any child in a test to take account of oversubscription criteria, such as having a sibling at the school." While the AQS may vary from year to year to enable a target number of children from particular geographic areas named in oversubscription criteria to meet it, there is nothing in the arrangements to suggest that any child's score is adjusted. I do not uphold this part of the objection.

Paragraph 1.47 - Publication

54. Paragraph 1.47 requires: "Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website displaying them for the whole offer year (the school year in which offers for places are made)." The objection was that the published arrangements did not contain the numerical value of the AQS. I have dealt with this matter above. The arrangements are published as required and I do not uphold this part of the objection.

Paragraph 2.14 – Waiting lists

55. This paragraph concerns waiting lists and says: "Each admission authority **must** maintain a clear, fair and objective waiting list until at least **31 December** of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria. Priority **must not** be given to children based on the date their application was received or their name was added to the list. Looked after children, previously looked after children, and those allocated a place at the school in accordance with a Fair Access Protocol, **must** take precedence over those on a waiting list." The objection concerned the relationship between the waiting list and the FAP and testing of children before they join the waiting list.

56. As a designated grammar school only children who have met the required academic standard will be placed on the waiting list. The arrangements explain that children who were part of the main admissions round, who reached the required standard but could not be offered a place, will be placed on the waiting list according to the oversubscription criteria. The arrangements also explain how children who did not apply during the main admissions round will be assessed in order to establish if they are of the required academic standard to be added to the waiting list. I find nothing in this part of the arrangements which does not conform with paragraph 2.14.

57. The waiting list is for children above the required academic standard, whose parents wanted them to attend the school but could not be offered a place. These children will have

a place at another school or will be home educated. They stay on the waiting list until a place becomes available. The FAP is a local authority process to find a school place for children who do not have a place at any school and whose parents do not want to home educate them. Should any of these children be of the required academic standard and the FAP leads to them being placed at the school, they must take precedence over children on the waiting list, but the Code does not require the arrangements to state this.

58. I do not uphold this part of the objection.

Paragraph 2.17 and 2.17A – Admission outside of the normal age group

59. Paragraph 2.17 of the Code says," Admission authorities must make clear in their admission arrangements the process for requesting admission out of the normal age group." Paragraph 2.17A begins "Admission authorities must make decisions on the basis of the circumstances of each case and in the best interests of the child concerned." The arrangements do not say what the process of making an application outside of the normal age group is, but they do say that such applications will only be accepted on one condition, that being they are already being educated outside of their normal age group in Year 6. This does not take into account the circumstances of each case as required by the Code. The requirements of the Code are not met concerning applications for admission outside of the normal age group.

60. The school noted my comments on this point and suggested it removed this paragraph from their arrangements and relied on the local authority to explain education out of the normal age group. The Code, however, requires admission authorities to "make clear in their arrangements the process for requesting admission out of the normal age group." It is not possible to rely on the local authority to do this on their behalf.

Paragraph 14 – Overall fairness, clarity and objectivity

61. I consider that the arrangements for the Warwickshire grammar schools are relatively complex compared to those for most other grammar schools in England. This is mainly through the use of two academic thresholds which may be necessary in the context of the schools, in particular their geographical location. Where complex arrangements are necessary, it is important that the explanation of them is clear. Where the explanation is not clear, then parents will not be able to see that they are fair (which I believe these to be) and objective or otherwise.

62. I have addressed the clarity of some parts of the arrangements when considering the objection earlier in this determination. I will now consider aspects of the arrangements not referred to by the objectors which I consider are not clear.

63. The first matter which came to my attention was the definition of the priority circle. The arrangements say this "is based on a circle with a radius of 10.004 miles drawn from the Rugby Water Tower. In drawing a priority area in this manner, the grammar schools are able to comply with their duty to follow the Greenwich Judgement".

64. The Greenwich Judgment is R v Greenwich London Borough Council, ex parte John Ball Primary School (1989) 88 LGR 589 [1990] Fam Law 469 which held that pupils should not be discriminated against in relation to admission to the school simply because they reside outside the local authority area in which the school is situated. It was not clear to me why setting the radius of the priority circle as it is is required to comply with the duty to follow the Greenwich Judgment.

