



Office of
the Schools
Adjudicator

Determination

Case reference:	ADA3935
Objector:	A member of the public
Admission authority:	Chislehurst and Sidcup Grammar School for Chislehurst and Sidcup Grammar School, London Borough of Bexley
Date of decision:	12 October 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 Chislehurst and Sidcup Grammar School for Chislehurst and Sidcup Grammar School in the London Borough of Bexley.

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 September 2023 for Chislehurst and Sidcup Grammar School (the school), 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 with a sibling at the school or with a parent employed by the school; and to the use of distance of an applicant's home address to the school in the oversubscription criteria.

2. The local authority for the area in which the school is located is the London Borough of Bexley (the local authority). The local authority is a party to this objection. Other parties to the objection are the objector and the admission authority for the school, which is the single academy trust also named Chislehurst and Sidcup Grammar School (the admission authority).

Jurisdiction

3. The objector made objections to the admission arrangements for 2023 for this and ten other grammar schools. There are a number of matters which are common to all but one of the objections. 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. 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 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 on 1 July 2022. We note that is after the date of 28 February 2022 by when the Code requires that admission authorities determine their arrangements for 2023. However, this late determination does not alter our jurisdiction for this case.

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 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 the minutes of the meeting of the admission authority's 'trust board' at which the arrangements were determined (dated 1 July 2022);
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 5 May 2022 and supporting documents;

- d. the response to the objection from the 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 the matters we raised 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 the same questions in the test (as they end up in the hands of tutors who pass them on to students).”

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”.

12. The objector queried the fairness of the oversubscription criteria that give priority to children with a parent that is a member of school staff and to children that have a sibling at the school at the deadline for applications.

13. The objector queried the reasonableness of using distance of a child’s home address from the school as an oversubscription criterion.

14. The objector queried why the local authority sets the prescribed standard for admission to the school, rather than the admission authority itself. We considered this objection in relation to paragraph 14 of the Code which requires, amongst other things, that practices and criteria used to decide the allocation of school places must be clear.

Other Matters

15. We were concerned that the arrangements may not conform with the following requirements of the Code: the requirement to publish in the arrangements the process of selection (paragraph 1.17); the requirement to admit every child with an Education, Health and Care Plan (EHCP) that names the school (paragraph 1.6); in relation to the admission of children outside of their normal age group, the requirement to make decisions on the basis of the circumstances of each case and in the best interests of the child concerned (paragraph 2.19); the requirement to give highest priority to looked after and previously

looked after children (paragraph 1.7); the requirement for clarity of the application of the oversubscription criteria (paragraphs 1.6 and 1.8); the requirement that designated grammar schools that rank all children according to a pre-determined pass mark and then allocate those who score highest must not give priority to siblings of current or former pupils (paragraph 1.9j); in relation to the omission of foster siblings from the definition of sibling in the oversubscription criteria, the requirement for fairness (paragraph 1.8); in relation to the use of the home address of the parent in receipt of 'Child Benefit and/or Tax Credit' as being the address where the child is considered to live, the requirement for fairness (paragraphs 1.13 and 1.8); the requirements relating to waiting lists (paragraph 2.15); and that the Published Admission Number (PAN) applies only to admissions for the "relevant age group" (paragraphs 2.23 to 2.31).

Background

16. The school is situated in Sidcup, in the London Borough of Bexley (the local authority). The Year 7 PAN for the school for September 2023 is 192.

17. The school is designated as a selective grammar school and the arrangements indicate that only applicants who attain the "standard prescribed by [the local authority] for admittance to selective schools in the Borough" are eligible to be considered for admission to the school.

18. Priority for eligible children can be summarised as follows:

- a. "Students who are or have been looked after children";
- b. The highest scoring 180 applicants;
- c. Applicants with a sibling attending the school at the closing date for applications;
- d. Applicants with a parent or guardian who has been employed at the school on a permanent basis for two or more years; and
- e. Applicants living closest to the school.

19. Where a tie-breaker is required, an independently verified process of random allocation is employed.

20. The selection test used by the local authority is provided by the Centre for Evaluation and Monitoring (CEM).

Consideration of Case

21. 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.

22. 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

23. 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 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.

24. The arrangements are silent on testing arrangements for those applicants unable to sit the main selection test.

25. The admission authority explained that “Tests are held on different days because of the number of students sitting the test. Given the fact that the tests are competitive, there is no advantage to sharing any content from the test, even if a student were to be able to recall parts of it. The School has no control over the content from the test. We are an examination centre for the test only. We act under instruction from the [local authority]”.

