



Office of
the Schools
Adjudicator

Determination

Case reference:	ADA3934
Objector:	A member of the public
Admission authority:	The Mercian Trust for Queen Mary's Grammar School, Walsall
Date of decision:	20 September 2022

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, we partially uphold the objection to the admission arrangements for September 2023 determined by The Mercian Trust for Queen Mary's Grammar School, Walsall.

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 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 this determination or an alternative date specified by the adjudicators. In this case we require the arrangements to 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 a member of the public (the objector), about the admission arrangements (the arrangements) for Queen Mary's Grammar School (the school) for September 2023, a selective academy for boys aged 11 to 18. The objection is to the way the school tests applicants, to the oversubscription criteria and to the waiting list.

2. The local authority for the area in which the school is located is Walsall (the local authority). 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 Mercian Trust (the trust), a multi academy trust.

Jurisdiction

3. The objector made objections to the admission arrangements for 2023 for this and ten 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 trust 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 trust held on 11 November 2021 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. the response to the objection from the trust;
- e. the response to the objection from the local authority;
- f. comments from the trust on the matters we raised under section 88I of the Act; and

- g. comments from the local authority on the matters we raised under section 88I of the Act.

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 questions used in previous tests (as these end up in the hands of tutors who pass them on to children).”

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 ranking can be unfair.”

10. The objector also questioned the way children are tested and ranked for the waiting list. The requirements for waiting lists are set out in paragraph 2.15 of the Code.

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 paragraph 1.9b concerning naming feeder schools, paragraphs 2.15 and 2.19 concerning waiting lists and paragraphs 2.23 and 2.28c concerning in-year admissions. The arrangements for admission to the sixth form also appear not to conform with requirements.

Background

12. The school is situated in Walsall in the West Midlands. It is part of a consortium of five schools which all use the same selection test on the same day. The published admission number (PAN) for the school for 2023 is 180. Priority for boys reaching the qualifying score in the selection test can be summarised as follows:

- a) Looked after and previously looked after children;

- b) Up to 54 places for children eligible for the pupil premium in rank order of their test score. Priority within this criterion is given to boys attending primary schools in Walsall; and
- c) Other children in rank order of their test score.

Consideration of Case

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 – The use of the same test

15. The objector quoted paragraph 1.13 of the Code, “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.” The first part of the objection was that using the same test for “late sitters” did not conform with this requirement because children who had sat the test earlier could remember content and would pass information on to other children giving them an advantage.

16. The arrangements say, “If a candidate is unable to sit the Test on the appointed day because of illness or other exceptional reason (and it will be for the Governors to decide whether the reason is exceptional), alternative arrangements will be made to take the Test.” The arrangements also include a section on “Late applications” which makes provision to test boys who apply late (up to 1 February 2023) “where there are exceptional circumstances that are outside of the control of the applicant (such as moving into the area, or the long-term serious illness of a parent)” so they can be included in the main allocation of places. If such provision was not available, we would consider it unfair and so not to conform with paragraph 14 of the Code. The arrangements say that applicants who apply

after 1 February 2023 and those whose application is late without an exceptional reason will be tested so they can be placed on the waiting list.

17. For boys who miss the main test because of illness or other exceptional reason, the arrangements refer to them taking “the Test”, this can only be interpreted as being the same test as that taken on the appointed day. In the section on late applications the arrangements say the test is “not necessarily the same papers as were taken on the appointed day”. The arrangements also say: “candidates may be at a disadvantage because of the standardisation by way of age or if alternative papers are used”.

18. The objector argued that children can remember questions and do tell other children about the content of the test, either directly or indirectly through parents and tutors and this gives “late sitters” an unfair advantage. He provided references to support this view. The objector argued that there should be a different test for each sitting before setting out the issue of comparability of results in different tests. He also suggested other approaches to testing which an admission authority could adopt for example, sitting two tests on separate days with the highest, or only, score being taken into account.

19. Before considering this part of the objection, we have looked at the familiarisation material published on the school’s website. This is intended to give parents and children a feel for the style of the test and how to complete the answer sheet. It is a multiple-choice test in which children are required to mark a sheet in a specified way so that their paper can be marked by a computer.

