



Office of  
the Schools  
Adjudicator

## Determination

<b>Case reference:</b>	<b>ADA3899</b>
<b>Objector:</b>	<b>An individual</b>
<b>Admission authority:</b>	<b>Twyford Church of England Academies Trust</b>
<b>Date of decision:</b>	<b>15 July 2022</b>

## Determination

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the sixth form admission arrangements for September 2023 determined by Twyford Church of England Academies Trust for Twyford Church of England High School, Ealing.**

**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 or by 28 February 2023 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 28 February 2023.**

## 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 about the sixth form admission arrangements (the arrangements) for Twyford Church of England High School (the school) for September 2023. The school is a co-educational non-selective academy secondary school for pupils aged 11 – 18 designated as having a Church of England Religious character.

2. This was a long and complex objection. In summary it comprised the following complaints:
  - a. Lack of clarity about how the admissions process operates;
  - b. The school is taking into account factors which it is prohibited from taking into account, such as information and references provided by the applicant's current school;
  - c. The school is 'interviewing' applicants as part of the process of deciding whether they should be made a conditional offer;
  - d. There is no definition of 'predicted grades', and no mention in the arrangements that predicted grades are used as a 'filtering process' for applications. Separately, the use of 'predicted grades' to determine whether conditional offers are made is unfair and unreasonable;
  - e. The oversubscription criteria are unclear;
  - f. Applicants who are not made a conditional offer are not given a right of appeal against this decision;
  - g. The arrangements have not been consulted upon as required;
  - h. The naming of secondary schools as feeder schools is unlawful.
3. The parties to the objection are:
  - 3.1. The person who has made the objection (the objector) and her lay representative;
  - 3.2. The Twyford Church of England Academies Trust which is the admission authority for the school (the trust);
  - 3.3. The governing board of Twyford Church of England School (the school);
  - 3.4. The London Borough of Ealing which is the local authority for the area in which the school is located (the local authority); and
  - 3.5. The Church of England Diocese of London (the diocese).

## **Jurisdiction**

4. The terms of the academy agreement between the multi-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 trust, the admission authority for the school, on that basis. The objector submitted her objection on 13 February 2022.

5. I should set out the somewhat unusual circumstances which have occurred and their impact upon my jurisdiction. The objection was made before the school's 2023 arrangements had been published, and was based upon the content of the arrangements for admissions in September 2022. I am now satisfied that the admission authority has determined its admission arrangements for September 2023, and the objector has confirmed that she wishes to object to those arrangements. Having considered the objection raised, I have concluded that under section 88H(4) of the School Standards and Framework Act 1998 (the Act) I have jurisdiction to consider some of the matters raised in the objection. I have explained to the parties which matters I may and may not consider, and the reasons why.

6. It is necessary to identify what I consider the school's sixth form admission arrangements for 2023 to be. On 9 February 2022 those arrangements were determined to be the same as the admission arrangements for September 2022. As there had been no changes at the time the arrangements were determined, the arrangements were not required to be consulted upon prior to determination. When my office asked for a copy of the arrangements, the school sent three documents:

- Twyford Sixth Form Entrance Criteria & Policy, Entry 2023
- Twyford Sixth Form Specific Minimum Entry Requirements Entry 2023
- Twyford Sixth Form Application Form.

7. When I looked on the school's website, I noticed that there are five documents published together on the school's website under the heading of 2023 admissions. These are:

- The Entrance Criteria Policy;
- Sixth Form Minimum Entry Requirements;
- Sixth Form Admissions Timeline;
- Sixth Form Application; and
- Sixth Form Academic Statement.

8. The admission arrangements for September 2022 do not contain the detailed explanation of the process which is now set out in the Sixth Form Admissions Timeline (the Timeline). Further, the Academic Statement request form has been altered significantly from that which applied in 2022. In light of this, I asked the school why the discussions leading to these revisions were not reflected in the minutes of the directors' meeting of 9 February 2022. Given that the minutes state that the 2023 arrangements were determined to be the same as the arrangements for 2022. I also asked why the school had published a different set of arrangements on the website.

9. The school has explained that it added the Timeline and amended the Academic Statement request after the admission arrangements had been determined. I have asked myself whether these documents form part of the admission arrangements properly understood. My view is that they do. The School Admissions Code (the Code) defines "admission arrangements" to mean "the overall procedure, practices, criteria, and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered".

There is nothing to prevent the arrangements being set out in more than one document (as they often are). The majority of the procedural information is set out in the Timeline, which I consider to be part of the admission arrangements under the above broad definition.

10. I have considered whether, on the footing that the admission arrangements comprise the documents above, the arrangements were determined lawfully. Any changes to a set of admission arrangements should be formally consulted upon in compliance with the relevant statutory requirements prior to being determined. Also, once determined, admission arrangements cannot be revised without a variation except under the circumstances set out in paragraph 3.6 of the Code. These are where such revision is necessary to give effect to a mandatory requirement of the Code or admissions law, a determination by the Adjudicator or to correct a misprint. It is a mandatory requirement in paragraph 14 of the Code that admission arrangements must set out procedures for determining the allocation of places clearly.

11. The school has told me that it did not appreciate that the Timeline or the Academic Statement were part of the admission arrangements, and that the inclusion of the Timeline and the making of other revisions had been carried out for the purpose of making the procedure clearer and more helpful to parents. I note that the contents of the Timeline broadly mirror the description of the procedures which the objector was given in response to her enquiries about the 2022 admissions procedures.

12. The arrangements are undoubtedly clearer with the benefit of the Timeline document, and I imagine that the revisions to the Academic Statement were made in light of suggestions by the objector that the reference application form which was formerly being used gave the appearance that paragraph 1.9 of the Code was not being complied with. It is not uncommon for admission authorities to make a distinction between their admissions policy document and additional documents which are intended to be helpful to applicants. Nor is it uncommon for admission authorities to revise their arrangements when they receive details of an objection, although the Adjudicator will usually ask them not to do so before they have made a determination.

13. Schools Adjudicators are not empowered to dictate the exact nature of any revisions which an admission authority is required to make. Our jurisdiction is limited to determining whether a set of admission requirements is Code compliant and otherwise lawful. In all the circumstances, my view was that the best way to proceed in this matter was to consider the five documents referred to above as the school's intended arrangements. There is little value in considering the arrangements for September 2023 to be as they were for admissions in September 2022 as these are not the arrangements which the school intends to proceed with.

14. I accept that the objector may have a valid argument that some of the revisions to the arrangements might be unlawful to any extent that they were not made to give effect to a mandatory requirement of the Code. However, since the purpose of including the Timeline and the making of revisions to the Academic Statement request was clarity, and clarity is a mandatory requirement of the Code, I saw little point in a line-by-line analysis of exactly

which detailed changes have been made for the purposes of making the arrangements clear and which have not.