26. The local authority explained that it administers selection testing on behalf of the four grammar schools in the borough so that children do not have to take multiple tests. The local authority further explained that “Each year around 7000 pupils register to sit the test with the majority of tests sat over a three day period within the same week. Whilst the same test is used for everyone including those sitting the late test this ensures equity and fairness and there is no evidence that those sitting the late or later tests in the same week gain any advantage and given the competitive nature of the test there is no advantage for pupils sharing any content of the test and all papers are handed in at the end of each test session”.

27. Both the admission authority and the local authority drew our attention to the fact that the Code does not prohibit the reuse of tests.

28. 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.

29. Nowhere do the arrangements say that the same test is used for the main and late tests. However, in their responses to us, the admission authority and local authority accepted that the same test was used across a main week of testing and for ‘late’ tests.

30. We noted that the school’s website explained that the “Bexley Test” consists of “two test papers with a mixture of questions on verbal reasoning and comprehension, non verbal reasoning and mathematical reasoning. Each paper will be divided into timed sections, and instructions will be given on an audio soundtrack. Most questions are multiple choice, and all answers are marked on a separate machine-readable answer sheet”. No other familiarisation material is provided but there is reference to the fact that those who register for the test will be sent a link to practice questions and a familiarisation booklet. We were provided with a copy of the familiarisation booklet.

31. In our view, children could remember some aspects of such tests. However, we doubt that many, if any, children could remember all comprehension questions arising from a particular article including all alternative options for each question. We also doubt that many children would remember the details of a given question 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 a specific topic, we doubt that a child who had been ill would have time to learn a sufficient amount about that topic before the late test to give them any advantage.

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. However, passing on questions to children who will be taking the same test on a later date is 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 “prescribed standard” in the test. However, achieving such a score does not mean that a place is guaranteed. There are only 192 places available. Furthermore, the allocation of places depends on other factors including: whether a child is looked after or previously looked after; whether they scored within the highest 180 scores; whether the child has a parent working at the school; whether the child has a sibling attending the school; and where the child lives. Some children ranking highly in 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 of children that applied to the school for entry in September 2022 and took the main test was 2102, whereas only 14 children who applied to the school for that year took the ‘late’ test. For one of the children sitting the late test to benefit from information about the test received from another child who sat the main 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 “prescribed standard” score, many other factors come into play before they would be offered a place.

38. The local authority provided an overview of the scores of those who applied for the school for entry in September 2022 and sat the main and late tests:

Test	Number sitting test	Number meeting the “prescribed standard”
Main	2102	1227
Late	14	9

39. From this table it can be seen that, of the children who took the main test, 58 per cent met the prescribed standard. Of those who took the late test, 64 per cent met the prescribed standard. The percentages are very similar and therefore there does not appear

to be an obvious advantage (in terms of likelihood of meeting the prescribed standard for the school) for those who took the test late compared to those who took 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. We also noted that the proportion of children offered places at the school after taking the late test is very similar to the proportion offered places after having taken the main test. 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 “Additional time for children with dyslexia is standard practice across all public examinations”.

43. The local authority explained that “The Council publishes a special arrangements policy which explains how this works and invites parents/carers or schools to make an application for additional time based on their individual needs, an independent panel led by our Principal Educational Psychologist assesses every application independently again this ensures fairness and equity and is, we believe, standard practice across all public examinations”.

44. Nowhere do the arrangements specifically say that children with dyslexia will receive 25 per cent additional time. The local authority has made clear that additional time may be available for pupils who require it by reference to a 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. This aspect of the arrangements complies with the requirements of the EA and the Code. We do not uphold this part of the objection.

Testing – Age standardisation

45. The objector said, “There is zero peer reviewed evidence that age standardisation [sic] is required in 11+ tests.” More specifically he said, “The CEM age standardisation algorithm is not peer reviewed or evidence based” and argued that the algorithm used should be published. He was of the view that age standardisation was “a blunt average based system, which makes assumptions that age has a uniform affect [sic] 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.”

46. 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, 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.”

47. 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.

48. 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.