20. In our view, children could remember some aspects of these tests, for example that the comprehension test was based on an article about Japan, or that they were asked to find the area of some flower beds and the paving around them in the maths test. We doubt that many, if any, children could remember all 25 comprehension questions arising from the article on Japan including the four alternative options for each question. We also doubt that many would remember the diagram of the flower bed in sufficient detail that another child, parent, or tutor would be confident that the remembered answer was correct. As for the questions requiring the child to choose which of six shapes was the missing shape in diagrams of nine shapes, we think it unlikely that a child could remember any detail at all that would help another child.

21. For admission in 2022, the main test was taken by 1385 boys on 18 September and the test for boys who were unable to take the test on that day for unforeseeable reasons was held on 29 September. Forty-two boys took the test on the second day mainly because Covid prevented them from taking the test on the first date. It seems to us that this is a higher number than would normally be expected to take the second test if Covid was not present. If a boy did tell their friend who missed the main test because of illness or a family trauma that the comprehension was about Japan, we doubt that a child who had been ill or was distressed would have time to learn a sufficient amount about Japan before the test to give them any advantage especially when all the necessary information to answer the questions is provided in the test.

22. Considering other questions, let us assume that a child does remember that there is a question which asks which word is the opposite to “prominent”. They also remember the options are: A foreign, B distant, C unimportant, D wealthy and E exciting. Because of illness or a family trauma, their friend did not take the main test, but takes the test a week or so later. The child decides that they will tell their friend about this question and what answer they gave. The recently ill or distressed child now has to check in a dictionary that their friend’s answer was correct, if not, learn the correct answer and remember all of the details. We think this is a long chain, but not impossible across a short period of time. To benefit from this it would also need to be the case that the child would not already have known the right answer or be able to deduce it.

23. We found the school’s response to our enquiries about testing later in the year contradicted the arrangements which say.

““Late” applications are those where the parents of a candidate have not registered with the School by 4.00 p.m. **on 2nd July 2022** even if an application is made to the Local Authority by 31 October. The School deals with such applications in this way:

a) Those received after 4.00 p.m. on **2nd July 2022** but before **1st February 2023** AND where there are exceptional circumstances that are outside the control of the applicant (such as moving into the area, or the long-term serious illness of a parent). The Governors will normally expect such applications to be accompanied by appropriate evidence. The decision concerning whether circumstances are “exceptional” will be delegated to a panel of Governors and is final.

If the circumstances are exceptional, the application will be treated as being in time. The School will arrange to test the candidate at an appropriate time, after which they will be placed in the order of merit.

b) Those received after 4.00 p.m. **2nd July 2022** but before **1st February 2023** BUT are not exceptional, and all those which are received after **31st January 2023**.

In these cases, candidates will be tested and placed at an appropriate point in the order of merit only after all the offers of places have been made. This order of merit will then be the waiting list referred to in section 6 below, and places allocated accordingly. Such candidates will, therefore, only be offered a place if a vacancy should occur.” [Emphasis in the original].

24. When we asked how many boys had benefitted from these provisions in the arrangements in the past, the school identified 12 boys with exceptional circumstances out of the 48 late test candidates for 2022 and said, “QMGS have only had a Contingency test (from 10 days – up to 3 weeks) after the main exam, for illness predominantly and one late test in March.” Unless the provision quoted above from the arrangements is new for 2023, or the 12 boys with exceptional circumstances did not apply until after 1 February 2022, this statement from the school contradicts the arrangements which say that boys with exceptional reasons for their application being late will be tested separately to those without an exceptional reason so they can be included in the “order of merit”.

25. If the same test is used for the late tests, taken last year by 48 candidates, five or six months after the main test, we do not consider the chain of memory among children could

be sustained. Also, most boys tested after the 1 March would not displace boys already offered a place as they are instead competing for a place on the waiting list. The arrangements, however, say that the test may not be the same. This leads to the objector's concern about the waiting list which we consider later in this determination.

26. The objector refers to tutors systematically collecting what children can remember from the test after the test has been sat. We think this is perfectly acceptable if the information is used to construct questions of similar style and difficulty for other children to practise, for example, calculating simple percentages of quantities set by the tutor. However, passing on questions to children who will be taking the same test on a later date is colluding with and encouraging cheating.

