



Office of
the Schools
Adjudicator

Determination

Case reference:	ADA3928
Objector:	A member of the public
Admission authority:	Chelmsford County High School for Girls, Essex
Date of decision:	29 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 Chelmsford County High School for Girls, Essex.

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

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of 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 Chelmsford County High School for Girls (the school), a selective single-sex academy school for girls aged 11 to 18. The objection is to:

- a. 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. age standardisation in selection tests;

- d. the re-use of old questions in a new selection test;
- e. arrangements for alternative sittings of the selection tests for those unable to attend on a scheduled date;
- f. the residence requirements employed in the arrangements; and
- g. the catchment area employed in the arrangements.

2. The local authority for the area in which the school is located is Essex County Council (the local authority). The parties to the case are the objector, Chelmsford County High School for Girls (both the school and the single-academy trust of the same name, that is the admission authority for the school) 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 single-academy trust (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 admission authority on that basis.

6. 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.

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

Procedure

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

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

- a. a copy of correspondence indicating that the arrangements were determined by the admission authority on 2 January 2022;
- b. a copy of the determined arrangements, including a Supplementary Information Form (SIF);
- c. the objector's form of objection dated 4 May 2022, supporting documentation and subsequent correspondence;
- d. the admission authority's response to the objection and matters raised by us under section 88I of the Act;
- e. the school's website; and
- f. research report 'Factors associated with achievement: key stage 2' by Alex Sutherland, Sonia Ilie and Anna Vignoles at RAND Europe and the University of Cambridge in 2015, published by the Department for Education (DfE); and
- g. the local authority's response to the objection and matters raised by us under section 88I of the Act.

The Objection

10. 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 previous old questions in the test (as they end up in the hands of tutors)." He also raised a concern about the arrangements for late sittings of the selection test for those unable to attend on the scheduled date.

11. The objector 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". The objector queried the reasonableness of using a catchment area in the arrangements stating that, "There is no rational reason to have a catchment area as stated as it does not ensure children who attend the school live within the catchment area when attending". The objector also queried whether the catchment area employed in the arrangements complied with the requirement at paragraph 1.14 of the Code that "Catchment areas **must** be designed so that they are reasonable and clearly defined".

12. Lastly, the objector questioned the reasonableness and fairness of the residence requirements set out in the arrangements. He did not say which part of the Code he thought

the requirements failed to conform with. We have considered whether they conform with paragraph 14 of the Code, which requires fairness.

Other Matters

13. Paragraph 14 of the Code requires that, “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.” Paragraph 1.8 of the Code (see extract above) requires that oversubscription criteria must be reasonable, clear, objective and procedurally fair. There were a number of ways in which we considered that the arrangements may not be clear and, at one point, possibly unfair.

14. The arrangements also appeared not to conform with the requirements: for looked after and previously looked after children, as set out at paragraphs 1.7 and 1.20 of the Code; for the admission of children with an Education, Health and Care Plan (EHCP), as set out at paragraph 1.6 of the Code; for the admission of children outside of their normal age group, as set out at paragraph 2.19 of the Code; for waiting lists, as set out at paragraphs 2.15 and 2.29 of the Code; for random allocation, as set out at paragraph 1.35 of the Code; for the use of SIFs, as set out at paragraph 2.4 of the Code; and prohibiting giving priority to siblings or former pupils, as set out at paragraph 1.9(j) of the Code.

Background

15. The school is situated in Chelmsford, Essex, and has a Published Admission Number (PAN) of 180 for September 2023.

16. The school is designated as a selective grammar school and the arrangements indicate that only girls who attain the “required standard” in the school’s “Entrance Test” will be eligible to be considered for admission to the school.

17. In the event of oversubscription, priority for places at the school will be allocated in descending score order from a ranked list of applicants who have not already been offered a place at a higher preference school, applying the following criteria (in summary):

1. looked after and previously looked after children who have scored within the “top or middle bands”;
2. of the next 144 places:
 - a. up to 30 places for children in receipt of the Pupil Premium who have scored within the “top or middle bands” and living within the catchment area;
 - b. places remaining within the 144, for children living within the catchment area; and

3. all remaining places in descending score order.

18. The arrangements say that where there is a tie-break for the last available place, priority will first be given to looked after and previously looked after children, then to children in receipt of the Pupil Premium, then to children with a sibling at the school, and then by proximity of the child's home address to the school.