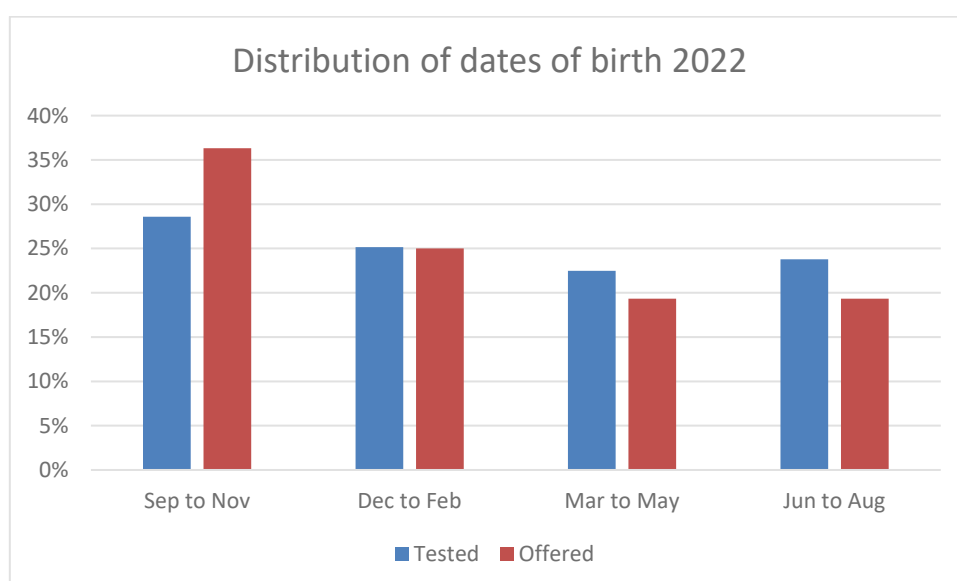
49. The table below shows the number of children whose birthdays fell into each quarter of the school year. We have chosen to group the data into quarters because the number of birthdays in each month will be small and it is the same approach used in the research report quoted above. The following chart 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	600	77
December to February	528	53
March to May	472	41
June to August	499	41
Total	2099	212

50. 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



51. Initial consideration of the data shows that a smaller proportion of the intake have birthdays in the last two quarters of the school year (19 per cent in each) than in the first two quarters (36 per cent and 25 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 29 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
13%	10%	9%	8%

52. 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 of children out of 212 having a birthday in any quarter forms a binomial distribution. We have calculated the chance of 41 or fewer children with birthdays in any quarter being offered places at the school is 3 per cent. The probability of 77 or more children with birthdays in any quarter being offered a place is almost zero. 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 five heads in a row 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 heads in a row, we might start questioning the fairness of the coin, but it is not outside of everyday experience. If the coin never came down heads, we would decide it was biased.

53. 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. Furthermore, the numbers of children with birthdays in the first quarter is outside 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.

54. 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 is extremely unlikely to have arisen by chance. From the data we have been provided with, the standardisation algorithm does not appear to have balanced the proportion of children offered places with birthdays in each quarter of the year. Children born in the first quarter form a disproportionate amount of the intake. 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

55. 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 used in previous tests.

56. 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 reused in subsequent tests.

57. 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.

58. 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 several years later) will have little effect alongside the other variables. We do not uphold this part of the objection.

Priority for children of staff

59. The objector asserted that the priority afforded in the oversubscription criteria to children of school staff was unfair contrary to the requirement of fairness set out at paragraph 1.8 of the Code because it serves no valid purpose.

60. Paragraph 1.39 of the Code permits admission authorities to give priority to children of members of staff. The requirement in the Code is for the member of staff to have been employed for “two or more years” or recruited to fill a post where there is a skill shortage. This criterion adopts that timeframe of length of service to the school.

61. The admission authority stated that this provision is “a common feature in many schools” and “Although it has been available for many years – as yet this offer has not been used by anyone”.

62. The criterion is permissible and no applicant has yet been admitted to the school in relation to it. We therefore see no unfairness arising from it and do not uphold this part of the objection.

Priority for children with siblings at the school

63. The objector asserted that the priority afforded in the oversubscription criteria to children with a sibling at the school as at the deadline for applications was unreasonable and unfair contrary to the requirements of paragraph 1.8 of the Code. The objector highlighted that it would be possible for a child to be admitted to the school under this criterion and for their sibling to have left the school before the child begins.