15. The objector suggested that by adding the Timeline and revising the Academic Statement request, the school is changing its admission arrangements, and that it should not be able to do that without consulting. I absolutely take the point that the school should not be able to bypass the statutory consultation process or prevent interested parties from being able to comment upon proposals. However, it appears to me that part of the school's purpose in adding to or revising the documents was to tell people what those procedures are, which is exactly what it is required to do. Had the school not published the Timeline document, I would certainly have determined that the arrangements were unlawful because admission authorities must ensure that their procedures are set out clearly. The 2022 arrangements did not do this. By contrast with entry to year 7 there is no national timetable for this. Also by contrast with entry to year 7, there is no locally co-ordinated scheme governing the processing of applications.

16. The school has somewhat 'jumped the gun' in making changes before awaiting this Determination. However, my view is that it is more useful to consider the revised arrangements as the arrangements which the school considers apply to September 2023 admissions. The school has said that it is eager to 'get this right'. In light of the fact that the school has taken steps to make the 2023 admission arrangements clearer and the objector has sent comments based upon the revised arrangements, I decided to focus my consideration upon those revised arrangements.

### Consultation

17. The objector has made the point that the admission authority did not consult on the revisions to the admission arrangements for September 2023 prior to making those revisions. Paragraphs 1.45 – 1.48 of the Code set out the requirements which apply to consultation upon proposed changes to admission arrangements prior to their determination. The admission authority did not comply with the legal requirements in these paragraphs because it did not intend to change its admission arrangements for September 2023 prior to determination. The arrangements were determined and revised afterwards. Where this is the case, paragraph 3.6 of the Code applies, as I have explained above.

18. Revisions under paragraph 3.6 can only be made under the limited circumstances specified in this paragraph. There is no requirement that revisions under paragraph 3.6 must be consulted upon. These are revisions which must be made in order to ensure that admission arrangements comply with admissions law or with mandatory requirements in the Code or a determination by the Adjudicator. The school will not be required to consult upon any revisions which need to be made to the 2023 arrangements as a result of this determination, it will simply be required to make any necessary revisions by the specified date.

19. I have explained to the parties that, even if I reach a conclusion that the admission authority has failed in its obligations to consult the required persons on any proposed

arrangements, I have no power to impose a requirement upon an admission authority to conduct a consultation process at this point in time.

### Appeal Rights

20. This objection is based in part upon the objector's personal experience of the sixth form application process. I will not refer to those circumstances in the determination. Suffice to say that the objector considers that there should be a right of appeal against the failure by the school to make conditional offers to all applicants. I have explained to the objector that I do not have jurisdiction to require the school to offer an appeal to an independent panel in an individual case. My jurisdiction in relation to appeal rights is restricted to ensuring compliance with paragraph 2.32 of the Code.

21. I will now proceed to make a determination upon the eight aspects of the objection which I have listed in paragraph 2 above as these are the aspects of the objection which I have jurisdiction to consider. My consideration will be based upon the school's admission arrangements as comprised in the five documents referred to above.

22. I have also used my power under section 88I of the Act to consider the sixth form arrangements as a whole.

23. I have not considered the school's arrangements for admission to Year 7 or the arrangements for in-year admissions. That should not be taken as an endorsement that I regard these arrangements as being Code compliant or, in the alternate, that I do not.

### **Procedure**

24. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code). I have considered all the material with which I have been provided.

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

- a. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- b. a copy of the determined arrangements, which include (for the reasons explained above) the Supplementary Information Form;
- c. the objector's form of objection dated 13 February 2022 and supporting documents;
- d. the school's response to the objection;
- e. information provided by the local authority, including confirmation of when consultation on the arrangements last took place;
- f. the sixth form admission arrangements of various schools which the objector has drawn my attention to;

- g. previous determinations which the objector has referred me to, namely ADA3766, ADA3875 and REF3895 (one of my own decisions).

The diocese has been sent all of the relevant documentation but has chosen not to comment. The local authority has chosen not to comment save as above.

## The Objection

26. I will now summarise the objector's arguments in relation to each aspect of the objection, citing the applicable paragraph in the Code.

- a. The objector says that the arrangements make no reference to the use of conditional offers in the arrangements, and that the school is operating a 'shadow' admissions policy which amounts to 'cherry picking'. This I have taken to mean that the school selects the applicants most likely to achieve high A Level grades using a methodology which is neither objective nor transparent. (Relevant paragraphs of the Code are 14 and 1.9a).
- b. The process of determining which applicants should be admitted involves taking into account factors which the school is prohibited from taking into account, such as information and references provided by the applicant's current school. (Relevant paragraphs of the Code are 14 and 1.9b) and 1.9g).
- c. The objector alleges that the school is 'interviewing' applicants as part of the process of deciding whether they should be made a conditional offer. The school conducts an Information and Guidance Meeting (IAG). The objector argues that this meeting must have some bearing on the outcome of an application and is therefore part of the decision-making process. The objector's view is that the arrangements are unclear as to the purpose of the IAG, what factors are elicited at the meeting, and the weight applied to these factors. (Paragraph 1.9m is relevant).
- d. There is no definition of 'predicted grades', and no mention in the arrangements that predicted grades are used as a 'filtering process'. Separately, the objector considers that the use of predicted grades to determine whether conditional offers are made is unfair (or unreasonable) because applicants who do not receive conditional offers are at a substantial disadvantage in the process. (Paragraph 14 is relevant).
- e. The oversubscription criteria are unclear. By this I have understood the objector to mean principally the procedure for determining eligibility rather than the oversubscription criteria, but I have considered the degree of clarity for both. (Paragraphs 14 and 1.8 are relevant).
- f. Applicants who are not made a conditional offer are not given a right of appeal against this decision. The objector considers that this is contrary to Article 6 of the European Convention on Human Rights (ECHR) and also unfair and

unreasonable. Appeal rights are not explained with sufficient clarity or at all. (Paragraphs 14 and 2.32 are relevant).

- g. The arrangements have not been consulted upon as required (Paragraphs 1.45 – 1.48 are relevant).
- h. The naming of secondary schools as feeder schools is unlawful (Paragraph 1.15 is relevant).

## Other Matters

27. Outside the terms of the Objection, the following are matters which appeared to me potentially not to comply with the requirements of the Code.

- a. The definition of Looked After and Previously Looked After Children did not appear to comply with the definition in the Code;
- b. There was a lack of clarity as to the number of sixth form places available to external applicants (paragraph 14);
- c. The order of priority within each of the oversubscription criteria was unclear (paragraph 1.8);
- d. The arrangements give priority to applicants who 'apply early'. It was unclear what this meant (paragraph 14).

## Background

28. The school is a co-educational secondary school for pupils aged 11 to 18 which became an academy in October 2011. It is rated as an Outstanding school by Ofsted. The school has specialist status in music and modern foreign languages and is heavily oversubscribed for the places available in year 12. The document which describes itself as the Sixth Form Entrance Criteria says:

### "FIRST ALLOCATION OF PLACES

6<sup>th</sup> Form places are available for all existing students on roll during the previous academic year providing they fulfil the minimum entrance requirements and individual requirements for each subject of the proposed course as set out in the 6<sup>th</sup> Form Prospectus

### SECOND ALLOCATION OF PLACES

In addition, the Governors will admit 80 pupils from outside the School to Year 12 subject to the applicant meeting the minimum entrance requirements and the individual entry requirements of suitable courses as set out in the sixth Form prospectus.