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

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 concern 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

22. 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.

23. The arrangements explain that "[The school] is part of a group of grammar schools who will be using a common admissions test for September 2023 entry. The group includes: [the school], the Slough Consortium of Grammar Schools and Kendrick School. In addition, there are other schools in the wider geographical area who will be using the same test. [...] Applicants for any of these schools may only take the test once; the raw marks from the test will be passed to the other schools for inclusion in the appropriate standardisation sample but only if you have registered with each school in accordance with their admissions policy.

[...] If it is found that an applicant has taken the test more than once, the raw scores for the first attempt will be used for the standardisation process”.

24. The arrangements say that applicants wishing to sit the school’s test must register by 4pm on 16 June 2022. The main sitting of the test will take place early in the Autumn Term of 2022. Applicants who are ill, or unable to take the test on the main date due to other exceptional circumstances, “may” be permitted to take the test on a later date. The arrangements say that, in the case of illness, a written explanation plus medical evidence will be required.

25. We consider that if there was no provision for children who cannot be tested on the appointed day because of unforeseeable 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 late for good reason, 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).

26. 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 if the child should be admitted. It is not for us to consider alternative approaches our role is limited to the arrangements as they stand.

27. Nowhere do the arrangements say that the same test is used for the main and late tests. However, the admission authority confirmed that the same test is used on both dates, stating that, “There are very good reasons why the same test is used for late sittings, such as illness”. We asked what these good reasons were. The admission authority explained that before the Covid-19 pandemic, they would offer the main test date and one supplementary, late test date. These were generally no more than one week apart. Since the start of the pandemic, the school’s practice has changed slightly – in response to an increase in the number of children unable to sit tests due to illness. For entry in September 2022, the school held tests on four dates: Saturday 11 September 2021, Monday 20 September 2021, 1 October 2021 and 5 October 2021 – so a period of almost four weeks from the first sitting to the final sitting of the test. The admission authority stressed that the only reason why an applicant would be permitted to sit the test on a later date would be illness or an inability to sit the test on a specified date for religious observance. Both reasons would need to be appropriately evidenced by the applicant.

28. In relation to the objector's concern that content recalled from the main sitting of the test could be passed onto those taking the late sitting of the test, the admission authority said the following:

"The nature of the tests are such that they are rapid fire questions under time pressure. There is a small risk that content may be recalled, passed on, and that would assist a late sitter to obtain a higher mark which, to have a significant effect, must lift that child above a point threshold. However, the risk is minimal and all reasonable steps are taken to ensure that content is not passed on."

29. We asked what those steps were. The admission authority listed five steps (in summary):

- a. Test booklets are delivered during the school holidays and kept in a locked cupboard to which only one member of staff has access;
- b. Test booklets are removed from the cupboard only the night before the test;
- c. All staff involved in administering the test sign a disclaimer acknowledging that the contents and format of the test must not be disclosed without authorisation;
- d. During the test, no mobile phones or devices capable of photography are permitted in the room; and
- e. Once the test is complete, all test booklets are returned to the secure cupboard and collected by the test provider the following day.

30. We noted that the school's website provided two links to familiarisation material in relation to the entrance examination: an eight-page document titled 'Chelmsford County High School for Girls Entrance Test Familiarisation Booklet' (CEM, 2022) and a 96-page document titled 'Grammar School Entrance Tests Familiarisation Guide (CEM, 2022). 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 explained that there are two test papers, each administered in about one hour. The tests are 'multiple-choice' and children are required to mark a sheet in a specified way so that their paper can be marked by a computer.

31. In our view, children could remember some aspects of such tests, for example where a comprehension test was based on an article about the tradition of Mother's Day, or where they were asked to calculate the total distance travelled on a journey of numerous parts. We doubt that many, if any, children could remember all comprehension questions arising from an article on Mother's Day including all alternative options for each question. We also doubt that many would remember the numbers of miles travelled in sufficient detail that another child, parent, or tutor would be confident that the remembered answer was correct.

32. If a child did tell their friend who missed the main test because of illness that some of the questions were about Mother's Day, we doubt that a child who had been ill would have time to learn a sufficient amount about Mother's Day before the supplementary, late 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, their friend did not take the main test, but takes a later test a week or so later. The child decides that they will tell their friend about this question and what answer they gave. The second 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.

33. 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 length of a journey 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.

34. 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.”

35. 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?

