Office of the Schools Adjudicator

Determination

Case reference:	**ADA3927**
Objector:	**A member of the public**
Admission authority:	**The governing board for Langley Grammar School, Slough**
Date of decision:	**21 September 2022**

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, we do not uphold the objection to the admission arrangements for September 2023 determined by the governing board for Langley Grammar School, Slough.

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 for September 2023 (the arrangements) for Langley Grammar School (the school), a selective co-educational academy school for pupils aged 11 to 18. The objection is to:

   a. the re-use of the same tests for late sitters of the selection tests;

   b. additional time being allowed during selection tests for children with dyslexia;

   c. the use of age standardisation in selection tests;

d. the re-use of old questions in a new selection test;

e. the residence requirements employed in the arrangements;

f. the use of a catchment area in the arrangements; and

g. the tie-break provision in the arrangements.

2. The local authority for the area in which the school is located is Slough Borough Council. The parties to the case are the objector, the governing board for the school (the admission authority) and the local 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 were appointed as joint adjudicators for these objections as permitted by the Education (References to the Adjudicator) Regulations 1999. Jane Kilgannon 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 schools in previous years about the same and similar matters. Those objections were determined by other adjudicators and do not form binding precedents. Therefore, the matters raised in this objection have been considered afresh.

5. The terms of the academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing board of the academy trust, which is the admission authority for the school, on that basis.

6. 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.

7. We are satisfied that the following elements of the objection are within our jurisdiction:

a. Additional time being allowed during selection tests for children with dyslexia;

b. The re-use of old questions in a new selection test; and

c. The tie-break provision in the arrangements.

8. The remaining aspects of the objection are not within our jurisdiction because they are matters upon which another adjudicator has made a decision on the same or substantially the same issue in relation to the school's admission arrangements within the two years prior to the submission of the objection (Determination ADA3677, published on

13 October 2020). Such matters are prohibited from re-consideration within that timeframe by regulation 22 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012.

9. We have also used our power under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

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

a. a copy of the minutes of the meeting of the governing board (held on 15 February 2022) at which the arrangements were determined;

b. a copy of the determined arrangements;

c. the objector's form of objection dated 5 May 2022, supporting documentation and subsequent correspondence;

d. Determination ADA3677 published on 13 October 2020;

e. the admission authority's response to the objection and the matters raised by us under section 88I of the Act;

f. the school's website; and

g. the local authority's response to the objection and the matters raised by us under section 88I of the Act.

The Objection

12. There are three aspects to this objection which are within our jurisdiction.

13. First, the objector is concerned about additional time being allowed in selection tests for those children with dyslexia. The objector quoted paragraph 1.31 of the Code which states "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 objector explained that he considers that this aspect of the Code is "violated by […] Arbitrary 25% extra time for those labelled with the new "badge of honour", called dyslexia".

14. Second, the objector considers that paragraph 1.31 of the Code is also "violated by […] Re-use of old questions in a new test as these end up in the hands of tutors".

15. Third, the objector considers that the arrangements lack an adequate tiebreaker. The objector quoted paragraph 1.8 of the Code which states “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 need”. The objector thinks that the school should use random allocation as a tie-break, where other criteria have not discerned between two applicants.

Other Matters

16. Paragraph 14 of the Code requires, “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 or objective. We considered that one aspect was possibly unfair. The arrangements also appeared not to conform with the requirements for publication in respect of both the process of selection (as set out at paragraph 1.17 of the Code) and the provisions relating to the admission of children outside of their normal age group (as set out in paragraph 2.18 of the Code).

Background

17. The school is situated in Langley, Berkshire and has a Published Admission Number (PAN) of 180 for September 2023.

18. The school is designated as a selective grammar school and the arrangements indicate that only pupils who attain a standardised score of 111 or above in the “11+ entrance examination set and administered by the Slough Consortium of Grammar Schools” will be eligible to be considered for admission to the school.

19. In the event of oversubscription, priority for places at the school is determined by application of the following criteria (in summary):

i. Eligible applicants who are looked after, or previously looked after, children;

ii. Eligible applicants with a permanent home address within Priority Area 1, prioritising applicants who attract the Pupil Premium and then in rank order of performance in the entrance examination (up to 100 places);

iii. Eligible applicants with a permanent home address within Priority Area 2 and who attract the Pupil Premium;

iv. Eligible applicants who are children of permanent members of school staff;

v. Eligible applicants with a permanent home address within Priority Area 2, in rank order of performance in the entrance examination;

vi. Eligible applicants who live within the school's Priority Area 3 in rank order of performance in entrance examination; and

vii. Eligible applicants who live outside the Priority Admission Areas, in rank order of performance in the entrance examination.

Consideration of Case

20. In addition to the objection form the objector sent in two appendices. The first was 17 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.