Where there are more external applicants who meet the entry requirements than the number of places available, places will be offered to students in the following order of priority:

- 1 Looked after children as defined in Section 22 of the Children Act (1989) or children who were previously looked after.
- 2 Students currently on roll at one of the Twyford Trust schools  
Ada Lovelace,  
Ealing Fields and  
William Perkin.
- 3 Students wishing to study Music or a Modern Foreign Language, in light of the school's specialisms.
- 4 On the basis of proximity to the school, with those living closest to the school being accorded the highest priority.

Tie Break

Where two or more students have equal priority, having applied all criteria, the final tie break will be by random allocation.

N.B. the sixth form admissions procedures will be carried out in accordance with the Schools Admissions Code 2021”.

29. The course requirements are set out in a separate document, which is clear. There is also the Timeline, which sets out the admissions processes. The Timeline explains that in the first week of January (which means January 2023 for admissions that September), there is a review of any applications where predicted grades are below the general entrance requirements and/or individual course requirements. It says that Information Advice and Guidance (IAG) meetings are offered for all applicants whose predicted grades meet the general and individual course requirements. At this stage, the current schools of these applicants are contacted to request an Academic Statement. Applicants who are not offered an IAG meeting are contacted to let them know that the school is not taking their application forward at this stage. They are not currently being given details of how to appeal in September should they wish to do so.

30. IAG meetings take place at the end of January/first week in February. These meetings are said to be a 15 minute discussion with a member of the Sixth Form Senior Team to review course choices. The IAG meeting is also described as an opportunity for the school to explain the Wider Learning opportunities in the Sixth Form and to ensure that the applicant “is in sympathy” with the aims and objectives of a Church of England School. After the IAG meetings, conditional offers are made to students who are “most likely” to meet the minimum entrance requirements and individual entrance requirements of their chosen courses based on the information in their academic statement. Conditional offer

holders are invited to an information evening in March to hear more about the Sixth Form experience. This is said to allow students to carefully consider whether they wish to continue to hold their offer.

31. At the end of June, there is an induction morning for all conditional offer holders (whether relating to the first or second “allocation” of places). These applicants experience “taster lessons” and are given preparation tasks to complete over the summer so that they are ready for September should their offer become firm. Enrolment takes place on National GCSE Results Day. Applicants must provide evidence of their GCSE outcomes and, where they meet the requirements, are allocated to chosen courses. If a class becomes oversubscribed, priority will be given to students who have higher grades at GCSE in the chosen course. Applicants with conditional offers and those without conditional offers who contact the school with their results will be given details on how to appeal in September if they are not offered a place.

32. The Academic Statement request is a simple form containing a table. The information requested for each A level subject is the target grade, most recent mock exam grade based upon current performance. The form also requests information about attendance but does not specify over what period, or how the attendance information should be provided for example as a percentage figure, by description, or by actual number of sessions attended on the completion date of the form.

## Consideration of Case

33. Notwithstanding the Timeline document, a number of aspects about how the arrangements operate remained unclear to me. The school provided the following further and fuller information in response to questions I asked.

“In the year 7 process, in simple terms, we have an agreed number of places which we hope to fill and if oversubscribed, have various criteria to act as a filter until we reach the appropriate number. Through the appeals process we may take a few additional children, but in terms of planning the admissions process is relatively straightforward. The sixth form admission process is far from simple. We need to consider:

- the applicants’ capability to undertake the courses they wish to follow;
- the mix of courses chosen by the applicants;
- applicants not achieving their predicted grades;

Despite these difficulties we are confident that we apply the system fairly.

For the previous 5 years we have been heavily oversubscribed. This year for example we have had 742 external applicants for a minimum of 80 places... the applicant whose application has predicted grades that do not meet the minimum requirements and/or subject requirements, receives a letter that says they will not be

invited to an IAG meeting and that their application will not be taken forward. This is not a rejection, as we state clearly that they can contact us again in August, once they have received results, and we will reconsider their application if places are still available. We do not offer any places until GCSE results day but, due to the large number of applicants we are considering for a limited number of places, we believe it is in the interest of the parents and applicants to know as early as possible the likelihood of them being offered a place, so that they may plan appropriately. There cannot be a formal appeal at this stage as the student has no GCSE results and has not been refused a place.

However, we will look to give more detail as to why their application cannot be taken forward at this point. (For example, student's predicted grades not meeting requirements.) This would also offer the applicant a chance to check that the reasons for not taking their application forward were factually correct.

The applicants whose predicted grades meet the specified requirements are all invited to an IAG meeting. We then write to their current school to ask for confirmation of predicted grades. Following the meeting, (based on previous experience) approximately 65% of applicants are made a conditional offer, based on the number of places we expect to have available. Of course, some applicants withdraw their application, some don't turn up and, with others, the predicted grades they have put on their application may not be supported by their school.

On GCSE results day, students show confirmation of their results to the school. All internal candidates and those with a conditional offer who meet the entrance requirements, will be admitted to the Sixth Form. As a result of careful course planning, we would not expect to have to use the oversubscription criteria for these students, unless they wish to change course (e.g., due to failing to achieve the required grades in one of their choices or due to a change of mind). If there are more applicants than places available on a given course, then priority will be given to those who already had conditional offers for that course. If there is an oversubscription (e.g. more candidates with other conditional offers than places), then we would apply the oversubscription criteria. Since the oversubscription is being applied at course level, it usually only applies to a few students and we would generally hope to manage this process by suggesting alternative options.

Where places remain available, after those with conditional offers are accommodated, other candidates will be considered where there are places for all three of their course options. Again, where there are more applicants than places, the oversubscription criteria will be applied. One of the reasons for making conditional offers in advance of results is we are able to plan a timetable, and staffing, that should allow us to offer courses to all those whom we have made conditional offers to and who decide to accept their place in August. It also enables us to hold induction days, with taster lessons, in the Summer term.

All students who are not made a conditional offer are told that we cannot take their application forward at that stage, but are informed they can contact us in August. If, in August, we cannot accommodate them and their application is rejected, we would give them the right to appeal. Currently, in our initial letter advising that they will not receive a conditional offer, we do not inform them of their right to appeal in August, but we will introduce this in future letters... The school does not run appeals until after sixth form admissions day.

We, like a large number of other schools and universities, make conditional offers in order to plan for correct staffing numbers, run induction sessions to be sure that students are prepared for the transfer (similar to year 6 into 7) and to organise summer preparation tasks to be sure that students are able to hit the ground running. We also expect to start teaching less than a week after results day and organisation for this would be very difficult if we were only letting students know about offers then. The system is increasingly like the UCAS one. Students apply to more than one school and so we have to make a well-judged decision on how many places to offer after IAG meetings, in order to be sure that numbers are about right in August (based on experience of drop off rates from previous years). As we have tried to explain in the context section, the process is not as simple as seeing who got the grades (in any one course) and applying the oversubscription criteria. We also need to consider the applicant's overall course selection and individual course viability.

