



Office of
the Schools
Adjudicator

Determination

Case reference:	ADA3930
Objector:	A member of the public
Admission authority:	Sir Thomas Rich's School for Sir Thomas Rich's School, Gloucestershire
Date of decision:	20 September 2022

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, we do not uphold the objection to the admission arrangements for September 2023 determined by Sir Thomas Rich's School for Sir Thomas Rich's School, Gloucestershire.

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

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), an objection has been referred to the adjudicator by a member of the public (the objector), about the admission arrangements (the arrangements) for September 2023 for Sir Thomas Rich's School (the school), a selective academy for boys aged 11 to 18. The objection is to the way the school tests applicants and to the priority given to boys eligible for the pupil premium.
2. The local authority for the area in which the school is located is Gloucestershire. The local authority is a party to this objection. Other parties to the objection are the objector and

the admission authority for the school which is the single academy trust also named Sir Thomas Rich's School (the trust).

Jurisdiction

3. The objector made objections to the admission arrangements for 2023 for this and 10 other grammar schools. Jane Kilgannon and Phil Whiffing have been appointed as joint adjudicators for these objections as permitted by the Education (References to Adjudicator) Regulations 1999. Phil Whiffing has acted as lead adjudicator for this case.

4. There are a number of matters which are common to all but one of the objections. The objector has made objections to other schools in previous years about the same matters. Those objections have been determined by other adjudicators. Their determinations do not form binding precedents on us, and we have considered the matters afresh.

5. The terms of the academy agreement between the trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing board on that basis. The objector submitted his objection to these determined arrangements on 5 May 2022. We are satisfied the objection has been properly referred to us in accordance with section 88H of the Act and it is within our jurisdiction. We have also used our power under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

7. The documents we have considered in reaching our decision include:

- a. minutes of the meeting of the governing board held on 25 January 2022 at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 5 May 2022 and supporting documents;
- d. Determination ADA3777 published on 11 October 2021;
- e. the response to the objection and the matters we raised under section 88I of the Act from the trust; and
- f. the response to the objection and the matters we raised under section 88I of the Act from the LA.

The Objection

8. The objector quoted paragraph 1.31 of the Code which says “Tests for all forms of selection must be clear, objective, and give an accurate reflection of the child’s ability or aptitude, irrespective of sex, race, or disability. It is for the admission authority to decide the content of the test, providing that the test is a true test of aptitude or ability.” He said, “This is violated by (a) reuse of the same tests for late sitters (b) Arbitrary 25% extra time for those labelled with the new “badge of honour”, called dyslexia (c) age standardisation for which there is no independent peer reviewed evidence the algorithm is accurate (d) Reuse of old questions from previous tests (as they end up in the hands of tutors).”

9. The objector also quoted part of paragraph 1.8 of the Code, “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”. He said, “The school potentially reserves places at the school for pupil premium students and not a proportion. The qualifying mark is not pre-determined. This means the school could set the qualifying score so low than [sic] the entire PAN is filled with pupil premium students even though their scores are lower than others. This cannot be fair or reasonable. Surely, the level should be set to 25% at the most and the qualify [sic] standard should be pre-defined before the test is sat.”

10. Regulation 22 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the regulations) prohibits an objection being referred to an adjudicator where that (or another) adjudicator has made a decision on the same or substantially the same issues in relation to those admission arrangements within two years. Determination ADA3777 published on 11 October 2021, concerned the admission arrangements for the school for 2022 and, amongst other things, late tests, age standardisation and the reuse of old questions. This objection was made on 5 May 2022 (so within two years of 11 October 2021) and included late tests, age standardisation and the reuse of old questions. These are the same or substantially the same issues as parts of this objection. Therefore, we cannot consider those matters in this determination.

Other Matters

11. Paragraph 14 of the Code 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.” There were a number of ways in which we considered that the arrangements may not be clear and at one point, possibly unfair. The arrangements also appeared not to conform with the requirements for waiting lists set out in paragraph 2.15 of the Code and the admission of children outside of their normal age group as set out in paragraph 2.19 of the Code.

Background

12. The school is situated in Gloucester. It uses the same selection test as the other six grammar schools in Gloucestershire. The published admission number (PAN) for 2023 is 150. Priority for boys reaching the qualifying standard in the selection test is given in summary as follows:

1. Looked after and previously looked after children;
2. Children eligible for the pupil premium; and
3. Other children in rank order of their test score.