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

Testing – Additional time for children with dyslexia

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

23. The admission authority responded that it "regards it as a matter of fundamental equality and inclusion that pupils who have recognised special educational needs are afforded the same access arrangements for the 11+ examination as they would be entitled to in their normal school experience". It went on to explain that "The Slough Consortium's guide to the 11+ examination states that extra time (up to 25% for each paper) or other

specific access arrangements may be available for pupils with special educational needs" and that any such needs must be evidenced in advance.

24. Nowhere do the arrangements specifically say that children with dyslexia will receive 25 per cent additional time. The admission authority has made clear, by reference to the Slough Consortium's guide to the 11+ examination, that additional time – up to 25 per cent – may be available for pupils who require it by reference to an evidenced special educational need. The Equality Act 2010 (EA) requires that reasonable adjustments are made for children with disabilities. Dyslexia is a disability and, as such, reasonable adjustments must be made for children with the condition. The arrangements comply with the requirements of the EA and the Code in this respect. We do not uphold this part of the objection.

Testing – Reuse of questions from previous papers

25. The objector quoted paragraph 1.31 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 objector said that the tests used by the school did not conform with the Code because they might include questions from previous years' tests.

26. The objector did not provide any evidence of a particular question being re-used in the past, or that the test to be used for admission in 2023 would contain previously used questions which were known to tutors. We also note that nowhere do the arrangements say that test questions are re-used in subsequent tests. However, the admission authority did not question this assertion in the objection. Indeed, the admission authority explained that "the use of old questions on new papers has been standard practice in the setting of the 11+ examination for many years and there is no evidence to suggest that this provides any pupils with advantage".

27. In these arrangements, to reach the academic standard required for admission, a child must achieve a standardised score of 111 or above. However, achieving such a score does not mean that a place is guaranteed. There are only 180 places available. Furthermore, places are prioritised based on whether a child is looked after or previously looked after, then according to Priority Areas, and within those whether a child attracts the Pupil Premium. Some of the applicants that fall within those categories may have listed another school higher on the common application form and may be offered a place at the preferred school rather than this school. 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 extent to which test questions are re-used from one year to another, and the unpredictability of knowing which of those questions will be re-used, means that even if some children have been provided access to previously used questions by their tutors, the number of those children who will be able to accurately recall those questions is likely to be small. If luck leads to a child being set a question in the test which has been used before

and which they have previously been shown by a tutor in some other arena, 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. The more able the child, the less likely this is. In the case of a child for whom this information pushes them into a standardised score of 111 or above, many other factors come into play, including the application of the oversubscription criteria, in determining whether that particular child would be offered a place at the school. 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.

Adequacy of tie-break provision

29. The objector considers that the arrangements lack an adequate tie-breaker. The objector quoted paragraph 1.8 of the Code which states "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 need". The objector drew attention to section 8 of the arrangements which says "If applicants still remain tied [on home to school distance], the Governors will exercise their discretion to admit above the Planned Admission Number." The objector thinks that the school should not admit above its PAN in such circumstances, but instead should use random allocation to break the tie.

30. The admission authority responded that the tie-break is "seldom, if ever, used". It explained that "the only circumstances where it is envisaged this would be necessary are where the two eligible applicants are resident in the same household, e.g. in the case of twins or step-siblings, or where the distance to the addresses is genuinely equal, as in the case of a block of flats. In such unusual cases, the Admission Authority regards assigning the 'last' place on the basis of random selection as unjust and admitting above PAN to be the morally right decision".

31. We consider the approach outlined by the admission authority to be reasonable, clear, objective and procedurally fair. Clarity requires that a tie-break arrangement be in place. However, the Code does not prescribe what the tie-break arrangement must be. Although paragraphs 1.34 and 1.35 make provision for how random allocation should be used if it is employed in admission arrangements, that is neither a requirement that the practice be used nor an endorsement of its use. The tie-break arrangement in question provides that where even distance cannot discern between applicants, the school will admit the tied applicants even if this means going above its PAN. The admission authority is entitled to take such an approach and – given the likely situations in which such a scenario would arise (those living in the same household or building) – it appears to us to be a reasonable approach that does not unfairly disadvantage any particular individual or group of individuals that might apply for a place at the school. We therefore do not uphold this part of the objection.

Other Matters

Where the arrangements may not be clear

32. Paragraph 14 of the Code requires that "admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are […] clear […]. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated".

33. We noted that the copy of the arrangements provided to us was marked "Draft for Approval", potentially creating confusion and a lack of clarity as to the status of the arrangements. The admission authority explained that this was a mistake in the version of the arrangements provided, and that the correct version was that displayed on the school's website. We have checked the version of the arrangements that is displayed on the school's website and note that it does not include the words "Draft for Approval". No further action is required on this matter.

