



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** REF3974 (for 2023) and REF4096 (for 2022)

**Referrer:** Southend-on-Sea Borough Council

**Admission authority:** The Discovery Educational Trust for Chase High School, Westcliffe-on-Sea, Essex

**Date of decision:** 25 January 2023

## Determination

I have considered the admission arrangements for September 2022 and September 2023 for Chase High School, Westcliffe-on-Sea in accordance with section 88I(5) of the School Standards and Framework Act 1998. I find that in relation to the determined Published Admission Number for September 2023 and concerning the other matters set out in this determination, they fail to comply with the legal requirements set out in the School Admissions Code and elsewhere concerning them.

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 for both 2022 and 2023 within two months of the date of the determination, unless a different date is specified by the adjudicator. In respect of the PAN for September 2023, I determine that this date shall be 30 January 2023.

## The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Office of Schools Adjudicator (OSA) by the local authority (the LA, the referrer), about the admission arrangements (the 2023 arrangements) for Chase High School (the school), for September 2023. The date of the objection was 13 May 2022. As a result, the admission arrangements for the school for September 2022 (the 2022 arrangements) have also come to the adjudicator's attention.

2. The referral relates to the published admission number (the PAN) for admissions to Year 7 at the school for September 2023.

## Jurisdiction

3. The terms of the Academy agreement between the trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools.

4. Admission authorities are required by section 88C of the Act to have determined admission arrangements for September 2022 by 28 February 2021 and for September 2023 by 28 February 2022. On 13 May 2022, when the objection was received, the trust had not determined the arrangements for either 2022 or 2023. Because my jurisdiction is for determined arrangements only it was not possible for me to consider the objection at that time. The trust subsequently determined the arrangements for both years on 11 August 2022. This was however after 15 May 2022 which is the date by which the School Admissions Code (the Code) requires any objections to admission arrangements for 2023 to be made to the adjudicator. As this deadline was missed, the case cannot be treated as an objection. However, as the arrangements for 2023 have been brought to my attention, I have decided to use the power conferred under section 88I(5) of the Act to consider whether the arrangements conform with the requirements relating to admission arrangements and I am treating the objection as a referral. I am also considering the arrangements for 2022, which have also been brought to my attention as a result of the referral, under section 88I(5) of the Act.

5. I am considering the arrangements for September 2022 under REF4096 and those for September 2023 under REF3974.

6. The parties to the cases are The Discovery Educational Trust (the trust), the school and the LA which accepted my offer that it be a party to both cases.

## Procedure

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

8. The documents I have considered in reaching my decision include:

- a) the referrer's form of objection dated 13 May 2022 and subsequent correspondence;
- b) copies of the minutes of the meeting of the trust at which the arrangements for both years were determined;
- c) the LA's composite prospectus for parents which describes admissions to secondary schools for September 2023;

- d) a copy of the determined arrangements for both years, and
- e) comments from trust on the matters raised, supporting documents and subsequent correspondence.

9. I have also taken account of information received during a meeting I convened on 18 November 2022 at the school. The meeting was attended by representatives of the school, the LA and the trust.

## The Referral

10. The arrangements for the school for September 2023, or more accurately the putative arrangements which were understood to be such at the time of the referral by the LA, include a Year 7 PAN of 226. The LA objected to this, saying that the premises available to the school should permit a PAN of 256. It said that the issue between itself and the school centred on the development of a three-storey building which had initially been fitted out to allow the first two storeys to be brought into use. This had permitted the PAN to be increased from 196 to 226 in September 2019, and the LA's stated position was that the school had now brought the third floor into use and that this should therefore be reflected in a revised net capacity assessment of the premises, and therefore a revised PAN of 256, as originally envisaged.

11. When the trust responded to my request for evidence that the arrangements for 2023 had been determined, it said that this had taken place on 1 July 2021. I therefore wrote to the parties concerning what appeared to be the failure of the trust to determine admission arrangements for the school for 2023 as required by the Act. The date on which the arrangements had been determined preceded 1 October 2021, which is the first date on which any necessary consultation concerning proposed arrangements for September 2023 was permitted under the Code. The Code requires that admission arrangements for schools are determined annually and says that the determination year for arrangements for September 2023 is the school year 2021/22. The date on which the arrangements were determined therefore fell outside the range of possible dates specified for that determination.

12. When I wrote to the trust, I also referred to the evidence which I had been provided with at that point, which showed that there had been changes made to these arrangements from those shown on the school's website as those for admissions in September 2022. I therefore sought evidence of the date of the determination of the arrangements for 2022 and of the consultation which the Code requires should have taken place prior to any changes for 2023 being introduced. The school acknowledged that it had never determined admission arrangements for 2022, and that those for 2023 had been approved for consultation on 1 July 2021 (and not determined on that date) and had not been determined following the consultation. This consultation had been undertaken between 8 November 2021 and 17 December 2021, and the trust provided me with evidence to this effect. It informed me that it was the trust's intention to determine admission arrangements for both years on 27 September 2022. Following further correspondence, I was provided with

evidence of the determination of admission arrangements for 2022 and 2023 which had taken place on 11 August 2022.

