



Office of
the Schools
Adjudicator

Determination

Case reference:	ADA3929
Objector:	A member of the public
Admission authority:	Pate's Grammar School for Pate's Grammar School, Gloucestershire
Date of decision:	21 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 Pate's Grammar School for Pate's Grammar 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 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 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 Pate's Grammar School (the school) for September 2023, a selective academy for children aged 11 to 18. The objection is to the way the school tests applicants, to the priority given to children eligible for the pupil premium and the tie-break in the arrangements.

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 Pate's Grammar School (the admission authority).

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 the admission arrangements of other grammar 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 admission authority 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 behalf of the admission authority on that basis. The objector submitted his objection to these determined arrangements on 4 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. correspondence confirming that the governing board determined the arrangements by email before 28 February 2022 and the ratification of this decision by the governing board on 16 March 2022;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 4 May 2022 and supporting documents;
- d. the response to the objection from the admission authority and supporting information;
- e. comments from the admission authority on the matters we raised under section 88I of the Act; and
- f. comments from the local authority on the matters raised in the objection and 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 old questions from previous papers (as they fall in to [sic] 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. The third part of the objection was that the arrangements did not include “an adequate tie-breaker”. Paragraph 1.8 of the Code requires that “Admission arrangements **must** include an effective, clear, and fair tie-breaker to decide between two applications that cannot otherwise be separated.”

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. The arrangements also appeared not to conform with the requirements for in-year admissions set out in paragraphs 2.23 to 2.31 of the Code.

Background

12. The school is situated in Cheltenham, Gloucestershire. It uses the same selection test as the other six grammar schools in Gloucestershire. The published admission number (PAN) for 2023 is 150. The arrangements say that the “Qualifying Group” will be the highest ranking 250 pupils in the test. However, looked after or previously looked after children and children eligible for the pupil premium, who are within the top 500 children in the test are

also included in the qualifying group for admission. Priority within the qualifying group is given 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.

13. The selection test used by the school is provided by the Centre for Evaluation and Monitoring (CEM).

Consideration of the Objection

14. 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.

15. 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

16. 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.

17. The arrangements use the terms “Main Test”, “Medical Test”, “Late Test” and “Appeals Test”. The main test is sat on the same day in September at all grammar schools in Gloucestershire. The arrangements say that the medical test is for children who were registered for the main test but are prevented from taking it because of “illness, accident, or sudden bereavement” or “other exceptional circumstances that mean a child cannot take

the test on the appointed day.” This test is taken a few days after the main test and evidence is required concerning the child’s circumstances before they can take this test. The late test is sat in February and is described in the arrangements as being for “those who failed to register for the Main Test and have decided through the LA’s waiting list option process to seek a place at Pate’s.” The appeals test is described in the arrangements as “for anyone wishing to qualify for a place on the Y7 waiting list”. The arrangements say this test will be available in April.

18. We consider that if there was no provision for children who cannot be tested on the appointed day because of exceptional circumstances, the arrangements would not be fair and so the arrangements would not conform with paragraph 14 of the Code. We also consider that it would also be unfair if the arrangements did not make provision for children whose applications were, for good reason, late to have the opportunity to have their ability assessed. Religious observance may also prevent children from taking a test on a particular day. In such cases not making a test available on a different day would contravene the requirements of the Equality Act 2010 (the EA).

19. 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 documents 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. One of his suggestions was that children should all be given the opportunity to sit the test on two occasions with the highest mark being the one used to decide which of the children should be admitted. It is not for us to consider alternative approaches, our role is limited to the arrangements as they stand.

20. Nowhere do the arrangements say that the same test is used for the main, medical, late and appeals tests. However, in response to our enquiries the admission authority confirmed this to be the case. Neither the admission authority nor the local authority commented on this part of the objection.

21. Before considering this part of the objection, we have looked at the test familiarisation material published on the school’s website. This material says it 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.

22. 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.