27. Among the articles referred to by the objector in his second appendix was one by Professor Rebecca Allen, "What does North Yorkshire tell us about how reliable the 11+ is", Education Datalab, May 2017. This study compared the results from a group of children's performance on two 50-minute verbal reasoning tests taken one week apart. The first conclusion of this study was that even the highest quality tests will result in pupils getting slightly different results from one test to the next. It also concluded "Sometimes less academically capable students will pass the 11-plus and more academic capable students will fail. Society needs to decide how much of this misallocation it can tolerate."

28. An experienced teacher would not expect every child in their class to get exactly the same mark on a test if the same test is repeated a few days later or even to be ranked in exactly the same order. Overall, the more able children will do better than the less able, but within this any individual may be healthier on one day than the other, correctly guess an answer they did not know on one day and guess incorrectly on the other or simply record their answer inaccurately. If we accept that it is possible for a child to pass on information after the test, directly or indirectly to another child who is taking the test at a later date, then does it introduce a greater degree of variability to that already in any testing system?

29. In these arrangements children must reach the academic standard required for admission. There are 180 places available for boys reaching this standard. First priority is given to looked after and previously looked after children and then to as many as 54 applicants who are eligible for the pupil premium. The number of children offered places on these grounds cannot be known in advance. If, say, 40 children were offered places on these grounds that would leave 140 places to be offered on the basis of rank order of their test score. This does not mean that the child ranked 140 on the test is offered a place and the one ranked 141 is not. Some of the top 140 may have listed another school higher on the common application form and may be offered a place at their preferred school so children ranked below 140 will be offered places. There are therefore many unpredictable variables which decide the cut off point for admission to the school and which children find themselves above or below it.

30. The number of children taking the test after the main test is relatively small, even when inflated in recent years due to Covid. For one of these children to benefit from information about the test received from another child it must lead to them getting right a

question they would otherwise have got wrong. The more able the child, the less likely this is. For a child for whom this information pushes them above the 180th position, many other factors come into play before they would be offered a place.

31. We conclude that within the variability already in the testing system any test content remembered by a child and passed to one taking the test at a later date will have little effect and will be within the “misallocation tolerated by society” referred to by Professor Allen. We do not uphold this part of the objection.

Testing – Additional time for children with dyslexia

32. 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. Whatever the merits of the objector’s arguments, the arrangements do not say that 25 per cent additional time will be given in the test to children with dyslexia.

33. The Equality Act 2010 (EA) requires that reasonable adjustments are made for children with disabilities. The arrangements say “Parents may apply for special arrangements to be made for those children who satisfy the Governors that they have special educational needs, or who suffer from a disability. A delegated panel of Governors will take professional advice and decide what arrangements (if any) should be made to allow such a candidate not to be disadvantaged in the Test.” Dyslexia is a disability and as such reasonable adjustments must be made for children with the condition. We find that this aspect of the arrangements complies with the requirements of the EA and we do not uphold this part of the objection.

Testing – Age standardisation

34. The objector said, “There is zero peer reviewed evidence that age standardisation [sic] is required in 11+ tests.” More specifically he said, “The CEM age standardisation algorithm is not peer reviewed or evidence based” and argued that the algorithm used should be published. He was of the view that age standardisation was “a blunt average based system, which makes assumptions that age has a uniform affect on ability, by the day, so children learn linearly by the day or by the second. It ignores their individual innate ability and level of preparation as reasons for differences in ability (it also ignores IQ and genetics).” The objector suggested “Younger children can prepare more to alleviate any age disadvantage, if it even exists.”

35. The degree to which a child’s date of birth affects their achievement compared to other children in their year group has been the subject of much academic research. While genetics and nurture do play a part in determining how an individual child will perform in a test at the end of their primary education, the academic studies consistently find that the month in which a child is born matters for test scores at all ages. One example of this research is a research report published by the DfE undertaken by Alex Sutherland, Sonia Ilie and Anna Vignoles at RAND Europe and the University of Cambridge in 2015, Factors associated with achievement: key stage 2. We quote the findings in this report on the effect of age in full.