13. When I wrote to the parties about the trust's initial response concerning the determination of the arrangements for 2023, I had also referred to the objection which had been submitted by the LA, saying that I understood this to be that the same PAN had been set as that which applied to admissions in 2022. I said that paragraph 3.3b) of the Code says that such an objection may not be brought under section 88H of the Act which meant that I had no jurisdiction to consider it, but that I had nevertheless decided to consider whether the arrangements complied with the requirements concerning them under section 88I of the Act. Specifically, I said, I was concerned that the arrangements for 2023 may not comply with the requirement in paragraph 14 of the Code that they be fair in respect of the Year 7 PAN which they contained. I also said that I was minded to consider the 2023 arrangements as a whole since I was concerned that they might have contained a number of matters which did not comply with the requirements concerning admission arrangements.

14. Following my receipt of evidence of the determination of both sets of arrangements on 11 August 2022 (in identical form to those which I and the referrer had seen previously but which had not been determined by the admission authority for the school), I confirmed that as a result of their late determination I had no power to consider the objection to the arrangements for 2022 or 2023 under section 88H of the Act. However, I said that I was considering both sets of arrangements under section 88I and that this would include a consideration as to whether the PAN included in the arrangements for 2023 is unreasonably low. I shall explain below how an unreasonably low PAN may result in the arrangements which include it being unfair and therefore in breach of paragraph 14 of the Code.

## Other Matters

15. When the arrangements, as finally determined, were brought to my attention I considered that the following additional matters concerning both the 2023 and the 2022 arrangements did not, or might not, conform with the requirements for admission arrangements.

- (i) The statement that there is an "admission limit" for Years 7-11 does not accord with the requirement that an admission number (a PAN) must be set for each "relevant age group" in paragraph 1.2 of the Code. PANs do not apply to year groups other than relevant age groups, as stated in paragraph 1.4, making the arrangements unclear in breach of paragraph 14 of the Code;
- (ii) The statement that there is an "admission limit" of 300 for the school's sixth form does not accord with the requirement in paragraph 1.2 of the Code that the admission number (PAN) for Year 12 is the number of external candidates to be admitted, and
- (iii) The statement concerning the admission of children outside their normal age

group does not accord with the requirement in paragraph 2.18 of the Code that parents may seek a place for their child outside their normal age group and that admission arrangements must make clear the process for requesting this.

## Background

16. The trust is a multi-academy trust which comprises a secondary and a primary school in Brentwood in the administrative county of Essex, as well as Chase High School in Southend-on-Sea. The trust has told me that the school has made “significant improvements” in recent years and the school (which joined the trust in 2015) was judged to be “good” by Ofsted in February 2022 “...the first time that the school has been rated above ‘Requires Improvement’ in its 30-year history”.

17. The arrangements for 2022 contain the following statement:

“Admission limit: 226 (Years 7-9) 196 (Years 10 and 11) and 300 (Sixth Form)”

Those for 2023 say:

“Admission limit: 226 (Years 7-10) 196 (Year 11) and 300 (sixth Form)”

18. Both sets of arrangements contain a paragraph which describes what the published Co-ordinated Admission Scheme of the LA says about admissions to Year 7 of “under age” (as defined) or “over age” (as defined) applicants. These set certain conditions which would allow applicants in either category to be “accepted”. Each set of arrangements also says that “the school will support any over or under age application where the above has been met and the school is satisfied that then child should continue to be educated out of the normal age group.” However, nothing further is provided.

19. The oversubscription criteria can be summarised as:

### 2022

- (i) Looked after and previously looked after children (as defined)
- (ii) Pupils living in the school’s catchment area who have a sibling at the school
- (iii) Other pupils who live in the catchment area
- (iv) Pupils living outside the catchment area who have a sibling at the school
- (v) Other pupils living outside the catchment area.

### 2023

- (i) Looked after and previously looked after children (as defined)
- (ii) Pupils who have a sibling at the school

(iii) Pupils who live in the catchment area

(iv) Pupils who live outside the catchment area.

20. Before I give my consideration to other aspects of the arrangements, it is necessary for me to provide further background relevant to my consideration of the PAN for admissions in 2023, and the referral of it to the adjudicator by the LA. I shall summarise here what has been said to me by the parties about the demand for places at the school (both recently and in the near future), the physical capacity of the school buildings and the background to the absence of common ground between the trust and the LA concerning this aspect of admissions. I shall then set out how I judge these matters to affect my consideration of the PAN for 2023 which has been determined by the trust.

21. Following the determination by the trust of admission arrangements for the school for September 2022 and September 2023, as well as requesting that it provide me with its comments on the matter raised by the referrer and those which were my own concerns, I asked the trust to tell me the number of preferences which had been expressed for a place at the school and the number of children admitted under its oversubscription criteria in 2020, 2021 and 2022, if it had been oversubscribed in any of those years. This is common practice within OSA protocols in respect of considerations undertaken by adjudicators which have to do with the number of places which schools provide. The trust's initial response was to say that "Chase High School has never applied oversubscription criteria, as historically, the school has had low parental preference choices, and is below PAN in all Year Groups." It did not provide the data which I had requested until I reminded it that this was necessary, and then only the application data. This showed that there had indeed been more preferences expressed for a place at the school than there were places available in each of the three years for which I had requested the information. My interpretation of the trust's second response was that, since there had been more preferences expressed for places than the number of places available, the oversubscription criteria contained in the relevant arrangements must, in spite of what it had said to me initially, have come into play.