The number of external applicants who were not made conditional offers, but who applied for and were offered places on or after results day were 8 (2019), 8(2020) and 0(2021). (2021 was an unusual year, due to the exceptionally large numbers of applicants attaining their predicted grades, therefore there were no students admitted who had not received a conditional offer.)

... applicants do contact us on results day and a number of them in the past have been offered places. We would hope that a student who remains committed to applying would contact us in August (as stated in the letter to them). If they did, and we were not able to offer them a place, we would offer them the right to appeal then.

... we are committed to finding places for those we have offered conditional places to. This means that these students would be offered places ahead of a person who had not received an offer but contacted us in the summer. However, we would work hard to accommodate this applicant if spaces were available”.

[It is not necessarily the case that all applicants whose predicted grades meet the entry criteria are made conditional offers] “...this is because we commit to have an IAG meeting with all those students whose predicted grades on their application form meet the entrance requirements. In recent years we have been heavily oversubscribed and we would expect to see about 50% more students than we would be able to offer places to. The IAG meeting allows us to check that predicted grades are accurate (as we can check them against their school's verification). We then look at the student's course selection, current predictions, expected staffing and

groups for the following year, and the number of Twyford students we expect to return and, in conjunction with the over subscription criteria, endeavour to build a cohort that can support the courses planned”.

[Applicants who are not made a conditional offer] “are told that this is linked to either their predicted grades from their school not meeting their own predictions, or that other students ranked higher in the oversubscription criteria.”.

34. The school does not offer a right of appeal to all applicants who do not receive conditional offers, only to those who are refused a place having contacted the school once the results are known.

35. The purpose of the Academic Statement request is said to be in order to check the veracity of the predicted grades on the student’s application form. The school has also told me that it does not take into account behaviour or attitude when deciding which applicants should be made conditional offers. Information about attendance is requested in order to help give context to a predicted grade that might be lower than expected (for example because the applicant had had a long-term absence). The school explained that “it would be used to support an applicant in extreme circumstances if they were able to explain this at the IAG meeting). We would not ordinarily take it into account and it would never be used to disadvantage an applicant.... We do not take behaviour or attitude into account when making offers. As we explain in response to a later question, ... ties within an oversubscription criteria are decided by the strongest grades. Attendance is there to help give context to a predicted grade that might be lower than expected (e.g., because they had a long-term absence). It would be used to support an applicant in extreme circumstances, if they were able to explain this at the IAG meeting”.

36. I asked about the statement in the arrangements which says that applicants must be in sympathy with the aims and objectives of a Church of England School. I was unclear who would decide this and how. The school explained that, at the IAG meeting applicants are given information about how the spiritual life of the school impacts on the sixth form. It is hoped that an applicant who has no desire to engage with this, would decide for themselves, as part of the IAG meeting, that the school might not be right for them. I am assured that an applicant’s religious engagement is absolutely not part of the selection process (either positively or negatively). The school has told me that the purpose of the IAG meeting is to give the applicant advice and guidance about their course choices, to review their academic statement with them and to give them information about the school, the courses, including the extracurricular offer, and expectations linked to this. It is said to be as much a chance for the applicant to be sure that they are making the right choice for them in applying. This is said to be particularly important given how many applications so many students now appear to make. The school can also provide advice on appropriate course selection.

37. The school makes more conditional offers than there are places available. This is said to be because many students make multiple applications to Sixth Forms. In recent years the school has seen on average a 40% take up of places from conditional offer to

final enrolment in September. I asked whether the school offers IAG meetings for internal applicants. I was told that all Twyford students have two IAG meetings. One at the end of year 10, which is a more general one about all possible post 16 options, and a second in November of year 11, after the 6th form open evening. This allows them to get the same advice and guidance about their courses as external applicants, look at how their current academic profile is placing them and to ask more questions about the sixth form experience.

38. The school has confirmed that it does not take account of reports from previous schools about children's past behaviour, attitude, or achievement. Attendance is taken into account for the reasons explained above. The school has stated that the sixth form admissions process is not simple and has a number of interacting dependencies. The number of applications to the sixth form has been significantly higher than the number of available places. Making conditional offers five months in advance of GCSE results day allows the school to manage the process effectively. Offers are made using the oversubscription criteria; however this is in the context of ensuring a viable course mixture can be offered. The school considers that the policy is fair; the application process is clear; and the school is scrupulous and objective in the application of the process: "we do not "cherry pick"".

39. In relation to appeals, I asked the school why applicants are not offered a right of appeal at the point when they are notified that they are not being made a conditional offer. The reply was: "A conditional offer is not a firm offer of a place and not receiving one is not a refusal of a place. This point is re-inforced by The School Admission Appeals Code, Section 2.3, c) i), which states that for applications to sixth forms, where the offer of a place would have been conditional upon exam results, appeals must be heard within 30 school days of confirmation of those results i.e., GCSE results day. No firm offers are made until GCSE results day. Furthermore, Section 5.1 states that students are allowed one appeal. This can only sensibly take place once we have their actual results and offers are made". There have been no applicants who have not been made conditional offers who have brought appeals once results are known. There have been no applicants who appealed with grades that did not meet the requirements.

40. Additionally the school has told me that the application form has space for the parent's details; parents may attend the IAG meeting if they wish to; parents of students with conditional offers are always invited to the meeting for students and parents in March (following the conditional offer).

41. In response to further questions about how the process works, the school provided information relating to this year's application process by way of a worked example. There were 742 applications. 600 applications were taken forward because their application forms indicated that they were predicted to achieve the required GCSE grades. IAG meetings were offered to those 600 applicants. Some did not attend the meeting and/or withdrew their application.

42. For those who attend the IAG meeting, their current school was contacted. In a number of cases, the predicted grades supplied by the school did not match those provided on the application form. In cases where the current school has confirmed that the applicant is expected to achieve the necessary GCSE grades, applicants are then “considered on academic merit (and on staffing availability for numbers of groups/courses)”. This year offers were made to just under 400 students (approximately 65% of those invited to IAG meetings). The admission criteria states that the school will admit a minimum of 80 external students. In recent years, about 55-60% internal students have gained a post 16 place. This has allowed the school to admit up to 150 external students. The school says that it has a much better understanding of the likely academic outcomes of internal students and so can predict success at GCSE more accurately. It is possible therefore to have a reasonably strong idea (at the point when the IAG meetings are conducted in February) of how many places are likely to be made available to external students

43. There are then two further points of contact before results day which allows the school to get a sense of who is still interested in a place. The “offer holders” meeting held in March: a percentage of students do not attend and later confirm withdrawal - this varies from year to year but is approximately 10 per cent. The induction event in June: it is said to be usual to see numbers of students attending this to be approximately 50 per cent of those who have conditional offers. On results day in August, from previous experience, the school would expect about 150 of the 400 originally made conditional offers to take up a place in September (approximately 40 per cent of those made conditional offers). “The reduction is due to the multiple offers students hold and the fact that some students do not achieve the required GCSE grades for entry. We work on about 40% of conditional offers actually turning into places in September (not dissimilar to UCAS) and cater for a small amount of flexibility either side of this %”.