23. If a child 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 medical test to give them any advantage when all the necessary information to answer the questions is provided in the test. 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 medical 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. For the late test and the appeals test which are taken months after the main test, we do not consider the chain of memory among children could be sustained.

24. 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 the area of a flower bed designed 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.

25. 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.”

26. 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?

27. In these arrangements (other than for looked after and previously looked children and children eligible for the pupil premium), to reach the academic standard required for

admission, a child must be ranked in the top 250 children taking the test. However, even being ranked in the top 250 does not mean that a place is guaranteed. There are only 150 places available. Even if there were no looked after or previously looked after children who were offered places, this does not mean that the child ranked 150 on the test is offered a place and the one ranked 151 is not. Some of the top 150 may have listed another school higher on the common application form and may be offered a place at the preferred school so children ranked below 150 will be offered places. There are many unpredictable variables which decide the cut off point for admission to the school and which children find themselves above or below it.

28. The number of children taking the test after the main test is relatively small. For admission in 2022, the number taking the main test was 1907, whereas 11 took the medical test shortly afterwards. 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 250th position, many other factors come into play before they would be offered a place.

29. Four or five months later, 70 children took the late test.. These children are competing for a place on the waiting list after places have already been allocated to the on-time applicants. Even if they have been told about some of the questions on the paper and use this to score higher than they might otherwise have done, they would only be offered a place if another child turned down the place already offered.

30. The appeals test is initially described in the arrangements as “for anyone wishing to qualify for a place on the Y7 waiting list”. Later in the arrangements it is described as being for children who do not have a test rank who are appealing to the independent panel against not being offered a place at the school. This aspect of the arrangements is not clear. Just one child took this test last year. If a child is offered a place through the independent appeal process, it would be in addition to the children already offered a place. The successful child would not be taking the place of another child and the panel would have made a decision taking into account any prejudice to the children in the school.

31. We concluded 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. We noted that the arrangements do not, in fact, say that children with dyslexia get 25 per cent extra time. They say that the school will consider requests “for reasonable adjustments from the parents of any disabled child”.

33. The EA requires that reasonable adjustments are made for children with disabilities. The arrangements say that parents should notify the school when they register for the test if additional support is required. The arrangements also say that the Admissions Review Group, a sub-committee of the governing board will consider the specific needs of individuals if adjustments are requested to test arrangements. 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 is of the view that age standardisation is “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 has 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 children will perform in a test at the end of their primary education, the academic studies emphatically find that the month in which a child is born matters for test scores at all ages. One example of this research is a report published by the Department for Education (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.

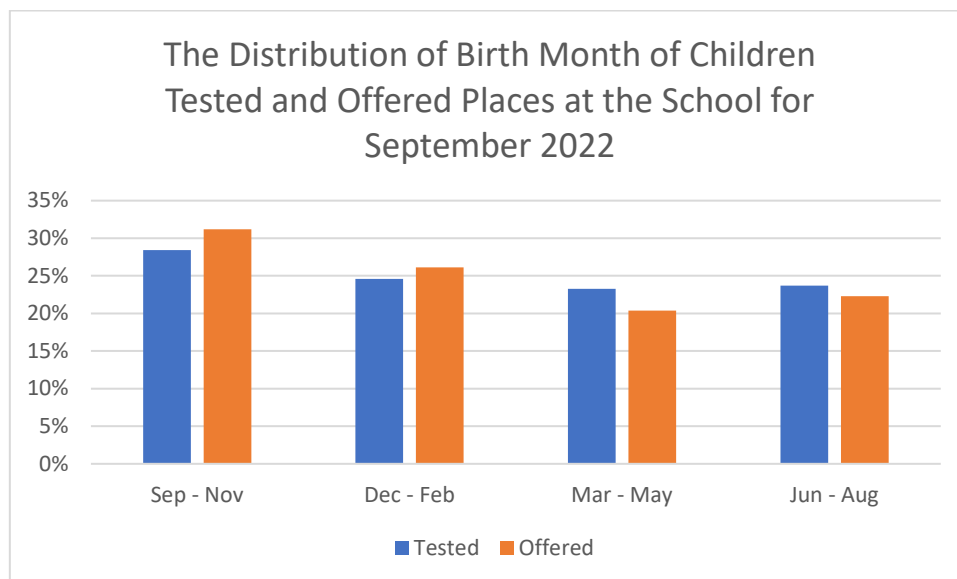
“Residual differences between the quarters of birth of children were found in the model including all proxies, both when prior attainment was included, and when it was not. The differences are larger than the ones reported in the KS4 analysis, but seem plausible given the young age of children, where 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. Mandatory Key Stage 2 tests (“SATs”) 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 simply through accident of birth. We are of the view that it would be unfair if testing of this type at this age did not attempt to give all children an equal chance of passing.