Consideration of the objection

13. In addition to the objection form the objector sent in two appendices. The first was 16 pages long and related specifically to this case. The second was common to ten of the 11 objections made by this objector to grammar school admission arrangements for 2023. It was 130 pages long and contained extracts from on-line forums and other media (some dating back 10 years), copies of correspondence with local authorities, examining boards and other test providers, transcripts of an employment tribunal and an ombudsman decision.

14. In the first appendix the objector set out his reasons for making this objection. These stem from his opinion about various organisations and individuals. None of these concerns us. Our jurisdiction in relation to objections to admission arrangements is set out in section 88H(4) of the Act and is to “decide whether, and (if so) to what extent the objection should be upheld”. In relation to admission arrangements generally this is set out in section 88I(5) and is to “decide whether they conform with those requirements [requirements relating to admission arrangements] and, if not, in what respect they do not.” Outside of those parameters, it is not for schools adjudicators to reach conclusions about an objector’s view of any individual, organisation or statute with which he may disagree.

Testing – Additional time for children with dyslexia

15. The objector put forward a range of arguments which he said made giving 25 per cent more time in the test to children with dyslexia was unfair to other children. He said “there is no published scientific or trailed evidence that points to 25% extra time being reasonable or required in all cases in this arbitrary assessment or is fair in a CEM test. Just because something happens in some exams it does not mean not [sic] should continue in others.” He continued, “Dyslexia is a spectrum [sic] “disability”. All dyslexics do not have the same level of disability. To give all dyslexics 25% extra time cannot be fair or provide an accurate level of ability. Each child should be individually titrated. But in reality everyone has some disability or disadvantage.”

16. The admission authority responded by quoting paragraph 1.32b of the Code which requires admission authorities to “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". It said "an applicant with dyslexia will, in all probability, have slower processing skills such that it would put them at a substantial disadvantage compared to the non-disabled applicant if both applicants (or applicant groups) were required to sit the entrance test in the same time period. It is submitted that it is entirely in line with its statutory obligations under the Equality Act 2010, and in line with its duties under the Code, for the School to make a reasonable adjustment to the length of time a dyslexic applicant has to sit and to complete the entrance test."

17. Nowhere do the arrangements specifically say that children with dyslexia will receive 25 per cent additional time. They say, "Parents must provide details of any Special Educational Needs or Disabilities on the Test Registration Form in order for the School to consider appropriate access arrangements." The Equality Act 2010 (EA) requires that reasonable adjustments are made for children with disabilities. Dyslexia is a disability and as such reasonable adjustments must be made for children with the condition. We find that the arrangements comply with the requirements of the EA and the Code in this respect. We do not uphold this part of the objection.

Priority for boys eligible for the pupil premium

18. On his objection form the objector said "The school potentially reserves places at the school for pupil premium students and not a proportion. The qualifying mark is not pre-determined. This means the school could set the qualifying score so low that the entire PAN is filled with pupil premium students even though their scores are lower than others. This cannot be fair or reasonable. Surely, the level should be set to 25% at the most and the qualify [sic] standard should be pre-defined before the test is sat." He provided no further argument in the two appendices to support these arguments.

19. The admission authority responded by saying that paragraph 1.41 of the Code expressly permits priority to be given to children eligible for the pupil premium. It said that the same standard in the test was required for boys eligible for the pupil premium as for other boys and that it was a legitimate aim to provide advantage to a group who were recognised as being disadvantaged.

20. The admission authority did not comment on the objector's view that "the qualify [sic] standard should be pre-defined before the test is sat." The arrangements say, "The qualifying standard is determined by the Governors Admission Committee, with reference to the relevant cohort, approximately one week before the results are sent out to parents." We note that this meets the requirement in paragraph 1.32c of the Code that admission authorities "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."

21. The Code, in paragraph 1.20 and elsewhere refers to "pre-set standards of the ability test." Examples of a pre-set standard could be the highest 20 per cent of the ability range or the most able 250 children applying for the school. Other standards could be set. The mark

in a test which represents that standard could vary from year to year and will not be known until after tests have been taken.

22. The Code does not require that arrangements say what the qualifying standard is. The Code permits giving priority to children eligible for the pupil premium. It does not set limits on the proportion of children who can be offered places on such grounds. We do not uphold this part of the objection.