64. Paragraph 1.11 of the Code envisages that some admission authorities will give priority to children with siblings attending the school and this is not prohibited other than by paragraph 1.9j of the Code in grammar schools which “rank all children according to a pre-determined pass mark and then allocate places to those who score highest, give priority to siblings of current or former pupils”. Before considering this part of the objection, we will decide whether paragraph 1.9j precludes giving priority to sibling in the context of these arrangements. If it does, then the fairness of the criterion does not need to be considered, it would simply not be lawful.

65. The admission authority said “We do not rank all children according to a pre-determined pass mark [...]. The vast majority of our students are offered a place due to the distance criteria following being deemed selective”. The school must rank all children in order to identify the top 180. Potentially, parents of all children in the top 180 could have put the school as their first preference, in which case the vast majority of places would be allocated to the those who score highest. We note here that the 180 top scoring children in this context means all children who have taken the test for the Bexley grammar schools; not only those who are seeking admission to this particular school.

66. We have thought carefully about the interpretation of paragraph 1.9j. We think that it is prohibiting a grammar school from giving the sibling of an existing or former pupil priority over another child with the same score. It would also act to prevent a school whose arrangements gave priority solely on the basis of test score from departing from that approach in the case of siblings. In this case, within the 180, no priority is given to siblings and so we find that the arrangements conform with paragraph 1.9j of the Code.

67. The admission authority explained that its siblings policy was “in recognition of the fact that moving to secondary school is extremely stressful and at times logistically difficult for both students and their parents or carers. When students have been deemed selective we try to support families while working closely with the [local authority] to act reasonably and do what we can do to support young people”.

68. We asked the admission authority how many children had been admitted to the school in the last three years under this criterion. The admission authority indicated that 114 children had been admitted to the school under this criterion in the last three years combined. This number indicates a mean average of 38 places each year. If the PAN for

the previous three years was the same as for entry in September 2023 – that is, 192 – then this number indicates that approximately 20 per cent of places are generally allocated to children with siblings at the school.

69. We consider the admission authority’s rationale for prioritising children of siblings to be logical and coherent. It is reasonable to make provision to support children and their parents with the logistical challenges associated with siblings attending secondary school and it is for each admission authority to decide what reasonable and lawful arrangements to adopt. We also notice that the figures provided indicate that the priority is valued by a good proportion of applicants, in that approximately 20 per cent of the school’s intake is admitted under this criterion. We note that the oversubscription criteria that fall below this one are children who have a parent that is a member of staff at the school and children by reference to the proximity of their home address from the school. Therefore, any disadvantage caused by the criterion is a lower chance of a place at the school for those children with a parent who is employed by the school (this appears to be zero or a negligible figure based on previous year’s admission numbers) and those that may live closer to the school but do not have a sibling at the school.

70. Unless two siblings are in the same year group, they will be in different schools at some point (other than in the very rare instances of all-through schools). Families can and do manage this situation and this is easier with children of secondary school age who can travel to school independently. However, there are some advantages to families from having children at the same school. On balance we consider that these outweigh the disadvantage to children who may live nearer the school of not being offered a place. This criterion, however, gives priority to siblings of children at the school at the time of application; this means that it is possible for the older sibling to have left before the younger one starts at the school. We consider that if a child’s elder sibling has left the school, the child should be given the same priority as any other and be offered a place on the basis of where they live. We therefore uphold this part of the objection.

Priority for children by reference to distance of home address to school

71. The objector said “Why is it reasonable to include distance from the school when there is no requirement to live at the same address whilst attending the school?”. He said that giving priority on the basis of home to school distance was contrary to paragraph 1.8 of the Code. The admission authority responded that this was a reasonable aspect of the admission arrangements. It added that “parents moving house is something beyond the school’s influence” and may also be for a reason beyond the control of the parents.

72. We asked the admission authority how many children had been admitted to the school in the last three years under this criterion. The admission authority indicated that 449 children had been admitted to the school under this criterion in the last three years. This number indicates a mean average of 150 places each year. If the PAN for the previous three years was the same as for entry in September 2023 – that is, 192 – then this number indicates that approximately 78 per cent of places are generally allocated to children on the basis of the proximity of their home address to the school.

73. Paragraph 1.13 of the Code envisages that some admission authorities will give priority to children on the basis of distance of home address to the school and this is not prohibited.