65. The school told me that as an academy it did not have to justify the priority area and that mentioning the Greenwich Judgment made it clear that it was "working within the confines of the Greenwich Judgment". As the priority circle meets the definition of a catchment area in the Code, paragraph 1.14 requires that it is reasonable. While the Code does not require the rationale for a catchment area to be set out in the arrangements, if an admission authority decides to do so, it must do so clearly.

66. The Greenwich Judgment did not confine the school to use a priority circle. Schools can and do set catchment areas in many ways which comply with the Greenwich Judgment and which are not circular. There are other relevant cases which followed Greenwich, in particular the Rotherham Judgment (R v Rotherham Metropolitan Borough Council, ex parte LT and others (1999)) from which I quote: "One cannot simply place the point to a pair of compasses on the school and draw a circle of so many miles radius around it. If you did that with each school you would have a series of circles, some of which overlap, so some people might live in two or more catchment areas and some people might miss out altogether. Catchment areas have to be carefully considered so that they interlock with each other and have regard to areas of population and bus routes, safe walking distance and matters of that sort."

67. I am not suggesting that there is anything unclear, unreasonable or unfair about the priority circle used by the school. It serves a different purpose from the interlocking catchment areas described in the Rotherham Judgment. I am simply saying that the Code does not require that the rationale for catchment areas is set out in admission arrangements; however, the admission authority has chosen to do so, and I consider that the rationale given is unclear and does not justify the catchment area.

68. There may be other ways in which the priority circle can be justified taking into account factors such as those referred to in Rotherham and other considerations pertinent to selective schools. This could be as simple as taking the view that, in the circumstances of the school, the distances created by the circle are appropriate to balance the need for children not to have too long a journey to school and for the areas to include enough children of an academic ability capable of benefiting from attending the school. If there was a future objection to the fairness or reasonableness of the circles those factors would need to be considered at that time. What I find is that the arrangements are not clear because the admission authority has chosen to justify the priority circle solely by reference to the Greenwich Judgment in the arrangements. That judgment appears to have been misunderstood and most parents will not be aware of or understand it.

69. Part of the arrangements that raised concerns in my mind was the statement on the first page, “Late 11+ registrations and late secondary school applications will not be considered in the first round of offers.” It appeared to me that this may not be fair to families who were prevented from meeting these deadlines for unpredictable, exceptional and compelling reasons. These might include bereavement, accident or illness. It may also be unfair to families who discovered after these dates that they were moving into the area. In my view not to have a safety net for these circumstances would not be fair.

70. On page 4 the arrangements say, “Late registrants are treated the same as those submitting a late application for a school place and will not be considered in the first round of offers. If your form is received after the closing date of 11:59pm on Wednesday 30th June 2021 it will only be treated as on time for this school if you can provide evidence of a move of address into the priority area by 11.59pm on 31 December 2021.” This suggests that there are circumstances in which late registration and late applications are considered, hence contradicting the earlier statement. However, in my view to limit this provision to girls moving into the priority area would not conform with paragraph 15d of the Code which says “a parent can apply for a place for their child at any state-funded school in any area.” While it could be argued that a child moving to an address outside the priority area would have low priority for a place and so not justify the time and resources required to test them, this would not be the case if the child was a looked after or previously looked after child.

71. There may also be some children whose religious practice would not permit them to take a test on particular days. The arrangements say, “Parents whose child is not able to sit the test on Saturdays for religious reasons must indicate this when registering for the test and supply a supporting letter from their religious leader.” What the arrangements do not say is what happens in these circumstances. Similarly, the arrangements explain what to do if the child is ill on the day of the test, but do not say what follow up action there will be. Nor do they allow for the child to be prevented from taking the test for other reasons, for example, transport failure. The only reference to additional tests is those held from 28 February 2022 which would be too late for these children.