44. The school has assured me that, on results day, applicants with conditional offers who have not achieved the required grades will be advised they have been refused a place and be given details of how to appeal. As set out in the Sixth Form Admissions Timeline, applicants who are not invited to an IAG meeting, and therefore not made a conditional offer, will be advised at that stage that they have a right to appeal once they have their results. Applicants who are invited to an IAG meeting, but who do not receive a conditional offer, will be advised at that point of their right to appeal should they wish to exercise it after they have their results. Both these groups of students will also be advised, at the point they are told that the school is not taking their application forward, to contact the school on results day if they are still interested in joining the sixth form and will be reminded of their right of appeal, if the school cannot offer them a place. The school says: “It would not be possible to write to all those applicants, who had not previously received a conditional offer, on results day, advising them again of their right to appeal, unless they contact us, because we will not know what their grades are (or even if they are still interested in joining the sixth form) and so, technically, aren’t refusing them a place”.

a. Lack of clarity about how the admissions process operates

45. The objector suggests that the school selects the applicants most likely to achieve high grades using a methodology which is not transparent – an invisible ‘shadow admissions policy’. (The objector also says that, in its use of ‘predicted grades’, the methodology is not objective: I will deal with this under (d), below). Relevant paragraphs of the Code are paragraph 14 which says: “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”; and paragraph 1.9a) which says: “It is for admission authorities to formulate their admission arrangements, but they must not place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements. “

46. This objection was made following the objector’s experience of the operation of the school’s admission arrangements for September 2022 which contain little information about the procedures in operation. The objector was made aware from the outset of the objection process that she was out of time for objecting to the Adjudicator about those arrangements; however, she has pursued an objection to the 2023 arrangements with the aim of improving the admissions arrangements for the benefit of applicants who apply for places under those arrangements. The objector has already achieved this aim as the 2023 arrangements provide a clearer explanation of the practices used to allocate places than the 2022 arrangements.

47. To the school’s credit, a member of staff did explain the process in detail to the objector by email; however, if the objector had been aware of what the procedures for allocating places were from looking at the arrangements, she would have been able to understand the procedures at the outset. In a school which receives 742 applications for 80 places, there will be a large number of applicants who will be disappointed, but the disappointment will be worsened if the applicant also feels that they have been treated unfairly. This is more likely if the applicant does not understand what the practices and criteria for the allocation of places are. The school has shown a commitment and willingness to making the necessary changes to their arrangements. The changes which have been made are necessary in order to comply with paragraph 14 of the Code. However, there will be further revisions needed.

48. The objector’s view is that the order of the oversubscription criteria in the second allocation of places within the Sixth Form Entrance Criteria Policy is substantially inconsistent with the Sixth Form Admissions Timeline. She asks how children wishing to study Music or a Modern Foreign language are given priority. She also asks how distance from home to school is measured. The objector asks: “In highly simplified and summarised plain English what is the driving over subscription category for a person who meets the general academic and subject specific criteria. Is it higher GCSE grades, or is it distance from the school. I suspect it is the former but the arrangements are unclear in my opinion”.



49. I agree in general with the objector's observations. In fact the admission arrangements bear little resemblance to how I understand the practice of allocating places to external applicants to operate even with the benefit of the additional information published in the Timeline.

50. I leave to one side for present purposes the question of whether the use of 'predicted grades' as part of the school's methodology is fair (or reasonable) or objective. Assuming that it is, applicants would still be entitled to be told as a matter of required clarity that:

- the school will make conditional offers to some applicants. It is unlikely that an applicant will receive a conditional offer if their predicted grades as set out in the application form are lower than the general entry requirements or specific course requirements;
- 'predicted grades' are the A Level grades predicted by the applicant's current school as set out in the application form and, where the predicted grades on the application form meet the entry level criteria, as confirmed by the applicant's current school in the Academic Statement;
- the decision about whether to make a conditional offer will be made once the predicted grades as set out on the application form have been verified by the applicant's current school, and following discussion with the applicant at an Advice and Guidance meeting, the purpose of which is to discuss options and academic entry requirements for particular courses;
- the decision not to make a conditional offer is not a refusal to offer a place because applicants can approach the school on GCSE results day if they do achieve the required grades;
- applicants who have not been made a conditional offer but who achieve the required GCSE grades will have lower priority than those who have been made conditional offers, but they may be offered a place;
- decisions to offer places and to refuse to offer places are made once the GCSE results are known;
- if a place is refused, the applicant is entitled to appeal. The applicant must be told the reason for refusal, the deadline for lodging an appeal and the contact details for making an appeal. The applicant must be informed that, if they wish to appeal, they must set out their grounds for appeal in writing.

51. The school has gone some way towards explaining the procedures in the arrangements for 2023 admissions. The addition of the Timeline will be helpful in enabling applicants to look at the arrangements and understand what the procedures are. My questions to the school have highlighted that there remain some aspects of the process that are not explained. The school has said it will make further changes. To the extent that the arrangements do not contain the information listed in the previous paragraph, they remain

non-compliant with the clarity requirement in paragraph 14 of the Code. I uphold this aspect of the objection. I find that the arrangements for 2023 admissions as determined and as revised remain unclear. To ensure compliance with this aspect of the Code, further information would need to be added in order to make the arrangements sufficiently clear. Further, where the practices and criteria used to determine allocation of places are set out in more than one document, there would need to be clear links in each document so that the arrangements could be read easily as a coherent whole.

52. The arrangements describe two conditions which inform the consideration of applications. The applicant must meet the general and subject specific entry requirements and be afforded the requisite priority in accordance with the oversubscription criteria. The objector alleges that there are invisible criteria which influence the outcome of an application. The allegation is hardly surprising based upon the 2022 arrangements as these are worded in a manner suggestive of the fact that references from the applicant's current school (and contrary to paragraph 1.9g) were a factor in determining which applicants were made conditional offers. The school has taken time to explain in detail the factors which are taken into account. It has been confirmed that sympathy with the religious ethos of the school is not a factor used to determine the allocation of places; neither is performance at an 'interview' or the ranking of an applicant's academic capabilities by their current school.

53. There is, however, another condition which will have a bearing on the consideration of any application. That is whether the applicant is made a conditional offer. The significance of this condition is that, when the results become known, places are not offered to all eligible applicants in accordance with the order of the oversubscription criteria. Those who have been made conditional offers have priority. Applicants who have not been made a conditional offer will only be offered a place if there are any places not accepted by applicants who have been made a conditional offer. This is not stated in the arrangements. To the extent that it complies with the Code (but as to which see (d) below), the school must ensure that any system of conditional offers which it has does not entail a condition on the consideration of any application other than one published in the oversubscription criteria.

- b. The admission authority is taking into account the applicant's current school together with information and references provided by the school, and is prohibited from so doing

54. Relevant paragraphs of the Code are paragraphs 14 (above) and 1.9b) and g). Admission authorities must not take into account any previous schools attended, unless it is a named feeder school. Neither must admission authorities take account of reports from previous schools about children's past behaviour, attendance, attitude, or achievement, or that of any other children in the family.