74. We consider it reasonable for the admission authority to prioritise places for children on the basis of how close they live to the school. Although this was not articulated by the admission authority, such a policy will mean that children have an acceptable travel distance to school and will be more likely to be able to join in extra-curricular activities before and after the core school day. We consider the admission authority's decision to determine distance as at the date of the deadline for applications to be a reasonable one, even if there is no requirement for the child to be living at that address once admitted to the school. This is because, if the admission arrangements are to use distance within the oversubscription criteria, it is necessary to have a date at which the home address is fixed in order to make the calculation. Without that date, the arrangements would lack clarity. A later date would not make sense as it would be impossible for the parent to state with certainty what their future home address would be. For these reasons, we find that this aspect of the arrangements is reasonable and we do not uphold this part of the objection.

Clarity of selection test "prescribed standard"

75. The arrangements state that "Only students who attain the standard prescribed by the [local authority] for admittance to selective schools in the Borough will be eligible to be considered for entry to the school". No information is provided as to how the 'prescribed standard' is calculated, nor who undertakes that calculation.

76. The objector asserted that it was unclear why the local authority "decide the prescribed standard" given that the school is "an academy and not under local authority control and has no statutory duties for admissions and what the standard is or how it is set and can be manipulated if it is not set before the test is taken". We considered this part of the objection in relation to the requirement at paragraph 14 of the Code that the practices and criteria used to decide the allocation of school places must be, amongst other things, clear.

77. The admission authority explained that "the Selection Panel, who determine what the required standard is, comprises senior council officers and is chaired by the Head of School Improvement. Headteachers from both selective and non-selective schools are also invited to attend. The decision is not made at school level". We noted that the school's own website explains that "The total score that pupils have to achieve to be deemed selective will be set by the Selection Panel, a panel of officers and Headteachers".

78. The local authority stressed that it "does not set any prescribed standard for admissions to any of the four grammar schools" because "they are their own admission authorities and set their own admission policies". It reiterated that the local authority "does [...] not set the score that pupils need to meet in order to be deemed selective this is done collectively by the four schools".

79. Simply on the basis that no information is provided in the arrangements as to what the prescribed standard is, who calculates it and how it is calculated means that the arrangements are unclear. A parent reading the arrangements would not be able to easily understand how places are allocated in relation to the selection test.

80. It is also concerning that the admission authority and the local authority appear to have different understandings about the process employed for setting the prescribed standard. Both refer to a 'panel' making the decision. However, the local authority considers that the decision rests with the relevant schools themselves, acting collectively. Whereas the admission authority considers that there is a collective decision made between the schools and the local authority. The admission authority is responsible for determining the arrangements for the school including the academic standard required for admission. In making that decision, it may take into account discussion with the local authority and other selective schools in the area, but the final responsibility is its alone, saying the standard is set by the local authority is not clear. On that basis, this aspect of the arrangements does not comply with the requirement for clarity at paragraph 14 of the Code and so we uphold this part of the objection.

Other Matters

Publication of the process of selection

81. The arrangements state "The school participates in the Bexley Co-ordinated Secondary School Admissions Scheme and the application process dates will be set out in that scheme. Only students who attain the standard prescribed by the [local authority] for admittance to selective schools in the Borough will be eligible to be considered for entry to the school". No other information is provided in relation to the process of selection. For example, there is no indication that one has to register for the test or how to do so. There is also no information as to how the testing takes place, where and when.

82. Paragraph 14 of the Code requires that admission arrangements are clear and paragraph 1.17 of the Code requires the process of selection is published in the arrangements. We were concerned that the arrangements might not conform with these paragraphs of the Code because the arrangements do not contain the date on which the selection test will be undertaken nor any other details of the testing process.

83. The admission authority explained that the "admission process for those schools who use the Bexley Selection Test are clearly detailed on [the local authority's] website from the May prior to the test being sat. At the time that the parent registers their child for the test they would have read and understood the information regarding it and the type of language used by the [local authority] relating to it. Our policy does not set out these details as they are set by the [local authority] and not the School. We administer the test under instructions from the [local authority]. We receive the test material from the [local authority]. We are an examination centre for the test only."

84. It is the responsibility of the admission authority to ensure that the admission arrangements meet the requirements of the Code. Arrangements must be determined by 28 February each year (a requirement not met by the admission authority for 2023) and published by 15 March. Arrangements must include the process for selection. Not making this information available until May and on the website of another organisation does not meet the requirements of paragraph 14 of the Code, or of paragraph 1.17 of the Code.