Other Matters

Where the arrangements may not be clear

23. In paragraph 14 of the Code, admission authorities are required to “ensure that the practices and the criteria used to decide the allocation of school places are fair, clear, and objective.” It continues “Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.” There are also requirements for specific aspects of arrangements to be clear.

24. Paragraph 1.17 of the Code requires that the process for selection is published in admission arrangements. The arrangements state the requirement to register for the selection test without specifying the deadline for doing so. The arrangements also say, “The testing will take place on the published date (date yet to be finalised).” Both dates were however given on the registration form sent to us with the arrangements.

25. For parents to understand easily how places will be allocated, it seemed to us that parents would need to know from the arrangements when they were required to register for the test and not need to look at the registration form. Parents would also need to know when their child would be tested so they could plan accordingly. We considered that the absence of these dates from the arrangements may make the process of selection unclear and indeed could lead to a parent missing the registration deadline or planning a family event on the date of the test.

26. We were surprised that the comment from the local authority was, “As arrangements are published 18 months in advance of admission, specific dates may not always be possible to confirm.” Admission authorities were required to determine their arrangements for admission in 2023 by 28 February 2022 and publish them by 15 March 2022. The registration period is from 19 May to 30 June 2022 and the test is sat on 17 September 2022. This period spans little more than six months and parents must act within three and a half months of the publication deadline.

27. The final dates may not have been confirmed when the arrangements were determined on 25 January 2022, however, we find it difficult to believe that it was not known at that time that registration would be between mid-May and the end of June and that the test would be sat on a Saturday in September. We also find it difficult to believe that by the date when publication of the arrangements was required, 15 March 2022, the exact dates of a process starting in two months time had not been set. It would certainly have been possible to add the dates to the arrangements when they appeared on the registration form.

28. The school accepted that “greater clarity could be achieved” and suggested how this might be done. It is not for us to comment on how an admission authority proposes to revise its arrangements, however, the arrangements should give parents a clear indication of when they must register for the test and when the test will be sat without them needing to refer to other documents. We find that the arrangements are unclear about the dates of the registration period and when the test will be sat and so does not conform with paragraph 14 of the Code.

29. The arrangements refer to “Boys from families entitled to Pupil Premium”. This may not be clear as families are not entitled to the pupil premium, individual children are eligible for schools to claim this additional funding. Both the local authority and the school agreed this was unclear. We find that this part of the arrangements is not clear and so does not conform with paragraph 14 of the Code.

30. In two places in the arrangements the word “may” is used in a manner which we considered was possibly unclear. The first is in the section on late testing which says, “where exceptional circumstances mean a child cannot take the test on the appointed day (for which they are registered) the School may organise a similar replacement test later”. The school said “The wording ‘may’ is sensible. The exceptional circumstances may not permit the child to take a test within a reasonable period of time such that to state “will organise...” would be an unnecessary commitment. Whilst ‘may’ could indicate discretion, the fact is that as a public authority it is obliged to exercise such discretion reasonably.”

31. We think that the use of the word “may” does indicate discretion. The discretion available to the admission authority is in deciding whether the reasons for missing the test are exceptional. Having decided that the reasons are exceptional either the admission authority does offer a date to all registered boys who miss the selection test for exceptional reasons or it does not. If there was not a reserve date, we would consider that to be unfair. For administrative reasons there must be a point beyond which a reserve date cannot be set; the reserve date does not have to be a bespoke date for each individual. If circumstances are such that a boy cannot take the test on either the appointed or the reserve date, it is unfortunate for that boy but necessary to allow the administration of the process for the others. We find the use of the word “may” in this part of the arrangements is unclear and so does not conform with paragraph 14 of the Code.

32. The other use of the word “may” is found under the heading “In Year Admission”. The arrangements say, “In Years 8, 9, 10 and 11, the School may permit a qualifying in-year candidate to be admitted where such admission will not prejudice the efficient education of others or efficient use of resources.” Section 86 of the Act requires that a boy who meets the academic standard set by the school is admitted if there is no prejudice of the type described in the arrangements. The school said that “may” was clear “as it is to be read as having permission – the School has permission to admit a qualifying candidate where such admission will not cause prejudice.” In our view, the word “may” suggests the school has an option to admit, when it does not. In addition the school’s wording does not take account of the right of parents to appeal to the independent appeals panel or the role

of the panel in deciding whether a child should be offered a place. We find this is unclear and so does not conform with paragraph 14 of the Code.