37. The question which we must consider in relation to this objection is whether the age standardisation 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 up 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	542	49
December to February	469	41
March to May	444	32
June to August	452	35
Total	1907	157



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 two quarters of the school year (20 per cent and 22 per cent) than in the first two quarters (31 per cent 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. However, the proportion of entries from each quarter is more evenly distributed ranging between 23 per cent and 28 per cent. The success rate (number offered places divided by the number tested) of children born in each quarter is shown in the table below.

Sep to Nov	Dec to Feb	Mar to May	Jun to Aug
9.0%	8.7%	7.2%	7.7%

41. The figures set out in this way suggest that children born later in the year, even with age standardisation, continue to be less successful in obtaining places at the school than those born earlier. However, 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. The number of children having a birthday in any quarter ranges from 0 to 157. This forms a binomial distribution. We have calculated the chance of 32 or fewer children with birthdays in any quarter being offered places at the school is 10.5 per cent. The probability of 49 or

more children with birthdays in any quarter being offered a place is 4.7 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 and for five in row it is 3.125 per cent. We would not question the fairness of a coin which came down heads three or four times in a row. At five, we might start questioning the fairness of the coin, but it is not outside of everyday experience.

42. We note that, even with the age standardisation applied to the test scores, it appears that fewer children born later in the school year are offered places than those born earlier. However, the numbers of children with birthdays in each quarter fall within ranges which could be expected to occur by chance. More sophisticated statistical analysis on data from more schools across several years would be possible but is outside the scope of this determination and would be more appropriate for an academic study.

43. We find that age standardisation is necessary for a selection test to be fair to children born later in the school year. The standardisation algorithm used in 2022 led to the birthdays of children offered places being distributed in a pattern which could have arisen by chance. There is no evidence that the standardisation process gives unfair advantage to children born later in the year and so 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. The objector 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. We have set out above our views on tutors collecting questions from previous tests to pass on to candidates in future years. Whatever the rights and wrongs of the practice, tutors cannot know in advance if one of the questions they have collected previously will be used in the test for admission in 2023. If luck leads to a child being set a question in the test which they have seen before, this will only make a difference to a child's mark if they could only get the question right having practiced the exact same question rather than many similar ones. Any effect from this would be in the range of variation in test outcomes described above. We do not uphold this part of the objection.

Pupil premium

46. The appendices provided by the objector did not include any further argument on the priority the school gives to children eligible for the pupil premium beyond his statement on the objection from, "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.”

47. The arrangements say that any child eligible for the pupil premium, and any looked after or previously looked after child, who is in the highest ranking 500 children in the selection test is deemed to have reached the qualifying standard for the school. These children have priority over other children for places at the school. For admission in September 2022, 16 children meeting this criterion were offered places. This is below the arbitrary 25 per cent which the objector considers should be the limit.

48. 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.

Tie-breaker

49. The objector stated that there was not an adequate tie-breaker, giving the example of twins living at the same address getting equal scores in the test.