Children with an Education, Health and Care Plan (EHCP)

85. Paragraph 1.6 of the Code requires that “All children whose Education, Health and Care Plan names the school **must** be admitted”. Paragraph 14 of the Code requires that the arrangements are clear.

86. After referring to the London Borough of Bexley, the arrangements say, “Students for whom the Local Authority maintains a formal Educational Health Plan naming Chislehurst and Sidcup Grammar School, who attain the standard, will be admitted”. We were concerned that it may not be clear to a parent reading the arrangements that an eligible child with an Education, Health and Care Plan (EHCP) naming the school would be admitted to the school, irrespective of which local authority maintains the EHCP – that is, it does not need to be the London Borough of Bexley, the local authority in which the school is situated.

87. The admission authority declined to respond to this concern.

88. We find that this aspect of the arrangements does not conform with paragraphs 1.6 and 14 of the Code because it is not clear from the arrangements that every eligible child who applies to the school and has an EHCP naming the school must be admitted to the school, irrespective of which local authority maintains the child’s EHCP.

Admission outside of the normal age group

89. In relation to admission of children outside their normal age group, paragraph 2.19 of the Code provides that “Admission authorities **must** make decisions on the basis of the circumstances of each case and in the best interests of the child concerned”.

90. The fourth paragraph of the arrangements states “The school will consider applications from students on a case by case basis who are no more than one year younger (that is, they were born no later than 31st August 2012) provided that they are already in Year 6 at a primary school and the school confirms that they are working successfully in that group.” We were concerned that this provision appeared to place limits on which children who had made an application for admission outside of the normal age range would be considered.

91. The admission authority said, “We do not impose any such limits”. However, the part of the arrangements quoted above does restrict which children it would consider for admission outside of the normal year group. It does not, for example, allow for those

children who may have been home educated. This does not meet the requirement of the Code for such applications to be considered on the circumstances of each case.

Looked after and previously looked after children

92. Paragraph 1.7 of the Code provides a specific definition of looked after and previously looked after children and requires that such children be given the highest priority in oversubscription criteria. Oversubscription criterion 1 of the arrangements is “Students who are or have been looked after children”. However, no definition of these terms are provided. As such, we were concerned that the arrangements made not meet the requirements of paragraph 1.7 of the Code and that the oversubscription criteria may not be clear as required by paragraph 1.8 of the Code.

93. The admission authority responded that “The definition of students in this category are defined by the [local authority] who are responsible for looking after them”. This is not the case. The definition is set out in the Code, it is mandatory and following its revision in September 2021, the DfE wrote to all admission authorities setting out the actions they were required to take following this revision.

94. We find that this aspect of the arrangements fails to conform with the requirements of paragraphs 1.7 and 1.8 of the Code because it is not clear on the face of the arrangements that the children defined by the Code as ‘looked after’ and ‘previously looked after’ children are given the highest priority in the arrangements.

95. We were also concerned that the oversubscription criteria for Year 12 did not appear to meet the requirements of paragraph 1.7 of the Code to give highest priority to looked after and previously looked after children as there was no reference to such children in the relevant oversubscription criteria. Oversubscription criterion 1 is “Rank order of their average APS points score” and oversubscription criterion 2 is a tie-breaker provision for the situation in which two applicants have the same APS points score.

96. The admission authority responded that “We feel that the oversubscription criteria for Year 12 is [sic] sufficiently flexible to guarantee that all requirements are met, e.g. there are significantly more students in Year 12 now then [sic] there were in the past”.

97. We find that this aspect of the arrangements fails to conform with the requirement at paragraph 1.7 of the Code that highest priority must be given in the oversubscription criteria to looked after and previously looked after children because no such priority is afforded to that group of children.

The second oversubscription criterion

98. Paragraph 1.6 of the Code requires that oversubscription criteria are applied in order, and paragraph 1.8 requires that oversubscription criteria are clear and include a tie-breaker to “decide between two applications that cannot otherwise be separated.”

99. The school has a Year 7 PAN of 192. The second oversubscription criterion is “Those students identified by the Local Authority as achieving one of the 180 highest scores

in the selection tests.” It seemed possible to us that more than one child could get the same score and so the 180 highest scores could be achieved by more than 180 children and indeed by more than 192. In such a scenario, we were concerned that it was not clear from the arrangements how children achieving one of the highest 180 scores would be prioritised. As such, we were concerned that the arrangements may not conform with paragraphs 1.6 and 1.8 of the Code.