36. In these arrangements, in order to be eligible for consideration for admission, a child must achieve the “required standard” in the test. However, achieving such a score does not mean that a place is guaranteed. There are only 180 places available. Furthermore, the allocation of places depends on other factors including: whether a child is looked after or previously looked after; whether the child is eligible for Pupil Premium, and where the child lives. Some children ranked in the top 180 by these criteria 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.

37. The number of children taking the test late is relatively small. The number taking the main test for entry in September 2022 on Saturday 11 September 2021 was 944, whereas

14 children took the test on Monday 20 September 2021, four children took the test on Friday 1 October 2021 and two children took the test on Tuesday 5 October 2021. For one of the children sitting one of the later tests to benefit from information about the test received from another child who sat an earlier test, 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 into the “required standard” score, many other factors come into play before they would be offered a place.

38. The admission authority provided an overview of the scores of those who sat the school’s entrance test for entry in September 2022, broken down by whether the scores fell into the “top”, “middle” or “lower” bands:

Date of test	Number sitting test	Top Band Score	Middle Band Score	Lower Band Score	National Offer Day places
Saturday 11 September 2021	944	338	370	236	178
Monday 20 September 2021	14	3	4	7	1
Friday 1 October 2021	4	1	3	0	1
Tuesday 5 October 2021	2	1	1	0	0

39. From this table it can be seen that, of the children who took the main test, 19 per cent were offered places. Of those who took the later tests, ten per cent (two out of 20) were offered places. There does not appear to be any obvious advantage in terms of likelihood of being offered a place at the school for those who took the test late compared to those sitting the main test.

40. 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. There is also no evidence that a greater proportion of children who take the test on a later date are offered places at the school. We do not uphold this part of the objection.

Testing – Additional time for children with dyslexia

41. The objector put forward a range of arguments which he said made giving 25 per cent more time in the test to children with dyslexia was unfair to other children. He said

“there is no published scientific or trailed evidence that points to 25% extra time being reasonable or required in all cases in this arbitrary assessment or is fair in a CEM test. Just because something happens in some exams it does not mean not [sic] should continue in others.” He continued, “Dyslexia is a spectrum [sic] “disability”. All dyslexics do not have the same level of disability. To give all dyslexics 25% extra time cannot be fair or provide an accurate level of ability. Each child should be individually titrated. But in reality everyone has some disability or disadvantage.”

42. The admission authority responded that “This is not limited to those with dyslexia. This is standard practice in schools and public exams [...]. Applicants may qualify for a number of adjustments, including up to 25% extra time, enlarged print, reast [sic] breaks, a scribe, an audio reader, coloured paper or any other reasonable adjustment. This is driven by the school’s obligations under the Equality Act 2010 and is also [sic] the Admissions Code at paragraph 1.32”.

43. Nowhere do the arrangements specifically say that children with dyslexia will receive 25 per cent additional time. The admission authority has made clear 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 – Age standardisation

44. The objector said, “There is zero peer reviewed evidence that age standardisaton [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.”

45. 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, 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.”

46. 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 10 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.

47. 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 unfairly benefitting younger children 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.

48. 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.

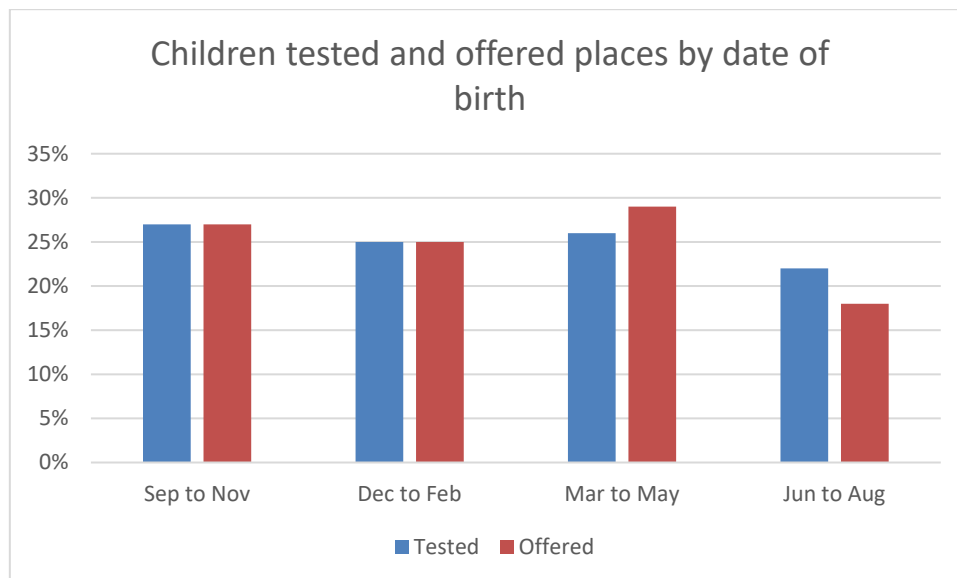
	Tested	Offered
September to November	263	49
December to February	243	45