50. Neither the admission authority nor the local authority commented on this part of the objection. Under the heading “Tie Breaks”, the arrangements say, “If two or more children achieve the same total score (i.e. have the same Test ranking) their respective positions in the rank order, whether for entry in to Year 7 or in any subsequent year, will be determined by closeness to school (measured in a straight line from the front door of the child’s address at registration, to the front entrance of Pate’s). Any issues arising from the testing process or application of tie-break criteria will be considered and resolved by the ARG.” The ARG is the Admissions Review Group , a sub-committee of the governing board.

51. Paragraph 1.8 of the Code requires that there is a tie-breaker to “decide between two applications that cannot otherwise be separated.” While the arrangements say the ARG will resolve issues arising from the application of the tie-breaker, they do not say how it will do so. We uphold this part of the objection.

Other Matters

52. 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.

53. Paragraph 1.17 of the Code requires that the process for selection is published in admission arrangements. The arrangements state that the selection test will be held in September and that there is a deadline for registering for the test. No specific dates are included in the arrangements although parents are referred to the school’s website (without a direct link). In its response to us on this matter, the admission authority considered that having details on other documents on its website met requirements.

54. 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 from the arrangements alone and not to need to look at the school's website to find out. 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.

55. 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.

56. The final dates may not have been confirmed when the arrangements were determined on 1 December 2021. 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 were published. We find that the arrangements are not clear in this respect.

57. The arrangements say, "The 400 children applying who live nearest to the School will take the Main Test at Pate's" and that children living further from the school will be tested at other grammar schools "more local to them" if they live in Gloucestershire. It seems to us to be possible that there may be more than 400 children for whom Pate's is the closest grammar school. It is not clear where these children would be tested. Nor is it clear where children from outside of Gloucestershire would be tested.

58. The school responded on this point by saying that the 400 is a minimum and there was no "cap set on the number of children sitting the test at Pate's." The school agreed there could be more clarity around testing arrangements for those living outside of Gloucestershire, saying it would include this detail in future.

59. The section of the arrangements concerning the "Late Test" limits the late test to those who failed to register for the main test and have decided through the local authority's waiting list process to seek a place at the school. It also says that applicants must apply to the local authority before an unspecified deadline.

60. When we raised our concerns about the fairness and clarity of this part of the arrangements the school said, "Late test criteria are set by the Gloucester grammar schools consortium and all grammar schools abide by these." The consortium is not the admission authority. The admission authority is the academy trust and while it may co-ordinate with other schools in the consortium, the admission authority is responsible for ensuring its

arrangements conform with the Code. We find the limits on who can have a late test is unfair to children from families who may move into the area served by the school after the registration deadline for the main test but in time to apply for schools by 31 October. The unspecified deadline also makes this part of the arrangements unclear and so not conform with paragraph 14 of the Code.

61. The arrangements say that “parents must make their application to GCC for a secondary school place”. This is not the case, as children who do not live in Gloucestershire must apply through their own local authority. The school agreed that this part of the arrangements was not clear.

62. The second oversubscription criterion refers to “Pupil Premium Children” and that these are defined on page 9. This definition refers to “Children attracting Pupil Premium”. We think that this is not clear as the accurate term is “children eligible for the pupil premium”. The school agreed to use the correct form of words in future.

63. On page 5 the arrangements say that the school requires “independent and verifiable evidence of Pupil Premium entitlement” which “needs to be sent to the testing school prior to sitting the test.” On page 9 of the arrangements there is a note, “Children attracting Pupil Premium are those who have been registered for free school meals at any point in the six years prior to the closing date for registration for the Test. The School will require independent and verifiable evidence of Pupil Premium entitlement in the requisite period from a reliable source such as a local authority. The school will make such enquiries as are necessary of Gloucestershire County Council (GCC), or the relevant Local Authority, as to the entitlement of any children who have qualified when notifying GCC of the Test results.”