“Residual differences between the quarters of birth of children were found in the model including all proxies, both when prior attainment was included, and when it was not. The differences are larger than the ones reported in the KS4 analysis, but seem plausible given the young age of children, where each additional three months of age may be strongly related to attainment because of developmental trajectories. This finding is also consistent with the existing literature as discussed in the KS4 report. Additionally, and again in contrast to KS4 results, the outcomes of the models with and without prior attainment do not result in a reversal of the relationship of quarter of birth to KS2 attainment, suggesting that both the absolute levels of attainment and the progress made are related to quarter of birth in the same manner. This would suggest that during KS2, older pupils start at higher levels of attainment and continue to make more progress than their younger peers; while during KS4, younger pupils are the ones progressing further, and therefore reaching similar levels of attainment to older children by the end of KS4.”

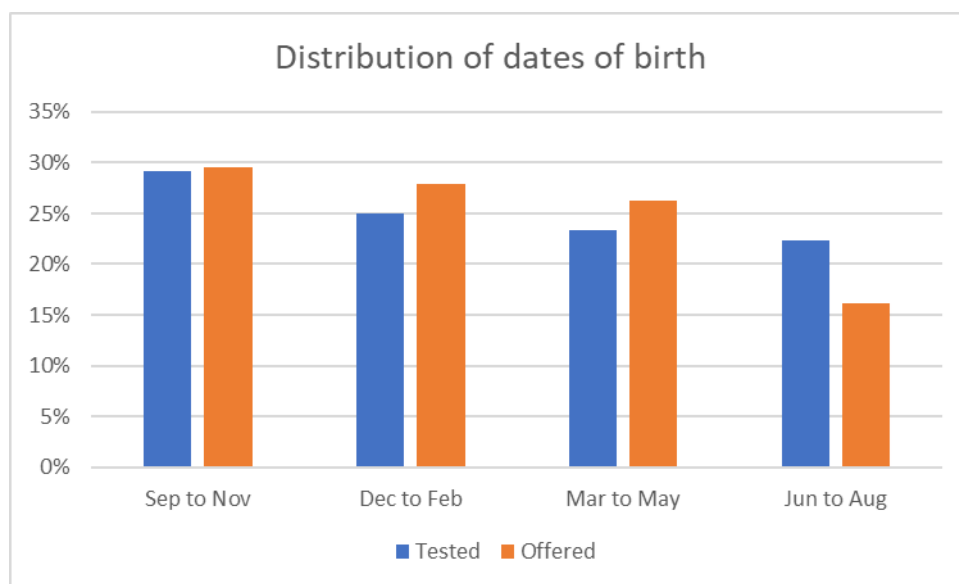
36. We are of the view that it is well established that children born in the summer months on average achieve lower marks in tests at the age of ten or 11 than children in the same year group who were born the previous autumn. Key Stage 2 tests measure what a child knows, understands and can do and the progress they have made over the previous four years; there is no question of passing or failing and so there is no need for age-standardisation. Eleven plus tests do have a pass mark which children born later in the school year are less likely to achieve than children born earlier through accident of birth. We are of the view that it would be unfair if testing at this age did not attempt to give all children an equal chance of passing the test.

37. The question which we must consider in relation to this objection is whether the way in which age standardisation is applied to applicants to this school is fair. We do not consider it necessary to examine the mathematical processing undertaken. We think that if the process was unfair this would show in the distribution of the dates of birth of children being offered places at the school. We asked the school for the dates of birth of the children taking the test for admission in 2022 and the dates of birth of those offered places.

38. The table below shows the number of children whose birthdays fell into each quarter of the school year. We have chosen to group the data into quarters because the number of birthdays in each month will be small and it is the same approach used in the research report quoted above. The following chart shows both sets of data as percentages. We have omitted the few children who were taking the test outside of the normal age group. We recognise that the quarters may differ in size by a few days but consider that any differences are negligible in the following analysis.

	Tested	Offered
September to November	403	53
December to February	346	50

	Tested	Offered
March to May	323	47
June to August	309	29
Total	1381	179



39. Underpinning our analysis of this data is a belief that children born throughout the year have an equal distribution of innate ability, and information from the Office of National Statistics (ONS) that the number of children born in each quarter is evenly distributed.