	Tested	Offered
March to May	246	53
June to August	212	33
Total	964	180

49. 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



50. Initial consideration of the data shows that a smaller proportion of the intake have birthdays in the last quarter of the school year (18 per cent) than in the first three quarters (27 per cent, 25 per cent and 29 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 22 per cent and 27 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
19%	19%	22%	16%

51. 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 probability of a number (from 0 to 180) of children out of 180 having a birthday in any quarter forms a binomial distribution. We have calculated the chance of 33 or fewer children with birthdays in any quarter being offered places at the school is two per cent. The probability of 53 or more children with birthdays in any quarter being offered a place is seven 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 four heads in a row 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, with a probability of 3.125 per cent, we might start questioning the fairness of the coin, but it is not outside of everyday experience.

52. We conclude 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 outcome in the one year which we have analysed suggest the outcome is just within the range which could be expected to occur by chance. More sophisticated statistical analysis on data across several years would be possible but is outside the scope of this determination and would be more appropriate for an academic study.

53. 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 proportion of children born later in the year being less than for those born earlier, however, this pattern could have arisen by chance. The objection, however, was that children born later in the year benefit from the standardisation algorithm unfairly. The evidence we have is that this is not the case and so do not uphold this part of the objection.

Testing – Reuse of questions from previous papers

54. 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 objector said that the tests used by the school did not conform with the Code because they might include questions used in previous tests.

55. 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. We also note that nowhere do the arrangements say that test questions are re-used in subsequent tests.

56. The extent to which test questions are reused (on which we have not been presented evidence), and the unpredictability of knowing which of those questions will be reused, means that even if some children have been provided access to previously used

questions by tutors, the number of those children who will be able to accurately recall those questions is likely to be small. For one of these children to benefit from information about previously used questions, 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 into a high ranking score, many other factors come into play before they would fall into one of the oversubscription categories and would be offered a place at the school.

57. Within the variability already in the testing system, any test content remembered by a child and passed to another child taking the test at a later date (perhaps a whole year or two later) will have little effect alongside the other variables. We do not uphold this part of the objection.

Testing - Alternative sitting dates

58. The objector was concerned about the admission authority's policy of allowing children who cannot sit the selection test on the main test date due to religious reasons, to sit the test on an alternative 'late' date. He considered that the policy amounted to unjustified more favourable treatment for those applicants of particular religions whose religious beliefs might prevent them from being able to sit the selection test on a particular day of the week. The objector highlighted the contrast with those unable to sit the selection test because it clashed with the date of a selection test for another school. It is made clear in the arrangements that children in those circumstances will not be permitted to sit the selection test on one of the alternative 'late' sitting dates as they are not considered to be "exceptional" circumstances.

59. The date of the test for admission in 2023 is Monday 19 September 2022. We have not been able to identify any faith which lists this day as one requiring any practice which would prevent a child from taking a test on it. However, if there were, the EA prohibits discrimination, whether directly or indirectly, on the grounds of religion or belief. We consider the school's policy of allowing a child who is unable to sit the main test due to religious reasons, to sit the test on an alternative 'late' sitting date, to be a sensible way to address a potential discriminatory aspect of the arrangements if a particular test date might preclude a child of a particular religious belief from sitting the test. The arrangements therefore comply with the requirements of the EA and the Code in this respect. We have found above that the small number of children who take the test on a later date do not obtain places in a greater proportion than those who take the test on the main date. We do not uphold this part of the objection.

60. In respect of not allowing late sitting for those children unable to sit the test on the main test date because they are sitting a selection test for another school elsewhere, we have considered whether the school's policy is fair. The other selective schools in Essex have formed a consortium within which children take the selection test on Saturday 17 September 2022. We have not been able to identify any selective school which admits girls within a 30 mile radius of Chelmsford and is north of the River Thames (which restricts access from Essex), that set their test on 19 September 2022.