64. There are two ways in which we considered this may not be clear. Eligibility for pupil premium is wider than the definition in the arrangements. It also includes pupils who have been adopted from care or have left care and children who are looked after by a local authority, although such children have higher priority under the first oversubscription criterion. Then there is the contradiction between asking for evidence of entitlement before testing and the school making enquires of the local authority about the entitlement of any children who have qualified. We also asked why it was necessary to ask for evidence of eligibility before the test was sat.

65. The school told us that it needed to have proof of eligibility for pupil premium before the test was taken so it could rank children correctly. Reflecting on this response, we think that it is not necessary to know about a child’s eligibility for pupil premium unless they are in the top 500 in the test; however, we accept that administratively it may be simpler to collect information when children are registering for the test rather than later. It is not clear from the arrangements what constitutes “independent and verifiable evidence of Pupil Premium entitlement”. The DfE advice document “Using the pupil premium, service premium or early years pupil premium in admission arrangements” dated December 2014 says, “If schools need to ask parents for evidence of their eligibility for the relevant pupil premium their admission arrangements must include what they require.” The same advice document

suggests a tick box on either the common application form or a school's supplementary information form and using the local authority's access to the DfE free school meal eligibility checking service to verify eligibility. With just 16 pupils being admitted under this criterion in 2022, the checking would not be an onerous task. We find that how eligibility for pupil premium is verified is not clear in the arrangements.

66. Paragraph 14 of the Code requires that arrangements are clear and objective. The arrangements say, "Any issues arising from the testing process or application of tie-break criteria will be considered by the ARG." We considered that it may not be clear what issues this statement covers or how the ARG will ensure that those issues will be addressed objectively.

67. The school told us that "The ARG is the governors' committee with delegated responsibility for Admissions. They deal with any/all issues [emphasis in the original] concerning admissions, whatever may arise. This is intentionally non-specific and, we hope, approachable and reassuring."

68. While recognising the sentiment in this statement, the Code requires in paragraph 14 that admission arrangements are clear and objective so that parents can understand easily how places will be allocated. Admission arrangements meeting those requirements will be reassuring for parents in themselves. Admission arrangements meeting all the requirements of the Code will leave no scope for issues to arise needing the attention of a committee. Decisions will be taken on an objective published basis as set out in the arrangements.

69. Paragraphs 2.23 to 2.31 of the Code set out the requirements for in-year admissions. The process involving a "Register of Interest" set out in paragraph 6.4 of the arrangements says "If a child has achieved the Qualifying Standard and his or her parents wish them to be considered for admission in later years up to and including Year 10 they must notify the School in writing on or before 30 April 2024 that they wish to be noted in the Register of Interest. There will be no rank order in the Register of Interest."

70. A parent can apply for a place for their child at any school at any time, including in Year 11. The only ground for refusing a place is that to admit a child, who meets the academic standard for a grammar school, would prejudice the efficient provision of education or use of resources. Any waiting list maintained, which is what we take the register of interest to be, must be ranked in the same way as the oversubscription criteria for the school. Grammar schools must notify a parent within 15 days of an in-year application of either the date for the assessment of ability or the reason for refusal.

71. The school considered that it did comply with the requirements for in-year admissions but acknowledged the process should be made clearer. We find that if the school is acting in accordance with the requirements set out in the Code, then the arrangements do not say so. These requirements were introduced in September 2021 and the arrangements must be revised to conform with them.

Summary of Findings

72. For the reasons set out above we do not uphold the parts of the objection concerning the reuse of tests, additional time for children with dyslexia and reuse of questions. We also do not uphold the parts of the objection concerning pupil premium. We do uphold the part of the objection concerning the tie-breaker.

73. We have also found that the arrangements do not conform with the Code in the other ways detailed above.

Determination

74. 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 Pate's Grammar School for Pate's Grammar School, Gloucestershire.

75. 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.

76. 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 determination.

Dated: 21 September 2022

Signed:

Schools Adjudicators: Phil Whiffing

Jane Kilgannon