55. The school does not appear to be taking into account the applicant's previous (or current) school in making decisions about the allocation of places other than in terms of giving priority to feeder schools which are named. The school does contact the current school but does not afford any degree of priority based upon which school the applicant

attends (other than in relation to the named feeder schools). I do not find the arrangements to be in breach of paragraph 1.9b).

56. Based upon the information and assurances provided, I do not believe that the school is placing conditions upon its consideration other than those permitted by the Code. The school formerly requested details of an applicant's general conduct, academic ability, honesty, reliability, punctuality and attendance from the applicant's current school. There was also a request for an assessment of the applicant as outstanding, very good, above average, average and poor. This practice was in clear breach of paragraph 1.9g). I am satisfied that the school is no longer requesting most of this information, (although the form still requests details of attendance).

57. The school says that it does not take into account attendance other than to the benefit of an applicant. However, paragraph 1.9(g) states that attendance must not be taken into account. To that extent I find the arrangements in breach of that paragraph.

58. I considered carefully whether a request for confirmation of an applicant's target grade, most recent mock exam grade based upon current performance, and attendance constitutes taking into account a report about achievement. On balance, I am inclined to give the school the benefit of the doubt in respect of requesting confirmation of the target grade and most recent mock exam grade on the basis that this is not a request for the current school to provide any sort of opinion, merely to verify a statement about predicted grades provided by the applicant on the application form. (I deal with the use of 'predicted grades' below).

c. The school is 'interviewing' applicants as part of the process of deciding whether they should be made a conditional offer

59. Paragraph 1.9 m) says that admissions authorities "must not interview children or parents. In the case of sixth form applications, a meeting may be held to discuss options and academic entry requirements for particular courses, but this meeting cannot form part of the decision making process on whether to offer a place".

60. The objector's view is that it is clear that decisions to make conditional offers are made having regard to the IAG meeting as stated in an email from the school to the objector dated 11 January 2022. The explanation subsequently given by the school, it is said, is not consistent with this email. The objector does not accept that the IAG meeting enables the school to check the veracity of the predicted grades, as this is the purpose of the Academic Statement. The objector observes that, until the reference was modified to a "reduced academic statement", the school was collecting a lot of information on personal qualities which was stated as not being used. This process appears to have been removed from the 2023 academic statement. However, the fact that, it is said, the school previously collected this information unlawfully leads the objector to doubt the truth of what the school is now saying actually happens during the IAG meeting. The objector wonders whether the information previously gathered in the response to the reference request will now be gathered at the IAG meeting. The school's response suggests that if the applicant does not

attend the IAG meeting, they will not receive a conditional offer. The objector observes that this is not made clear from the arrangements.

61. The school has told me that there is a process by which the number of applicants whose predicted grades as set out on the application form is distilled to the number of applicants who are made conditional offers. The objector considers that this is indicative of the fact that applicants are being interviewed and that 'invisible' (for want of a better word) considerations influence the outcome.

62. The school has assured me that this is not the case, and that the purpose of the IAG meeting is simply to give the applicant advice and guidance about their course choices, to review their academic statement with them and to give them information about the school, the courses, including the extracurricular offer, and expectations linked to this. The school has also said that it 'over offers' by 40 per cent. Since 1.9m) permits a meeting to discuss options and entry requirements for particular courses, and the school has assured me that the IAG meeting is not part of the decision-making process on whether to offer a place which takes place after the A level exam results are known, I accept these assurances and I do not uphold this aspect of the objection.

- d. There is no definition of 'predicted grades' and no mention in the arrangements that predicted grades are used as a 'filtering process'; and the use of 'predicted grades' is unfair (and not reasonable) and not objective because applicants who do not receive conditional offers are at a substantial disadvantage in the process

63. Paragraph 14 above is relevant. This requires that the practices and criteria used to decide the allocation of school places are "fair", "clear", and "objective".

64. The objector was concerned both about the clarity in the arrangements, and with their fairness or objectivity.

65. I deal first with clarity, so far as it relates specifically to 'predicted grades'. I wondered whether the term 'predicted grades' needed to be defined in the arrangements on the basis that it is a term which is generally understood and therefore did not need defining. UCAS defines a 'predicted grade' as the grade of qualification an applicant's school or college believes they are likely to achieve in positive circumstances. On balance, my view is that – assuming for the moment that 'predicted grades' can be used as a fair practice or criterion at all, there is a need to define this term, not least because it may have at least two different meanings. It may refer either to an applicant's current school's prediction as set out in the application form or the applicant's target grades, mock exam grades and overall predicted grades as set out by the applicant's current school in the Academic Statement. It could also mean the grades the applicant himself or herself expects to achieve. The school's system requires that any person completing the application should set out the grade prediction made by their school, but this is not made clear. Further, the arrangements do not explain that conditional offers are made to applicants "most likely" to meet the minimum entry requirements and entry requirements of their chosen courses based on the information set out by the applicant in the application form and verified by their current school in completing

and returning the academic statement. These aspects of the arrangements lack the clarity required by paragraph 14.

66. I now turn to consider whether, however clearly they might be expressed, the use of 'predicted grades' as part of the school's methodology in this particular case is not fair or objective. I consider that matter having regard to all the circumstances, taking particular note of the school's reasons for their use.

67. I note by way of preface that systems of "conditional offers" may differ; or to put it another way, may refer to a different system or methodology in different schools. The term "conditional offer" is not, in fact, defined in the legislation, Code, or Appeals Code. It may be used to mean simply that a school makes an offer conditional upon achieving the academic entry requirements and nothing more, so that where there are more qualifying applicants than places available, additional oversubscription criteria such as those envisaged in paragraphs 1.6 – 1.16 of the Code are applied. But it may also be used to mean a system of the sort used by the school in this case, that is to say a system which treats, in effect, those who obtain a "conditional offer" based on 'predicted grades' as having higher priority than those who are not made such an offer but nevertheless meet the academic entry requirements.

68. In the present case, the school points out, correctly, that whether or not someone receives a 'conditional offer' is not determinative of who is, and who is not, offered a place: indeed in most years, some applicants who have not been made conditional offers will be admitted to the school. However, that does not alter the fact that applicants who are not made conditional offers have lower priority in the allocation of places. (Although it is different, some analogy may be drawn with "late applications": it is common for admission arrangements to say that applicants who apply after the deadline are given lower priority than all applicants who apply on time). In the sense that conditional offers determine the level of priority, they operate effectively as oversubscription criteria. Put another way, it is not the case that all applicants who achieve the entry level requirements are on an equal footing at the point in time when places are offered.

69. Having considered the matter in the round, I do not consider that the use of 'predicted grades' in this case is fair or objective. I accept that the school has devised the system with good intentions. I accept that in principle the concerns about planning raised by the school, and the other reasons it has given for using the system, including the advantages for students in generating an expectation that they probably will (or probably will not) have a place if they do (or do not) achieve the required entry requirements. However, the school's reasons are not the only matters for me to consider when assessing fairness or objectivity. I have also considered the position of those students who meet the entry requirements but who are nevertheless accorded lower priority in relation to admissions simply because they were 'predicted' a grade or grades lower than they achieved. I do not think that the system is fair to that group. They are just as 'deserving' of a place on academic grounds as pupils who achieve the same grades but who happened to have a better prediction. What distinguishes the two cases is a prediction by a third party which is a subjective rather than objective matter. Notwithstanding all the points made by

the school, which I have taken fully on board, my judgement is that it is unfair, including for want of objectivity, that one pupil may be prioritised over another for admission for no reason other than a necessarily subjective third party prediction.