Sep to Nov	Dec to Feb	Mar to May	Jun to Aug
25%	24%	25%	26%

Source "How Popular is Your Birthday", ONS 2015

40. Initial consideration of the data shows that a smaller proportion of the intake have birthdays in the last quarter of the school year (16 per cent) than in the first three quarters (30, 28 and 26 per cent). We have considered whether this is because children taking the test are a self-selecting group. Parents of children born later in the school year may have formed the view that their children are less able than others and so fewer of them are entered for the test. The proportion of entries from each quarter does show more children born earlier in the school year being entered for the test, although the variation is not great (22 per cent to 29 per cent). The difference in the success rate (number offered places divided by the number tested) of children born in each quarter is, however, noticeable and is shown in the table below.

Sep to Nov	Dec to Feb	Mar to May	Jun to Aug
13%	14%	15%	9%

41. The figures show that, even with age standardisation, children born later in the school year are less successful in the test with fewer offered places at the school compared to those born earlier in the year.

42. We have considered whether this could be within the range of outcomes which could occur by chance. The probability of a child having a birthday in any quarter of the year is 0.25 and the number of children having a birthday in any quarter ranges from 0 to 179. This forms a binomial distribution. We have calculated the chance of 29 or fewer children with birthdays in any quarter being offered places at the school is 0.3 per cent. The probability of 53 or more children with birthdays in any quarter being offered a place is 7 per cent. Statisticians refer to levels of significance when testing hypotheses; however, for the purposes of this determination to put these probabilities in context, the chance of a coin toss producing three heads in a row is 12.5 per cent, for four heads in a row it is 6.25 per cent. We would not question the fairness of a coin which came down heads four times in a row. At five, we might start questioning the fairness of the coin, but it is not outside of everyday experience. The likelihood of 29 or fewer children born in the last quarter being offered places is similar to eight or nine consecutive heads and so unlikely to happen by chance.

43. We find that age standardisation is necessary for a selection test to be fair to children born later in the school year. We find that the proportion of children born later in the school year offered places is lower than would be expected to occur by chance. Whatever algorithm is being used we have no evidence that it gives unfair advantage to the younger applicants as suggested by the objector. We do not uphold this part of the objection

Testing – Reuse of questions from previous papers

44. The objector said that the tests used by the school did not conform with the Code because they might include questions used in previous tests which tutors may have had access to. He did not provide any evidence of a particular question being reused in the past, or that the test to be used for admission in 2023 would contain previously used questions which were known to tutors.

45. Even if questions are reused, it would not be possible to know in advance which ones. Should a child see a question which had been used before and they had seen that question at some time in the past, it would only affect their score if they could remember it and would not have been able to find the correct answer without having seen it before. We do not uphold this part of the objection.

The ranking of oversubscription criteria

46. On the objection form the objector stated, "The ranking can be unfair". He did not elaborate on this in the appendices to this objection.

47. There are three oversubscription criteria. The Code requires that looked after and previously looked after children have highest priority for places and this requirement is met. The Code in paragraph 1.41 permits priority being given to children eligible for the pupil premium which is the second criterion. We see nothing unfair in this, nor do we think it unfair for children attending local primary schools to have priority within this criterion. We do not uphold this part of the objection.

Comparison of different tests for the waiting list

48. We have noted above that the test used to assess children for a place on the waiting list may not be the same as that used for the initial allocation of places. The objector said "How is it possible to compare a CEM test result with a different test and rank children for a waiting list when CEM claim even they cannot do so with their own papers. The school admits the results of an alternative paper if used there will not be subject to age-standardisation. In which case why use age standardisation used for CEM papers? How can one compare a CEM score and a score from a different test? The school has not outlined the method and if it is peer reviewed. For an adjudicator to state the school will find a way is just not acceptable. They have to establish exactly how it is done. If the adjudicator rules different tests can be compared then (s)he must ban reuse of the same test. The school also admits its process is not fair as it states "candidates may be at a disadvantage"".

49. The requirements for waiting lists are set out in paragraph 2.15 of the Code. It requires that "Each admission authority must maintain a clear, fair, and objective waiting list until at least 31 December of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria."