61. The admission authority's reasoning for its policy is that it wishes to grant access to the late tests only to those children with 'exceptional circumstances' and it does not consider a clash of schedules of selection tests to be such a circumstance. Indeed, the admission authority considers that allowing such children access to the late tests would encourage fraud. It has explained that because children would have the opportunity to sit more than one grammar school selection test across more than one geographical area, the use of false addresses by parents would be encouraged. The admission authority said there were examples of applications from previous years where a parent has provided a false address when registering for the selection test.

62. No child would be prevented from taking the test for admission in 2023 because they were taking a test at another selective school in the area. The tests are not on the same day. Priority for places is given to girls living within 12.5 miles of the school, however, some places will be offered to girls who lived anywhere if their score was high enough. Theoretically, there could be a clash of dates with a school much farther from Chelmsford. If such a school exists, and a girl's parents wanted her to be considered for both schools, and there was no flexibility in the other school's arrangements for testing on a different day, what unfairness arises and to whom? If such a girl was tested and offered a place, she would displace another girl, who may not have an alternative selective school which her parents could transport her to. We think the balance of fairness lies with the displaced girl and do not uphold this part of the objection.

Catchment area – reasonableness in principle

63. The objector raised a concern about whether the admission authority's use of residence in a catchment area as an oversubscription criterion met the requirement of reasonableness at paragraph 1.8 of the Code. In his Appendix 1 document, the objector explains that if the point of a catchment area is to ensure that children live local to the school when attending it, then the requirement should be that children attending the school are resident in the local area, not that children should be resident in the local area before they attend the school. He makes the point that universities do not require applicants to be resident in the local area, so why should schools?

64. The Education (Pupil Registration) (England) Regulations 2006 do not allow children to be taken off the roll of a school on the grounds of changing address. Universities provide education for adults who can live independently, not children who live with their parents. The objector's argument does not bear scrutiny.

65. The admission authority responded to the objection by saying that the Code expressly permits the use of catchment areas and it asserted that using residence in a catchment area as an oversubscription criteria is reasonable and explained that there is no requirement for an admission authority to explain in its arrangements why it deems its catchment area to be reasonable.

66. Catchment areas are expressly permitted by the Code (paragraph 1.14) and we consider that it is legitimate for an admission authority to seek, via its oversubscription

criteria, to serve a local community. One way to do this is by employing a catchment area in the oversubscription criteria of a set of arrangements.

67. We consider the admission authority's use of a catchment area in its oversubscription criteria to be reasonable and we do not uphold this part of the objection.

Catchment area – reasonable and clearly defined design

68. The objector queried whether the catchment area used in the arrangements had been designed so that it is reasonable and clearly defined, as required by paragraph 1.14 of the Code. The catchment area provision is set out in two of the oversubscription criteria: an applicant must have been "continuously resident within the [catchment area] (at their permanent home address) between 1st September of Year 6 and the start of Year 7 at [the school]". The objector has argued that the requirement is unreasonable in that it disadvantages those who have recently moved into the area (such as recent immigrants) and those who would move into the area should their child secure a place at the school. The objector also argued that no explanation had been provided by the admission authority as to why it had chosen the catchment area that it had and that it was therefore unreasonable.

69. The admission authority did not address these points specifically. It responded – as above – that the Code expressly permits the use of catchment areas, asserted that using residence in a catchment area as an oversubscription criterion is reasonable and explained that there is no requirement for an admissions authority to explain in its arrangements why it deems its catchment area to be reasonable. We were disappointed that it was unable to articulate the rationale for its catchment area to us.

70. The catchment area is a circle with a 12.5 mile radius centred on the school. This is a clear definition. It encompasses towns including: Brentwood, Billericay, Witham, Maldon and Wickford together with many villages. No part of the catchment area is more than about 30 minutes drive from the school and less than one hour by public transport. We think these are acceptable travelling distances for girls aged 11 to 18 and find that the catchment area to be clearly defined and reasonable and do not uphold this part of the objection.

Residence requirements

71. The objector raised concerns about several of the residence requirements set out in the arrangements. He did not say which parts of the Code he thought those aspects of the arrangements failed to conform with. We considered whether they conformed with the requirements, at paragraph 14 of the Code, for clarity and for fairness.