70. For those reasons I uphold that part of the objection which complains that the school's use of 'predicted grades' in this case is contrary to paragraph 14 of the Code.

e. The oversubscription criteria are unclear

71. I now move away from the specific issue of 'predicted grades' to consider other aspects of the arrangements; more particularly the oversubscription criteria as presently identified.

72. As well as paragraph 14, paragraph 1.8 is relevant. It 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".

73. As identified as such, the oversubscription criteria are, in summary: Looked After and Previously Looked After Children; named feeder schools; those wishing to study music or a modern foreign language; and proximity of home address.

74. Although I have found other aspects of the overall admission arrangements to be unclear on a number of points, I do not find the wording of the oversubscription criteria to be unclear. Therefore I do not uphold this aspect of the objection.

75. I have a separate concern about these specific criteria, in that they fail to describe the order of priority within each individual criterion. I have addressed this in the part of this determination entitled 'Other Matters' as it is not a point raised by the objector.

f. Applicants who are not made a conditional offer are substantially disadvantaged and are not given a right of appeal against this decision

76. The concern addressed here is specifically about rights of appeal. So far as the objector's complaint was of unfairness in the use of predicted grades, I have already dealt with it.

77. The objector argues that an applicant who is not made a conditional offer is placed at a substantial disadvantage and should therefore have the right to appeal against the decision. There may be reasons why an applicant's predicted grades are lower than they might be expected to be. The applicant may have been ill or have had personal difficulties, for example. In the context of an appeal to an Independent Appeal Panel, the objector says that such an applicant would have the opportunity to explain their personal circumstances

and the Panel would be able to overturn the school's decision to not make a conditional offer if these outweighed any prejudice to the school caused by the admission of an additional pupil.

78. The objector's view is that there is no adequate recourse for an applicant who is disadvantaged unfairly by not being made a conditional offer. If the applicant achieves the required GCSE grades, he/she will have lower priority for admission. He/she may achieve higher grades than some applicants who have been made a conditional offer, and yet will not be offered a place unless other applicants decide to refuse the offer of a place. Because the GCSE results are not published until late August, it is unlikely that there will be sufficient time to convene an Appeal Panel and determine appeals before the start of the school year. Thus, even an appellant who is offered a place on appeal will be disadvantaged by not being able to join classes from the outset. The objector argues that failure to offer a right of appeal against a decision of the school not to make a conditional offer is in breach of Article 6 of the European Convention on Human Rights (ECHR), and that applicants should have a right to appeal against both the decision not to make a conditional offer and the decision to refuse admission. Both the child and parent should have these rights.

79. The objector says that parents have appeals rights in accordance with paragraph 2.32 of the Code. The objector considers that this also implies that the parent of the child should be notified of the decision. The objector is not satisfied that the school is notifying applicants who have not been made conditional offers of the decision not to offer a place. An applicant who does not receive a conditional offer and does not recontact the school in August is never given a decision, which is said to be in breach of paragraph 2.32 of the Code.

80. The objector says that the Appeals Code provides that, where an application is refused, a right of appeal arises. Therefore, she says that, where an applicant who has achieved the entry level requirements approaches the school, there has been a change in circumstances. If the school again refuses the application, a second right of appeal arises. The objector argues that where an applicant is told that their application is not being taken forward, this is a decision not to offer a place. The decision not to offer a place once the GCSE results are known is a separate decision attracting a second right of appeal. The objector accepts that the school does offer some applicants a right of appeal but objects to the timing of the appeal as it is unlikely to be heard until after the start of the new school year.

81. The school has said that there have been no applicants who have not been made conditional offers who have brought appeals once results are known, and there have been no applicants who have appealed with grades that did not meet the requirements.

82. The school maintains that in not making a conditional offer, it is not making a decision to refuse the application for admission, and that the right of appeal lies only against a decision to refuse to offer a place. Applicants who are not made conditional offers are told (or will be told) that the school is not taking their application forward at this stage, and will be given details of how to appeal in September should they wish to do so. The school considers that its view is re-enforced by the Appeals Code, section 2.3, c) i), which

states that for applications to sixth forms, where the offer of a place would have been conditional upon exam results, appeals must be heard within 30 school days of confirmation of those results i.e., GCSE results day. The school says that no firm offers are made until GCSE results day. Furthermore, according to the school, section 5.1 of the Appeals Code states that students are allowed one appeal. The school says that this can only sensibly take place once the results are known and offers are made.

83. The questions which follow are whether it is for the Adjudicator to determine whether an applicant should be offered the right of appeal when he/she is notified that the application is not being taken forward, and whether the Adjudicator can require the school to offer an appeal against this decision. The answer to each of these questions is no. I have explained to the parties that my jurisdiction in relation to appeals is limited to the consideration of whether the admission arrangements comply with paragraph 2.32 of the School Admissions Code. This says: "When an admission authority informs a parent of a decision to refuse their child a place at a school for which they have applied, it must include the reason why admission was refused; information about the right to appeal; the deadline for lodging an appeal and the contact details for making an appeal. Parents must be informed that, if they wish to appeal, they must set out their grounds for appeal in writing. Admission authorities must not limit the grounds on which appeals can be made".

84. The objector argues that the Human Rights Act 1998 requires the Admission Appeals Code to be read in a manner consistent with Article 6 of the ECHR. However, an applicant who is not made a conditional offer still has a right of appeal. The disadvantage claimed arises due to the lateness of the appeal, but in this respect an applicant who has not been made a conditional offer is in no different a position to an applicant who has been made such an offer but has failed to meet the entry requirements. Admission to the school is based upon GCSE results, therefore it cannot be possible to make decisions about who should, or should not, be admitted until these are known.

85. The school itself has said that it has fallen short of its obligations under paragraph 2.32 and has agreed to address this. The school needs to make decisions in respect of each application and where an application is refused, provide the required information relating to appeals. Further, insofar as it operates a Code compliant system of 'conditional offers', it must inform applicants not made such offers at the point of non-offer that they will have a right of appeal if they are refused a place.

g. The arrangements have not been consulted upon as required

86. The objector says that a consultation is required at least every seven years on admissions arrangements. A consultation is also required on changes to the arrangements. The objector says that she was unable to find evidence that the required consultation has occurred within the required seven years in respect of Sixth Form Admissions. In stating this, the objector acknowledges my previous remarks on consultation in relation to the revisions carried out to the 2023 arrangements and Twyford's comments. The local authority has confirmed that the school's admission arrangements for 2022/2023 were consulted upon in accordance with the requirements in paragraphs 1.45 – 1.48 of the Code.