100. The admission authority explained that “The top 180 are the highest scores across the test. Those students who achieve one of the highest 180 scores in [the local authority’s] test are awarded top scorer status which gives them priority similarly to that as a confirmed sibling. The cut off score varies from year to year dependant upon the scores achieved by those sitting the test. The decision made to set the cut off is made at the [local authority] level and not at the School level. The number of students in this category in all Bexley Grammar Schools is low.”

101. We consider that it is not clear from the arrangements that oversubscription criterion 2 necessarily relates to the top 180 scores across all those sitting the selection test rather than only those sitting the test and applying for a place at the school. In and of itself, we consider this renders this aspect of the arrangements to be unclear. The number of students meeting this criterion applying for all schools in Bexley, must be at least 180, not necessarily “low”. Furthermore, it does not address the issue of the possibility that multiple children may achieve the same scores, therefore there could be more than 180 children that achieve the top 180 scores and it is not clear how priority would be allocated amongst those children.

102. For the reasons set out above, we find that this aspect of the arrangements does not conform with the requirements of paragraphs 1.6 and 1.8 of the Code.

Definition of ‘siblings’

103. Paragraph 1.11 provides that “Admission authorities must state clearly in their arrangements what they mean by ‘sibling’”. Oversubscription criterion 3 prioritises siblings and provides the following definition: “A sibling includes full, half, adopted and step brother or sister living at the same address”. Paragraph 1.8 of the Code requires that oversubscription criteria are, amongst other things, fair. We were concerned that the omission of foster siblings from the definition of siblings might make this aspect of the arrangements unfair to those applicants who have a foster sibling in attendance at the school as at the relevant date.

104. The admission authority responded that “Foster siblings are siblings”.

105. We do not consider that the arrangements make clear that foster siblings are to be considered siblings because the definition makes no reference to foster siblings. We consider the omission of foster siblings from the definition of siblings creates unfairness. The omission disadvantages those children who have a foster sibling at the school and that disadvantage is not obviously outweighed by the benefit accrued to any applicant who would be offered a place at the school under a later oversubscription criterion (children of

staff or on distance of home address from the school) in their place. As set out above, we consider that there are good reasons for prioritising siblings and these apply equally to foster siblings.

106. For these reasons, we find that this omission from the arrangements leads to them not conforming with paragraph 1.11 and is unfair contrary to paragraph 1.8 of the Code.

Determining the child's home address where they live part of the week with each parent (at different addresses)

107. Paragraph 1.13 of the Code requires that admission authorities must clearly set out how distance from home to the school will be measured. The Code states "This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent". Paragraph 1.8 of the Code requires that oversubscription criteria are fair. The arrangements state, in the fifth oversubscription criterion, that the address to be used will be the address "at which the child lives with the parent or registered guardian who is the main carer, that is, the parent eligible to receive Child Benefit and/or Child Tax Credit". We were concerned that this may not be fair because there is no requirement for a child to live during the school week with the parent who is eligible for and/or receives child benefit.

108. The admission authority responded that "The [local authority] administer the calculation of distance and position on the waiting list on our behalf". The local authority responded that "The school is their own admissions authority as an academy". As we have stated before, the responsibility for the arrangements meeting the requirements of the Code rests with the admission authority.

109. We find that this aspect of the arrangements is unfair because it determines the child's home address according to which parent is eligible for or in receipt of Child Benefit. This may not be the address where the child lives for most of the week or for most of the school week. As such, a child may lose the opportunity to be prioritised for a place on the basis of the home address which is most relevant to their attendance at the school. That appears to us to cause unfairness because it undermines the underlying purpose of oversubscription criterion five which is to give priority to those children living closest to the school. The disadvantage to the applicant who loses their opportunity to be prioritised for a place on the basis of the home address which is most relevant to their attendance at the school is not obviously outweighed by the benefit that would accrue to another applicant who would gain a place ahead of the child but, necessarily, live further away from the school at the relevant times.

110. For the reasons set out, we find that this aspect of the arrangements does not comply with paragraph 1.8 of the Code.