50. The oversubscription criteria use the rank order of the test score within the other criteria to determine priority for places. For the children who sat the main test and find themselves on the waiting list, one with a score of say, 301, will be offered a place before a child who scored 300. Within the variability of any test, there will be very little difference in the ability of both children, and if tested on another day the positions might have been reversed, but on the day that was the result and so that is the priority order. If another child takes the same test, marked and processed in the same way, at a later date and scores 302 for the reasons set out above we think that this is comparable and so fair and reasonable. However, if they scored 302 on a different test then we do not think that would be fair as the marks are not exactly comparable even if both tests can demonstrate that the child is of the required academic standard.

51. We compare this with another way in which some selective schools operate. Selective schools may and do state that the required standard for admission is the highest, say, 20 per cent of the ability range and priority for places for children of this standard is given according to proximity of their home from the school. There are many tests which could determine whether or not a child's ability is in the top 20 per cent. The mark in the test which shows this standard would vary from test to test, but it would not matter which test was taken to prove the child met the academic threshold. What would matter in that case is that the home to school distance was measured consistently and in the same units, for example, a child living 300 metres from the school should not be given priority over one living 301 yards from the school.

52. The waiting list must be ranked using the oversubscription criteria which give priority on the basis of the score in the test. Using a different test is akin to using a different unit of measurement and so we uphold this part of the objection.

Other matters

The clarity of the arrangements

53. The arrangements state that the governing body is the admission authority. As an academy, the admission authority is the academy trust. In this case the academy trust is the Mercian Trust and the minutes provided to us show that it was a committee of this trust which determined the arrangements. The school accepted that this part of the arrangements was not clear.

54. The arrangements state that the selection test will be held between 24 and 27 September 2022. However, in another part of the arrangements, it is stated that they will be held between the first and third week in September. Providing two date ranges makes the arrangements unclear. The school said this was because at the time the arrangements were approved the dates had not been set.

55. On the first page the arrangements say that the date by which parents must register for the selection test has not yet been determined. On page 3 it gives this date as 2 July 2022. Again, this makes the arrangements unclear, particularly when in response to our enquiries on this matter we were told the date is in fact 7 July 2022.

56. These arrangements were determined on 11 November 2021, more than three months before the Code requires them to be determined and four months before they must be published by 15 March 2022. Arguably, the dates are part of the arrangements and so should be set by the admission authority when it determines the rest of the arrangements. If the trust decides to determine the arrangements before the consortium agrees the dates common to all five schools, then it must ensure that the correct dates are included with no ambiguity when the arrangements are published for the arrangements to be clear.

Feeder schools

57. Paragraph 1.9b of the Code prohibits admission authorities from taking into account any previous school attended unless it is a named feeder school. Within the oversubscription criterion for children eligible for the pupil premium the arrangements take into account attendance at primary schools “listed in Walsall Children’s Services Directory for the academic year 2022/23”. We have searched for this document on-line and the closest title which we can find is “Walsall Children and Young People’s Service Directory” in which we were unable to find any list of primary schools. We did find an “Education Directory” for the academic year 2021/22 on the local authority’s website which did list the primary schools in Walsall at that time; however, the arrangements we are considering are those for 2023.

58. The arrangements also refer to the “Information for Parents about admissions to Primary Schools” issued by Walsall Council as listing the “qualifying schools”. The arrangements say this can be found on the school’s website on the admission arrangements page. We could not find a link to this document on the school’s website. We did find a document with this title for admission in September 2022 on the local authority’s website which did list all the primary schools in Walsall. The local authority is not required to publish the composite prospectus for 2023 until 12 September 2022 and so the admission authority cannot rely on this document being available when its arrangements are published.

59. When we raised our concerns on this matter with the school, it put forward justification for the oversubscription criterion, which we are not disputing is a reasonable and permissible criterion. We find that the feeder schools are not named in the arrangements as is required by the Code. There are 86 state-funded primary schools in Walsall listed on the DfE database “Get Information About Schools” some of these are infant schools and so not relevant for secondary school admissions. Paragraph 1.9l of the Code prohibits fee-paying independent schools from being named as feeder schools. Listing the relevant schools in the arrangements would not be an onerous task but if other websites are relied upon for the naming of the feeder schools, the references should be accurate and the link to them direct.