The objector has therefore indicated that she no longer wishes to pursue this aspect of the objection.

h. The naming of secondary schools as feeder schools is unlawful

87. Paragraph 1.15 of the Code says: “Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion must be transparent and made on reasonable grounds”. The objector’s view is that Ada Lovelace, William Perkin and Ealing Fields schools do not meet the legal definition of feeder schools contained in paragraph 1.15 of the Code. They are not primary or middle schools, therefore to give preference to applicants from these schools would not be compatible with 1.9(b) of the Code. The objector’s view is that, if it was intended that other secondary schools could be named as feeder schools for sixth form entry, then the admissions code would have so stated. Her view is that primary and middle schools are an exhaustive list of feeder school categories.

88. Whilst I understand the reasons why the objector has reached this view, I do not agree with it. My reasons are that paragraph 1.15 contains a power to name particular categories of schools referred to in section 5 of the Education Act 1996. It does not prohibit other types of schools from being named as feeder schools. I note, in particular, that paragraph 1.15 does not refer to infant schools being named as feeder schools for junior schools, which is probably the most common example of a feeder school arrangement. It cannot have been the intention of the Code to prevent infant schools from being feeder schools for junior schools, therefore the interpretation of paragraph 1.15 most likely to reflect the intention of the legislature in approving the Code is that paragraph 1.15 is permissive and that it does not contain an exhaustive list of the types of schools which may operate as feeder schools. Paragraph 1.15 does require feeder schools to be named, and the arrangements name the feeder schools in question. The objector does not allege that the feeder schools have not been named on reasonable grounds, and I see no reason to suggest that this is the case. I do not uphold this aspect of the objection.

### **Other Matters**

The definition of Looked After and Previously Looked After Children did not appear to comply with the definition in the Code (paragraph 1.7)

89. The arrangements do not appear to define ‘previously looked after children’ to include children who appear (to the admission authority) to have been in state care outside of England and who have ceased to be in state care as a result of being adopted. The school has explained that fully compliant definitions of Looked After and Previously Looked After Children are given in the “Definitions” section on page 2 of the “General Admissions Policy for Twyford CE Academy, Entry 2023”, which applicants are able to see on the first page of the admissions section of the school website under the heading “Introduction and PAN”. I am grateful to the school for pointing this out. The definition is indeed compliant with the Code. There needs to be a link to it in the oversubscription criteria for sixth form admissions.

Lack of clarity as to the number of sixth form places available to external applicants (paragraph 14)

90. The school has confirmed that 80 is the minimum number of places available to external students: the school says that it will always admit at least 80 students who are not currently at Twyford. I am grateful for this clarification. The objector made a similar point in terms of not understanding what the PAN is for the school. The arrangements do need to make clear that the PAN is 80, which is the minimum number of external applicants the school intends to admit to Year 12.

The order of priority within each of the oversubscription criteria is unclear (paragraph 1.8)

91. The school has explained that offers to study in the sixth form are made to all students who are made conditional offers and who achieve the required grades. The school has always admitted every student to whom a conditional offer was made from both the first and second allocation of places. The school says that it works hard to avoid over subscription on courses. Occasionally, a course becomes oversubscribed because of students wishing to change course in August. Where a course becomes oversubscribed, priority will be given to the students who applied for the course initially (i.e. those with a conditional offer for the course). In this instance, a student who had been given a conditional offer would be offered the course ahead of a student who made a late change. If there were a case where a class became full, priority would be based on the oversubscription criteria. Where there is a tie within an oversubscription criterion, priority would go to those with the strongest grade in that course. Other courses would be offered to those who were unsuccessful (but this has not happened in the last 10 years). The same process would be adopted at conditional offer stage, but with more flexibility on course numbers due to the uncertainty around which students will turn up in September.

92. I appreciate that this is a complex process to administer, but – even if I had concluded that the use of ‘predicted grades’ was fair and objective – the fact would remain that the admission arrangements do not describe how it works. The ‘oversubscription criteria’ set out in the arrangements are in reality not used to determine the order for admissions. There is no order of admissions. Conditional offers operate as the oversubscription criteria, although they are also said not to be determinative of which applicants are offered places.

93. The process is not clear from the arrangements, and any lawful arrangements need to be sufficiently clear in order to comply with paragraph 14 of the Code.

The arrangements give priority to applicants who ‘apply early. It was unclear what this meant (paragraph 14)

94. The school has clarified that this means applicants who apply by the closing date. This needs to be made clear.

## Timescale for revisions

95. My duties under section 88H of the Act require me to determine whether or not the arrangements conform with requirements and if not, in what ways they do not so conform. This I have done. However, I cannot require the trust to revise their arrangements in any particular way. Nor can I require them to consult before doing so. It is for the trust to decide how to revise its arrangements in order to remedy the deficiencies I have identified. I do have a power to set a deadline for any necessary revisions to be made, and I have given careful consideration to this. In some cases, an early deadline can sensibly be set, and it is clearly desirable that arrangements that fail to meet the Code's requirements should not continue for longer than can be avoided. In the particular circumstances of this case, it seems to me that revising these arrangements is not a trivial task. The trust may decide to model various options, and may also consider it wise to consult on any proposed revisions, which would add to the time frame. In my view, it would not be reasonable to require the trust to do all of this properly before parents and young people begin making applications for places. In addition, this determination is being published at the end of the summer term, and I take into account that school and trust leaders, parents and potential six form students tend to take their holidays in the first half of the summer holidays before A level and GCSE results are published.

96. Against that background, I do not consider that it would be wise for me to set a deadline for any necessary revisions to the arrangements earlier than the time when young people and their parents will be applying for school places for 2023. For sixth form applications for this school, that is before 2 December 2022. I have considered whether I could set a deadline between 2 December 2022 and 28 February 2023. Again, I have decided that this would not be right. It would mean that applications would have been made on the basis of one set of arrangements but then considered on the basis of another set – which would not have been known to parents or potential pupils at the time they made their applications. I am therefore requiring that the arrangements must be revised by 28 February 2023 in accordance with paragraph 3.1 of the Code.

## **Summary of Findings**

97. I find that the arrangements, even with the benefit of the revisions made, are fundamentally unclear and do not describe the process by which places are allocated. I have accepted the assurances of the school that it is not interviewing applicants or taking into account factors which it is prohibited from taking into account, however the arrangements effectively only have one means of determining priority for admission, which is the making of conditional offers. The process involved in making conditional offers is not described with sufficient clarity.

98. The making of conditional offers is not determinative of whether or not a place will be offered but it does influence the order of priority and therefore must operate as an oversubscription criterion. For the reasons given above, I find that in the circumstances of this school, notwithstanding the arguments which the school has made, the use of 'predicted grades' as part of the methodology for determining places is not fair or objective.

99. I find that there are other matters which do not comply with the Code, as above.

## Determination

100. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the sixth form admission arrangements for September 2023 determined by Twyford Church of England Academies Trust for Twyford Church of England High School, Ealing.

101. 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.

102. 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 or by 28 February 2023 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 28 February 2023.

Dated: 15 July 2022

Signed:

Schools Adjudicator: Marisa Vallely