72. In addition to the existence of a catchment area, the objector's concern was that the arrangements require applicants to have lived within the catchment area from 1 September of Year 6. We consider this aspect of the arrangements is unfair contrary to the requirement at paragraph 14 of the Code for fairness, in that it results in unjustified disadvantage for those children who have recently moved into the area between 1 September and

31 October (when applications must be made) for reasons unconnected with securing a place at the school. We therefore uphold this aspect of the objection.

Residence requirements – Temporary addresses

73. The objector raised a concern about section 1.3 of the arrangements which states that “The Governing Body may refuse to base an allocation on an address which might be considered only a temporary address”. He has criticised the provision for being unclear. He asks: “What does ‘might’ mean? Under what circumstances is this applicable? What does temporary mean? Is it 1 day or 1 year? How can one determine an address is temporary when the person has not moved out? Given the government guidance is that a place should not be withdrawn after the first term, clarity would be insisting on residence until the end of the first term. If parents own a property and move out on what basis can the Governing Body make decision that a move was in good faith or not? What evidence is required? What is the standard of proof?”.

74. The admission authority responded that, “There are a variety of circumstances where an address could reasonably be considered as temporary and to be too prescriptive in this regard leaves the admission authority’s admission arrangements open to abuse by those whose circumstances have not been envisaged by the admission authority. The provision in question is clearly designed to prevent the use of fraudulent or intentionally misleading addresses”.

75. We share the objector’s concern that there is a lack of clarity in this aspect of the arrangements. There is no definition provided of “temporary address”. It is also not clear what “might be considered” means – for example, how certain does the governing body need to be that the address is a temporary one before it can exercise its discretion not to allocate the school place? What kind of evidence does it base its decision upon? Are parents invited to send in such evidence or will they be invited to make representations if there is a suspicion? For all of these reasons, we find that this aspect of the arrangements fails to conform with the requirement for clarity at paragraph 14 of the Code and we uphold this part of the objection.

Residence requirements – Leasehold agreements

76. The objector has queried the requirement in the arrangements that states that “informal letting arrangements will not be accepted” as evidence that a rented property is the child’s “normal place of residence”. He has queried why an informal letting agreement is considered to be invalid and has asserted that such a position is unreasonable.

77. The admission authority has explained that, “Rental agreements can be fabricated and allowing informal letting arrangements leaves the school open to, beyond what is reasonable or necessary, to claims that individuals live in a place that they may not actually do so. A line has to be drawn somewhere so as to protect the integrity of the admissions arrangements. [...] Unfortunately, admission authorities across the county have problems with false addresses being given by parents/carers in order to increase a child’s chances of gaining a place at a particular school”.

78. We share the objector's concern about this aspect of the arrangements. A blanket policy that rules out the possibility of a parent relying on an informal letting arrangement as proof of the normal place of residence of their child risks unfairness. It pre-judges that a family living under an informal letting arrangement will be doing so illegitimately, in order to obtain a place at the school. This is not necessarily the case. Therefore, the provision may result in unfairness to an applicant whose family live under such a letting arrangement. For that reason, we find that this aspect of the arrangements does not conform with the requirement for fairness at paragraph 14 of the Code and we uphold this part of the objection.

Residence requirements – sale of previous properties

79. The objector raised a concern about section 1.3 of the arrangements which provides, in relation to establishing an applicant's permanent home address, that: "If, in addition to the rented property, the child's parents also own another property and have previously resided at that property, the school will consider whether the application for a school place has been made in good faith. In this situation consideration will be given to whether the rented property or the other property should be regarded as the child's normal place of residence". The objector considered this amounted to a requirement that families in such circumstances must sell their previous home in order that the rented property becomes their permanent home for the purposes of the school application. He complained that the provision was "wholly unreasonable" and amounted to an interference with family life contrary to article 8 of the European Convention on Human Rights. The admission authority did not provide a specific response on this point.

80. We considered whether this aspect of the arrangements breached the requirement at paragraph 14 of the Code for fairness (set out at paragraph 13 above) and the requirement to comply with human rights legislation.