Waiting lists

60. The section of the arrangements concerning waiting lists describes two waiting lists. The arrangements say “A waiting list will be maintained of those candidates who have been tested and placed in the order of merit but not offered a place. If, in the opinion of the Governors (whose decision shall be final), a candidate is within the ability range, an offer will be made strictly according to this order of merit should a vacancy occur. If, in the opinion of the Governors, no candidate is within the ability range, no offers will be made. This waiting list will be maintained until 31st December 2023 at which time it will cease to exist.”

61. Paragraph 2.15 of the Code says “Each admission authority **must** maintain a clear, fair, and objective waiting list until at least **31 December** of each school year of admission,

stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria. Priority **must not** be given to children based on the date their application was received, or their name was added to the list. Looked after children or previously looked after children allocated a place at the school in accordance with a Fair Access Protocol **must** take precedence over those on a waiting list.”

62. The admission authority accepted that the arrangements do not say, as they are required to, that each added child will require the list to be ranked again in line with the published oversubscription criteria. These criteria include consideration of other factors over and above the order of merit. A boy who did not meet the academic standard for the school would not be placed in order of merit and so would not be on the waiting list unless they had demonstrated this academic standard. We do not understand why the governing board could subsequently decide that a boy on the waiting list was not “within the ability range”.

63. The arrangements continue by saying “A new waiting list will be maintained from the first day of the spring term 2024. Candidates who have already taken the Test but have not been offered a place and whose score in the test was below that of the candidate last admitted to the school will NOT be eligible to go on this waiting list. If after this date the number of pupils in Year 7 falls below the published admission number, the academic attainment of all those on this secondary waiting list will be assessed, and they will be tested in English, Mathematics, and such other subjects as the Governors consider necessary at the time. An order of merit will be drawn up based on the results of those tests, and if, in the opinion of the Governors (whose decision shall be final), a candidate is within the ability range, an offer of one or more places will be made strictly according to this order of merit. If, in the opinion of the Governors, no candidate is within the ability range, no offers will be made. Priority will be given to Looked After Children and previously Looked After Children as defined at paragraph 4 a) above, then those attracting Pupil Premium, should there be a tie for a place.”

64. We asked the admission authority if it was fair that a boy who had already shown they were of the required academic standard for the school should be prohibited from joining this “new” waiting list unless their test mark matched that of the last boy admitted. The admission authority did not accept that this was unfair but offered no justification for their view.

65. The arrangements do not say whether boys on the waiting list on 31 December automatically transfer to the “new” waiting list started on the first day of the spring term. If they do so, then how new applicants who are tested on a different basis would be ranked alongside them would need to conform with paragraph 2.29 of the Code which says, “Where an admission authority is dealing with multiple in-year admissions and do not have sufficient places for every child who has applied for one, they **must** allocate places on the basis of the oversubscription criteria in their determined admission arrangements only. If a waiting list is maintained, it **must** be maintained in line with paragraph 2.15.” That is in the order of the oversubscription criteria. We find that the “new” waiting list does not conform with the requirements of paragraphs 2.15 and so will not conform with paragraph 2.29 of the Code.

In-year admissions

66. Paragraph 2.30 of the Code and footnote 62 explain that within 15 days of an in-year application a grammar school must notify a parent in writing of either the date for the assessment of ability or the reason for refusal where the admission authority chooses not to assess the child's ability because admitting an additional child would prejudice the provision of efficient education or efficient use of resources.

67. The section of the arrangements "Admission to Years 8 to 11" states that "Only those candidates who have NOT taken the Test for entry to Year 7 may apply for a place in Years 8 to 11. Candidates who have already taken the Test but have not been offered a place are not eligible for admission until the Sixth Form or to be placed on a waiting list." Paragraph 2.23 of the Code states that "A parent can apply for a place for their child at any school, at any time." Paragraph 14 of the Code requires that admission arrangements are fair. The admission authority considered that it was fair that a child who reached the qualifying standard for admission in Year 7 but was not ranked highly enough by the oversubscription criteria to be offered a place, should not be allowed to apply for a place in a following year but offered no justification for this view. This practice does not conform with paragraphs 2.23 or 2.30 of the Code.