72. From the arrangements I conclude that there is a safety net for children with exceptional, compelling or unforeseeable reasons for not being able to register or take the test on a set day, but the arrangements are not clear about what that safety net is. This makes the arrangements unclear. The school noted my comments on these matters and suggested some amendments to the current wording. It is not for me to tell the school how to amend the arrangements, but I would ask them to consider if it would be clearer to set out details of the safety net in one place rather than distributed throughout the arrangements in a disconnected way.

73. On page 7 of the arrangements concerning admission other than in the main admission round there is a statement referred to in the objection. It says, “The governors reserve the right to admit above PAN where a student is exceptionally well qualified and where there is space to accommodate her.” Paragraph 14 of the Code requires that admission arrangements are objective, and section 86 of the Act (which is applied to this academy via its funding agreement) requires admission unless it would prejudice the

efficient provision of education or the efficient use of resources or (for selective schools only) it would be incompatible with selection. In other words, if there is “space” and the girl is sufficiently able, not just “exceptionally well qualified”, she must be admitted and there must be objective criteria for making these decisions.

74. When I raised this concern with the school it suggested simplifying this to “The governors reserve the right to admit above PAN”. This does not address the issue. The PAN only applies to the relevant age group, which is the normal point of admission, in this case Year 7. As explained in paragraph 1.3 of the Code if an admission authority decides it can admit more children at this point, it may do so and there is no requirement to state this in the arrangements. Admission at other times is governed by section 86 of the Act and paragraph 14 of the Code as set out above.

75. I find that this part of the arrangements does not conform with paragraph 14 because it is not an objective way of deciding to admit a pupil. This is the only part of the objection which I uphold.

76. My final area of concern is the compatibility of two parts of the arrangements which individually are fine, but which I had trouble in reconciling. I have quoted above a statement found on page 5 of the arrangements and repeat it here:

> “The Committee of Reference has an overriding discretion to set the Automatic Qualifying Score and the minimum score for the waiting list as it considers appropriate to ensure that those offered places, and those on the waiting list, have the level of ability required to cope with the academic environment of the school.
>
> The Committee will consider the descending score order and the number of children applying for each school (living within the priority areas and who registered before the closing date) and set the Automatic Qualifying Score using the score obtained by the fiftieth candidate (in score order) in Category 3 as a benchmark. The Automatic Qualifying Score will be set at a level which allows fewer than 50 applicants to be given priority under Category 4.
>
> The Committee of Reference will also consider the scores of students just below the automatic qualifying score and determine for each school the minimum score for the waiting list for that year.”

77. The third oversubscription criterion is: “Children who live in Area 1 – East Warwickshire, who achieve the automatic qualifying score or above for this school, for this particular year of entry. Up to 50 places will be offered in this category.” The fourth is: “Children who live in Area 2 – Eastern Priority Circle, who achieve the automatic qualifying score or above for this school, for this particular year of entry.”

78. From this I understood the AQS is set so that girls from both catchment areas can be offered places. However, on the first page of the arrangements where the two priority areas are defined, the arrangements say, “children who reside within East Warwickshire (Area 1) are also classed as residents of ‘Area 2’ – the ‘Eastern Priority Circle.” In the glossary the

arrangements repeat this and say: “A child living in Eastern Warwickshire may therefore be allocated a place using over subscription criteria III(i) or III(ii).” The arrangements use a different way of labelling the criteria here (and so are unclear), but I understand these to be criteria 3 and 4 as labelled earlier in the arrangements.

79. Separately, the statement on page 5 and the statements that residents of East Warwickshire are also considered as residents of the priority circle are clear, however, when I brought them together it appeared to me that they may be inconsistent.

80. If the AQS is set so that fewer than 50 girls living in the priority circle meet it, then because residents of the East Warwickshire are a subset of residents of the priority circle, there will be less than 50 girls living in that area who meet it. Consequently, there will be less than 50 girls meeting the third criterion and the number meeting the fourth criterion will be the difference between the number meeting the third criterion and 50. In other words no more than 50 girls can meet the third and fourth criterion combined. Furthermore, no other girls living in either priority areas would meet the AQS and so the fifth criterion: “Children living inside or outside of the priority areas who achieve the automatic qualifying score or above for this school, for this particular year of entry” could only be met by girls living outside the priority areas.