34. Paragraph 1.17 requires that the process of selection is published in the arrangements. Although the arrangements refer to an "11+ examination set and administered by the Slough Consortium of Grammar Schools", we were concerned that there was no detail provided as to the process of registering for and sitting the test. The admission authority explained that full details of the test and the process of registration are published annually as a document entitled 'A Guide to the Slough 11+ test'. It also explained that the document and relevant details may not be ready at the point at which the arrangements for a given year of entry are published. We note that the arrangements were determined on 13 February 2022 and we remind the admission authority that the deadline for publication of the arrangements on the school's website was 15 March 2022. Therefore, even if the relevant details were not available as at the date when the arrangements were determined (13 February 2022), they were required to be available and included in the arrangements by its deadline for publication - only one month later, on 15 March 2022. We are not persuaded that the admission authority has presented a good reason why it did not conform with the requirement to publish the details of the process for selection in the arrangements. We find that the arrangements do not conform to the requirements of paragraphs 14 (in relation to clarity) and 1.17 of the Code to include the process of selection, and they must be revised.

35. In the second paragraph of section 11 of the arrangements it is stated that, "Applicants who have previously sat the Consortium 11+ examination for entry into Year 7, but who did not achieve a standardised score of at least 111, may not be considered for in-year entry in Year 7." We were concerned that the use of the word "may" could make this part of the arrangements unclear and, without saying when such applicants would or would not be considered, not objective. The admission authority accepted this concern and indicated that it would be willing to revise the wording to ensure clarity and objectivity. We require the relevant revision to the arrangements and are grateful to the admission authority for its indication that it is content to make the necessary revision.

36. In note e) on page 5 of the arrangements, the word “may” is used again. We had similar concerns about the use of the word “may” in this context as those set out above in relation to in-year admissions. The admission authority accepted that its use of the word “may” meant that it was “unclear whether the Governors would or would not take action in the case of a fraudulent admission application”. It indicated that it was willing to revise this aspect of the arrangements in order to make the position “more objective” and therefore clearer in terms of when the governors would, or would not, take action . We find that the current provision is not objective, is unclear, and we require it to be revised. We are grateful to the admission authority for its indication that it is content to make the revision.

Residency requirements

37. While we could not consider residence requirements under section 88H of the Act, we are able to consider them under section 88I of the Act. We decided to do so and considered whether the provision met the requirement at paragraph 14 of the Code for fairness.

38. In note d) on page 5 of the arrangements it is stated that, “Applicants for entry to Year 7 in September 2023 must be resident at that address on the closing date for the Common Application Form on 31st October 2022 and have been continuously resident at the same address since 1st May 2022, i.e. six months prior to the Common Application Form closing date.” We were concerned that this provision may not be fair to certain applicants. For example, those who may have no control over the date on which they move house.

39. The admission authority explained that it considered its residency requirements to be a “reasonable attempt to ensure that the school intake is from a genuinely stable local community” and that it considered it “reasonable for the school to take steps to prevent parents from making temporary moves for the sole purpose of securing an unfair advantage in the application process when the intention is that the family will move back to their permanent address once a place is secured”. However, the admission authority accepted that the arrangements “do not clearly state what happens in the case of applicants who move into the area for genuine reasons after the 1st May date”. It stated that it was willing to address this issue.

40. We acknowledge that it is reasonable for the admission authority to take action to include provisions in its arrangements to ensure that its intake is from “a genuinely stable local community”. However, we find that the arrangements currently do not provide sufficient flexibility of approach in relation to those applicants who move into the area within the six months prior to the Common Application Form closing date for reasons unrelated to obtaining a place at the school. For this reason, we find that this aspect of the arrangements does not conform with the requirement of fairness set out at paragraph 14 of the Code. As such, we require the arrangements to be revised and we are grateful for the admission authority’s indication that it is content to make the necessary revision.

Admission outside of normal age group

41. Paragraph 2.18 of the Code requires that admission authorities must make it clear in their arrangements the process for requesting admission outside of the normal age group. We were concerned that such information appeared to be absent from the arrangements. The admission authority accepted this concern and indicated that it would be willing to correct the omission. We require the relevant revision to the arrangements and are grateful to the admission authority for its indication that it is content to make the revision.

Summary of Findings

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

43. We find that the arrangements: do not provide sufficient information about the process for testing; are missing the required information relating to admission outside of the normal age group; and include the use of the word “may” in two places, rendering the arrangements unclear and not objective. We also find that the requirement in the arrangements that applicants must have been resident at their permanent home address for at least six months prior to the application closing date is unfair to certain applicants. For example, those that have had no control over their moving date or those that have moved into the area for a reason unconnected with securing a school place.

Determination

44. In accordance with section 88H(4) of the School Standards and Framework Act 1998, we do not uphold the objection to the admission arrangements determined by the governing board for Langley Grammar School, Slough.

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

46. By virtue of section 88K(2), the adjudicators’ decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

Dated: 21 September 2022

Signed:

Schools Adjudicators: Jane Kilgannon and Phil Whiffing