Waiting lists

33. Paragraph 2.15 of the Code sets out the requirements for waiting lists. This requires admission authorities to state in their arrangements “that each added child will require the list to be ranked again in line with the published oversubscription criteria.” The arrangements say, “The waiting list will be prioritised in rank order”; this is not the same as the oversubscription criteria. When we raised this issue with the admission authority it proposed to amend the wording. We find that the arrangements do not conform with paragraph 2.15 of the Code.

Admission outside of the year group

34. Paragraph 2.19 of the Code concerns the admission of children outside of their normal age group. It begins “Admission authorities must make decisions on the basis of the circumstances of each case ...”. In section 8(i) the arrangements say “The following must apply if an applicant is underage:

- Their date of birth places them in the cohort below their chronological age and they are following the curriculum for the eligible cohort for testing.
- There is a letter of support of the application from the Primary School and it is confirmed that the candidate is studying the same curriculum as the eligible cohort for testing.”

35. Two conditions are applied before considering the circumstances of each case when the child is underage. In contrast, for overage applications, the arrangements say, “It will not be possible for an overage child to sit the Grammar School Admission Test or be admitted unless there are exceptional circumstances. Lifestyle or educational choices made by the parents will not normally be considered an exceptional circumstance. The School will consider each application in the light of the circumstances and in the best interests of the child concerned.” No circumstances are completely ruled out for overage children.

36. When we raised this issue the admission authority said, “The School notes the adjudicators concerns, however it is submitted that the conditions in respect of underage applicants (8(i)) are reasonable, objective and proportionate, and are part of the evaluation of the circumstances of each case.” These seem to us to be factors which should be taken into account when considering underage applications, but the wording of the arrangements sets them as hurdles which must be cleared before other factors can be looked at. For example, a home educated child could not meet the second condition, no matter how clever they were. We find that this part of the arrangements does not conform with paragraph 2.19 of the Code.

Late registration

37. The arrangements appeared not to make provision to assess the ability of a child who, for some exceptional and unforeseeable reason, is not registered for the test by 30 June 2022 (the date given on the registration form). For example, moving into the area served by the school after that date or a family trauma, such as a parent's serious illness. We considered that this may not be fair.

38. The admission authority referred us to the part of the arrangements which says, "If a parent names the School on their Local Authority Common Application Form, but the child has not yet sat the Grammar Test, the School will make arrangements for the child to sit Admission Tests usually during the Spring Term. If the child is eligible for entry, his name will be placed on the waiting list at the rank determined by the late test result." It also referred to the "burden of arranging the selective test dates".

39. This means that a child whose parent missed the registration deadline through being in hospital, or a child from a family who moved into the area served by the school in say, August, could not be considered for a place at the school in the main admissions round and would have to rely on the waiting list for a place even if they submitted the common application (CAF) from on time by 31 October.

40. Administrative factors do need to be considered. The date of 30 June seems to us a reasonable deadline so a test for hundreds of children can be organised on 19 September. The scheme of co-ordination determined by the local authority requires admission authorities to return ranked lists of applicants by 6 December and unlike some other schemes has no fall-back date to add children whose CAF was received after 31 October for an unavoidable reason. The arrangements say that if a registered child does not take the test on 19 September and this is because of illness, accident or bereavement, a later test will be organised. If it is possible to include an unknown number of children who do not turn up on 19 September in a later test, it would seem to be possible that a small number of children who could not be registered by 30 June, but were by a later date, could be tested on a reserve date alongside those previously registered children who were ill on the main test day. There would be a limited window for this reserve date so that the results could be known by 31 October.

41. We find that without some provision which enables, within administrative constraints, a small number of children who cannot be registered for the test by the deadline to be included in the main admission round, the arrangements are unfair and therefore do not comply with the requirement for fairness set out at paragraph 14 of the Code.

Summary of Findings

42. For the reasons set out above we do not uphold the objection.

43. We find that in the ways set out above, the arrangements are unclear and in one way unfair to a small number of children. We also find that the arrangements do not conform

with the requirements in the Code concerning waiting lists and admission outside of the normal age group.

Determination

44. In accordance with section 88H(4) of the School Standards and Framework Act 1998, we do not uphold the objection to the admission arrangements for September 2023 determined by Sir Thomas Rich's School for Sir Thomas Rich's School, Gloucestershire.

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

46. By virtue of section 88K(2) the adjudicators' 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 date of this determination.

Dated: 20 September 2022

Signed:

Schools Adjudicators: Phil Whiffing

Jane Kilgannon