81. When I raised this issue with the school it acknowledged the inconsistency and said this was as a result of changes made following previous adjudications. It said: “The potential problem lies in these sentences, on page 1 of the policy: "The smaller area, which is known as ‘Area 1’ (East Warwickshire), is contained within the circle. Therefore, children who reside within East Warwickshire (Area 1) are also classed as residents of ‘Area 2’ – the ‘Eastern Priority Circle’. A suggestion might be to remove the second sentence: “Therefore, children who reside within East Warwickshire (Area 1) are also classed as residents of ‘Area 2’ – the ‘Eastern Priority Circle’”

82. The school told me that “the vast majority of places go to students in Categories 3 and 4”. Given the description of how the AQS is set in the arrangements, it would seem to me that this is only possible if the two priority areas are discrete and a girl is considered to live in either the Eastern Area or the remainder of the priority circle, but not both. If this is the practice, then that is what the arrangements should say. I find the arrangements are not clear on this point.

Summary of Findings

83. The objectors were of the view that the Code requires the arrangements to include the mark which a girl must reach in the selection test in order to be considered for admission to the school. They considered that because this mark was not published in them, the arrangements did not conform with many parts of the Code.

84. There is nothing in the Code that requires the pass mark to be published in the arrangements. Because for this school, the academic standard required for admission takes

into account where applicants live, it cannot be known until after applications have been received what mark represents the academic standard for 2022.

85. I have gone on to consider whether the Code requires that the arrangements describe the required academic standard to meet the requirements of paragraph 1.17 of the Code to "publish the entry requirements for a selective place". The Code also requires that arrangements are clear so a balance must be struck between including the necessary information so parents can apply for a place and including detail which may be of interest to a few parents but could obscure what all parents must know. Consequently, I think that an admission authority could decide not to state the required academic standard explicitly in the arrangements, in which case the arrangements would need to clearly point to where an interested person could find that detail. If an admission authority decides to describe the academic standard in the arrangements, it must do so clearly.

86. In this case the admission authority has decided to include the academic standard in the arrangements; I understand this to be the academic standard of the most able 50 girls who apply from each of the priority areas. I find that this is not clear. However, the objection was that the mark representing this academic standard was not published and so I do not uphold this part of the objection, nor the other parts of the objection which were based on the mark not being published in the arrangements. Nor, for the reasons set out in the determination do I uphold any other part of the objection apart from one.

87. The part which I uphold concerns the statement in the arrangements that "The governors reserve the right to admit above PAN where a student is exceptionally well qualified and where there is space to accommodate her." I find that this is not objective; paragraph 14 of the Code requires that admission arrangements are objective.

88. I do however find that the arrangements are unclear, not only about the required academic standard, but on the safety net for girls where exceptional and unforeseeable events prevent on time registration or application or prevent them from taking the test on the appointed day. I also find that the justification of the catchment area to be unclear and that it is unclear that it is the waiting list score which looked after, previously looked children and those with a EHC plan which names the school must reach. I also find that the arrangements do not meet the requirements of paragraphs 2.17 and 2.17A of the Code concerning admission outside of the normal age group.

89. Paragraph 3.1 of the Code explains that "The admission authority must, where necessary, revise their admission arrangements to give effect to the Adjudicator's decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Adjudicator. An Adjudicator's determination is binding and enforceable." This determination has taken longer to complete than I would have wanted, and the arrangements for entry in 2022 are of necessity being applied before it is published. The revisions which are required concern the clarity of the arrangements and will not change the children who will be offered places at the school in September 2022. I have therefore decided to set the date of 28 February 2022 for them to

be revised. This will allow time for the school to consider exactly how it wishes to vary its arrangements in accordance with this determination.

Determination

90. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2022 determined by Rugby High School Academy Trust for Rugby High School, Warwickshire.

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

92. 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 I determine that the arrangements must be revised by 28 February 2022.

Dated: 24 November 2021

Signed:

Schools Adjudicator: Phil Whiffing