Waiting lists

111. Paragraph 2.15 of the Code sets out the requirements for waiting lists. These include the requirement to "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 concerned that these requirements may not be met because the arrangements simply stated:

- a. "A waiting list will be kept for each year group. A student's name can only be included on the waiting list for [the school] for Years 7-11 if they have been deemed selective"; and
- b. "A waiting list will be kept for Year 12. A student's name can only be included on the waiting list for [the school] if they are predicted to meet the entry requirements".

112. The admission authority responded that "The [local authority] hold the waiting list for us". While an admission authority may contract with a local authority to administer its waiting list, it is the responsibility of the admission authority to ensure that the waiting list is administered as required by the Code and that the arrangements include what the Code requires them to state.

113. The arrangements do not include a statement explaining that each added child will require the list to be ranked again in line with the published oversubscription criteria. Furthermore, it is not clear from the arrangements nor the admission authority's response that the waiting lists are maintained until at least 31 December of each school year of admission. No such date is provided. For these reasons, we find that this aspect of the arrangements does not conform with the requirements of paragraph 2.15 of the Code.

In-year admissions

114. The section of the arrangements on in-year admissions states that "Students will only be admitted In-Year 7-11 if the number on roll in the relevant year group falls below the planned admission number of 192". Paragraph 1.2 of the Code explains that the PAN only applies to the "relevant age group", that is, the age group to which children are normally admitted to the school – so in this case, Years 7 and 12. We find that the arrangements fail to comply with the Code because they only contemplate the admission of a child applying in-year in Years 7 to 11 where the existing year group size was below its "PAN" of 192, even though no PAN exists for Years 8, 9, 10 and 11 and both the Code and the Act make it clear that admission can only be refused where it would prejudice the efficient provision of education or use of resources, or, in the case of a grammar school, it would be incompatible with selection. The PAN merely represents the admission authority's view of where the point of prejudice is reached for the relevant age group.

115. The admission authority responded that "Our in-year tests are different to those offered to students looking to join the school at the start of Year 7. These are also devised and administered by CEM. The School is merely the test centre where the tests are carried out as per a public examination and are undertaken on-line. Processing of the data and decisions about those who are deemed selective afterwards as made outside of the school". The admission authority also stated "the PAN is based on class sizes of 32. This is

determined by the physical size of the classrooms that we can safely accommodate groups of students in. Classes at this school remain the same through years 7, 8 and 9, meaning that the PAN is fixed throughout Key Stage 3. It is true to say that group sizes change in Key Stage 4, but it is very rare for a student to be admitted to the school once the GCSE programme has commenced. The number 192 for us is a space issue.”

116. The admission authority appears to be passing responsibility for decisions about this aspect of admissions to the local authority. The requirements for in-year admissions are set out in paragraphs 2.23 to 2.31 of the Code. These include particular provisions for grammar schools. The admission authority will wish to study these paragraphs of the Code when revising this part of the arrangements to ensure that what it says and does conform with requirements.

Summary of Findings

117. For the reasons set out above, we uphold the parts of the objection concerning the clarity of the selection test’s “prescribed standard” and the criterion giving priority to siblings.

118. 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; priority for children of staff; and priority for children by reference to distance of home address to school.

119. We find that there are a number of ways in which the arrangements do not conform with the requirements of the Code, namely: the requirement to publish in the arrangements the process of selection (paragraph 1.17); the requirement to admit every child with an EHCP that names the school (paragraph 1.6); in relation to the admission of children outside of their normal age group, the requirement to make decisions on the basis of the circumstances of each case and in the best interests of the child concerned (paragraph 2.19); the requirement to give highest priority to looked after and previously looked after children (paragraph 1.7); the requirement for clarity of the application of the oversubscription criteria (paragraphs 1.6 and 1.8); in relation to the omission of foster siblings from the definition of sibling in the oversubscription criteria, the requirement for fairness (paragraph 1.8); in relation to the use of the home address of the parent in receipt of ‘Child Benefit and/or Tax Credit’ to measure home to school distance, the requirement for fairness (paragraphs 1.13 and 1.8); the requirements relating to waiting lists (paragraph 2.15); and the requirement that the Published Admission Number (PAN) applies only to admissions for the “relevant age group” (paragraphs 1.2 and 14).

Determination

120. 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 Chislehurst and Sidcup Grammar School for Chislehurst and Sidcup Grammar School in the London Borough of Bexley.

121. 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.

122. 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: 12 October 2022

Signed:

Schools Adjudicators: Jane Kilgannon

Phil Whiffing