81. We noted that the arrangements did not require the sale of a family's property where they had moved into a rented property and therefore we found that they did not amount to a potential breach of human rights legislation. Rather, the arrangements made clear that where a family was living in a rented property but still owned a property that they previously lived in, the admission authority will wish to consider which is the truly permanent address of the child. We consider that to be a reasonable position for the admission authority to take as it needs to be able to establish the permanent home address of the child in order to properly apply its oversubscription criteria. Furthermore, we also consider it to be reasonable for the admission authority to wish to avoid awarding a school place to the child of a family that has chosen to move into rented property in the catchment area of the school solely in order to obtain a school place and with the intention to return to their previous property once the place is obtained, because this aligns with the admission authority's legitimate aim of securing a cohort of pupils that represent a stable local community. We did not consider any unfairness to arise from this aspect of the arrangements. This is because it is simply a mechanism for the admission authority to seek to determine whether an applicant meets an oversubscription criterion or not. It does not disadvantage any particular

applicant or potential applicant in terms of how places are allocated. We therefore do not uphold this part of the objection.

Other Matters

Admission of children outside of their normal age group

82. Paragraph 2.19 of the Code requires that admission authorities must make decisions about the admission of children outside of their normal age group on the basis of the circumstances of each case and in the best interests of the child concerned. Section 1.1 of the arrangements appears to restrict admission of what it describes as “under age” applicants unless they are “registered in year 6 of their primary schools from the first day of the school academic year 2022/23”. We were concerned that this approach may be too prescriptive to meet the requirement that such admission decisions be made on the basis of the circumstances of each individual case. It also does not cover the circumstances of a child of that age who has been home educated. The admission authority responded that it was content to amend the arrangements to comply with the Code in this regard. We find that this aspect of the arrangements is too prescriptive to meet the requirement that such admission decisions are to be made on the basis of the circumstances of each case and therefore we require that the arrangements be revised. We are grateful to the admission authority for its indication that it is content to make the revision.

Looked after and previously looked after children

83. The first oversubscription criterion gives priority to looked after and previously looked after children with a test score in the top or middle bands. Paragraph 1.20 of the Code requires that the admission authority **must** give priority to all looked after and previously looked after children who meet the academic standard for the school. We were therefore concerned that the arrangements did not meet the requirement at paragraph 1.20 because the academic standard for the school is the “required standard” in the school’s “Entrance Test”, without reference to banding. The admission authority responded that it was content to amend the arrangements to comply with the Code in this regard. We find that this aspect of the arrangements fails to meet the requirement at paragraph 1.20 of the Code and therefore we require that the arrangements be revised. We are grateful to the admission authority for its indication that it is content to make the revision.

Applicants with an EHCP

84. Section 1.1 of the arrangements state that “the school supports girls with an EHCP. They will be assessed in line with the entry requirements detailed in section 1.4”. Section 1.4 of the arrangements list the oversubscription criteria and does not make any reference to applicants with an EHCP. We were concerned that this may be contrary to the requirement at paragraph 1.6 of the Code that all children whose EHCP names the school must be admitted. The admission authority responded that it was content to amend the arrangements to comply with the Code in this regard. We find that this aspect of the arrangements fails to meet the requirement at paragraph 1.6 of the Code and therefore we

require that the arrangements be revised. We are grateful to the admission authority for its indication that it is content to make the revision.

Testing – Required Standard

85. We asked whether for an applicant to be considered under oversubscription criterion 2(b), they had to have achieved a score within the top or middle bands, or whether a score above the “required standard” was sufficient. From our reading of the relevant part of the arrangements, it would be the latter. However, we asked if this could be confirmed because, if it was not the case, then we were concerned that this aspect of the arrangements may not comply with the requirement at paragraph 1.8 of the Code that oversubscription criteria must be clear. The admission authority confirmed that it was the latter. On that basis, we were satisfied that this aspect of the arrangements was clear and met the requirement for clarity at paragraph 1.8 of the Code.

Waiting lists

86. Section 1.4 of the arrangements makes reference to waiting list arrangements in the following terms: “This process will be operated until the end of the Academic Year, when the Ranked List of Applicants waiting list will cease to apply and any further vacancies will be determined through the in-year application process”. We were concerned that it is not clear which academic year is referred to here and so this aspect of the arrangements may be unclear. Paragraphs 2.15 and 2.29 of the Code set out the requirements for waiting lists. Paragraph 2.15 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.” We were also concerned that the arrangements did not appear to include the statements required by this paragraph. The admission authority responded that it was content to amend the arrangements to comply with the Code in this regard. We find that this aspect of the arrangements fails to meet the requirement of paragraph 2.15 of the Code. We therefore require that the arrangements be revised. We are grateful to the admission authority for its indication that it is content to make the relevant revisions.