68. The only grounds on which a grammar school may refuse to admit a child is if to do so would prejudice the efficient provision of education or the efficient use of resources, or if the child is not of the required ability. The arrangements say that for admission to Years 10 and 11, the governors must be satisfied that the course of study followed previously is compatible with the courses offered by the school. Paragraph 2.28c of the Code says that admission authorities must not refuse to admit a child because they have followed a different curriculum at their previous school. The admission authority accepted this point.

Admission to the sixth form

69. Regulation 8(1)(k) of the Education (Pupil Registration) (England) Regulations 2006 says that the name of a pupil who ceases to be of compulsory school age cannot be deleted from the admissions register unless he/she has indicated an intention to leave, or he/she has not met the required academic entry requirements. Therefore, if a student wants to continue into the sixth form at their current school and they meet the academic requirements, there is no admission process for them; they continue to be on roll.

70. Paragraph 1.2 of the Code requires admission authorities to set a PAN for each relevant age group. The arrangements include a PAN for Year 12 of 250. This means that as well as all Year 11 students who meet the academic requirements, the admission authority cannot refuse places to external applicants (who meet the academic requirements) until 250 external applicants who meet the academic requirements have been offered places.

71. It may be the case that it is intended to admit up to 250 external students in addition to those continuing from Year 11, but if not, then the arrangements must be clear on how many external students it will admit up to. When this matter was raised with the admission

authority, it said that it intended to “admit up to 100 external students to Year 12 as part of the Published Admissions Number of 250”. If that is the intention, then the admission authority would have to set a PAN of 100 for external applicants. There is no PAN for existing students, they are transferring from Year 11 to Year 12, they have already been admitted to the school.

72. There must also be oversubscription criteria for the admission of external students to Year 12 to meet the requirements of paragraph 1.6 of the Code. The arrangements did not appear to include any such criteria. The admission authority considered that the section in the arrangements under the heading “Waiting lists” met this requirement. This says “Applicants for admission to Year 12 who meet the academic requirements for admission but who, in accordance with the admissions criteria, cannot be offered places, will be placed on a waiting list. If the number of pupils studying particular subjects falls below the maximum capacity in the available sets, then those on the waiting list wanting to study those particular subjects will be offered places in order of merit derived from their average GCSE point scores. Where there is a tie for a place, Looked After Children and previously looked after children will be given preference.”

73. This paragraph refers to “admissions criteria” but does not list them. Paragraph 1.7 of the Code applies to admission to Year 12 as much as it does to Year 7. Looked after children and previously looked after children who meet the academic entry requirements must be given highest priority for a place. After that other oversubscription criteria may be used, which could include the order of average GCSE point scores, and a tie-breaker is required if two applicants were equally ranked. The arrangements for admission to Year 12 do not meet these requirements. The requirements of paragraph 2.15 concerning waiting lists are set out earlier in this determination. These also apply to admission to Year 12 and are not met.

74. We have considered carefully the date by which the admission authority must revise the arrangements. The deadline for registering for the test has now passed and the testing process is underway. The closing date for applications for secondary schools for admission in September 2023 is 31 October 2022. We do not consider that it would be right to require the school to make changes in time for the main admissions round for 2023. We have decided to set a date of 28 February 2023 as the deadline for the arrangements to be revised.

Summary of Findings

75. For the reasons set out above, we uphold one part of this objection. That is, the part concerning the use of a different test to rank children on the waiting list if their applications for a place in Year 7 are late.

76. We also find that the arrangements do not conform with the Code in relation to the clarity of the arrangements, the naming of feeder schools, waiting lists, in-year admissions and admission to the sixth form.

Determination

77. In accordance with section 88H(4) of the School Standards and Framework Act 1998, we partially uphold the objection to the admission arrangements for September 2023 determined by The Mercian Trust for Queen Mary's Grammar School, Walsall.

78. 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.

79. 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 this determination or an alternative date specified by the adjudicators. In this case we require the arrangements to be revised by 28 February 2023.

Dated: 20 September 2022

Signed:

Schools Adjudicators: Phil Whiffing

Jane Kilgannon