Tie-break - Designated grammar schools and siblings priority

87. Section 1.5 of the arrangements gives priority to applicants with a sibling within the school as part of its tie-break procedures. We are concerned that this may be contrary to the provision at paragraph 1.9(j) of the Code which states that “designated grammar schools that rank all children according to a pre-determined pass mark and then allocate places to those who score highest” must not “give priority to siblings of current or former pupils”. The reference to priority for looked after and previously looked after children also appears to be unnecessary, because any such child who met the academic standard must have first priority for a place and so would not find themselves in a tie-break. The admission authority responded that it was content to amend the arrangements to comply with the Code in this regard. We find that this aspect of the arrangements fails to meet the requirement at paragraph 1.9(j) of the Code. We therefore require that the arrangements be

revised. We are grateful to the admission authority for its indication that it is content to make the relevant revision.

Tie-break – Supervision by an independent person

88. One element of the tie-break arrangements is lots drawn by “an independent person (usually a Governor)”. We were concerned that a governor is not independent of the school and therefore this aspect of the arrangements may not comply with paragraph 1.35 of the Code which requires any form of random allocation to be supervised by someone independent of the school. The admission authority responded that it was content to amend the arrangements to comply with the Code in this regard. We find that this aspect of the arrangements fails to meet the requirement at paragraph 1.35 of the Code. We therefore require that the arrangements be revised. We are grateful to the admission authority for its indication that it is content to make the relevant revision.

Looked after and previously looked after children

89. The arrangements refer to definitions for looked after and previously looked after children in an “Appendix 1”. The definition of a looked after child is separate to that of previously looked after children. It includes children who appear to have been in state care outside of England. In paragraph 1.7 of the Code, children who appear to have been in state care outside of England are included as previously looked after children. We were therefore concerned that this part of the arrangements was unclear. The admission authority responded that it was content to amend the arrangements to comply with the Code in this regard. We find that this aspect of the arrangements fails to meet the requirement at paragraph 1.7 of the Code. We therefore require that the arrangements be revised. We are grateful to the admission authority for its indication that it is content to make the relevant revision.

Supplementary Information Form

90. Paragraph 2.4 of the Code requires that when a SIF is used, the request for additional information must only be made when that information has a direct bearing on decisions about oversubscription criteria or for the purpose of selecting by aptitude or ability. The SIF used by the school asks for the name and address of the applicant’s current school. We are concerned that this information is not required for making a decision about the application of the oversubscription criteria or for the purpose of selecting by aptitude or ability and so may be contrary to paragraph 2.4 of the Code. The admission authority explained that it requests details of the applicant’s current primary school for two purposes, neither of which relate to making any decision regarding the application of oversubscription criteria. First, it is used as “additional evidence when assessing the validity of addresses submitted in order to detect any potentially “fraudulent or intentionally misleading applications””. Second, it is used to “identify students applying from our local schools that we partner with as part of our Fair Access Partnership Protocol so that we can support them with their preparation and access to the entrance exam”. We consider these reasons to be impermissible under paragraph 2.4 of the Code and therefore this aspect of the arrangements must be revised.

Summary of Findings

91. For the reasons set out above we uphold parts of the objection concerning catchment area and residence requirements.

92. We do not uphold the following parts of the objection: the use of the same test for late sittings; additional time in the selection test for children with dyslexia; age standardisation of the selection test scores; the reuse of questions from previous tests; alternative sittings of selection tests for children unable to sit the test for religious reasons; the reasonableness of employing a catchment area; and the treatment, under the residence requirements, of families who own a property that they used to live in.

93. We find that there were a number of ways in which the arrangements are unclear and one further way in which they are unfair. We also find that arrangements do not conform with the requirements: for looked after and previously looked after children; for the admission of children with an EHCP; for the admission of children outside of their normal age group; for waiting lists; for random allocation; for the appropriate use of SIFs; and prohibiting certain designated grammar schools from giving priority to siblings or former pupils.

Determination

94. In accordance with section 88H(4) of the School Standards and Framework Act 1998, we partially uphold the objection to the admission arrangements determined by Chelmsford County High School for Girls, Essex.

95. 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.

96. 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: 29 September 2022

Signed:

Schools Adjudicator: Jane Kilgannon and Phil Whiffing