22. When the LA responded to my communication following the determination of the arrangements in August 2022, it provided me with the same application data as the trust for places at the school in recent years. These show the following:

<b>Year</b>	<b>PAN</b>	<b>Number of first preferences</b>	<b>Total number of expressed preferences</b>
2020	226	103	304
2021	226	130	380
2022	226	154	407

23. The LA helpfully pointed out that the school has reached its admission number of 226 in 2020 and 2021 on the first day of the school year because its final places had been filled through “alternative offers” (that is places offered to pupils who had not originally expressed a preference for a place there but who could not be accommodated at the schools they preferred or who had not submitted any preferences). The school told me on 1 September 2022 that it anticipated having 226 on roll in Year 7 in the present school year, and it confirmed this was the actual figure at the meeting which I held between the parties in November 2022. The LA commented on the trust’s statement about the need to use its oversubscription criteria, saying that “due to Chase having more preferences than they have places the LA applies the school’s oversubscription criteria for all Year 7 applications and this is ratified by Chase High School during the ranking and allocation process.... currently the school has vacancies in years 9,10 and 11....It is our understanding, based upon information provided from (sic) the school, Chase have needed to apply their oversubscription criteria for the lower years where the year groups have been full, and there have been more applications than places.”

24. The trust responded that “Whilst we acknowledge that SCC [the LA] has used CHS [the school’s] oversubscription criteria on behalf of the school to define and allocate the offers that go out to pupils, CHS has not yet reached a point whereby intake (sic) has been at PAN in September, regardless of the number of offers made. Therefore, oversubscription criteria have never played a part in stopping children, who wanted to attend CHS, from doing so.” Clearly, this is a slightly different statement to that originally given to me by the trust. The trust provided me with data showing the year group numbers in the school, as at 3 October 2022. These included the following:

Year 7: 224      Year 8: 224      Year 9: 218

I shall return below to the relevance to my consideration of the 2023 Year 7 PAN of these exchanges.

25. The LA had also given me the information which I had requested from the trust about the oversubscription criteria which have been employed in relation to admissions to the school in the last three admission rounds. This showed that oversubscription occurred in each year (commensurate with the position described above about the school filling up with “alternative offers”) with the final category of “other pupils living outside the catchment area” (the same oversubscription criteria having been employed in 2020 and 2021 as shown above for the 2022 arrangements).

26. I had asked the LA to give me:

- (i) its most recent projection of the need for places in Year 7 at the school in coming years, and
- (ii) an explanation of how the availability of places at the school contributes to the overall provision of Year 7 places in its area. I asked it, specifically, to set out why

it needs the additional places it says the school should be providing from September 2023.

27. The LA has described, both to me and at an earlier date in correspondence with the trust which it has shown to me, the issues with which it has to contend in making pupil forecasts, and has also set out details of the methodology which it employs in these circumstances. Four of the twelve secondary schools in Southend are grammar schools, two schools having a religious character (and one other school) are all partially selective, and one school admits a proportion of pupils based on scores on tests of aptitude in more than one curriculum area. This leaves four wholly non-selective secondary schools, of which Chase High School is one.

28. The LA told me that it operates one planning area for the purpose of making forecasts of the need for places across all these schools. It does so because of the small geographical area involved and because of the overall effects of uncertainty annually about the number of local children who will be admitted on a selective basis to some of the secondary schools, and because of short-term changes in parental preferences affecting both the current substantial net “export” of pupils to neighbouring Essex and the popularity of schools in the city. Like many others in my experience, the LA seeks to maintain a 3 per cent headroom of overall provision against forecasted need “to ensure surplus places do not adversely impact on any one school” as it put it, to deal with uncertainties of the sort it has explained, and to ensure adequate provision in the light of “large new housing developments in the coming 5 years”. The figures which result from its most recent projections, which use five year rolling averages, compared to the current number of Year 7 places (using the existing PAN of 226 for the school) and to the number of places needed if it is to have a 3 per cent buffer, are:

<b>Year</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>	<b>2026</b>	<b>2027</b>
Surplus/deficit (negative figures indicated deficit)	-2	24	141	48	35	-35
Surplus/deficit against 3% headroom	-78	-50	70	-26	-39	-111

29. The LA told me that the demand in September 2022 exceeded these recent projections and that other schools were asked to admit above their PAN in the 2022/23 academic year to accommodate the number of pupils seeking places. These same figures show that even if the school were to admit 256 pupils in 2023, there would be a shortfall against a 3 per cent headroom according to the existing forecast in that year, and again in



2026 and 2027. The LA acknowledged that 2024 is anomalous but says that the broad picture is that “There is pressure in the city planning area for secondary for the next six years, thereafter a decline in births for the reception cohorts feeds through to the secondary sector.” It said, “additional capacity at Chase of a further form of entry for years 2023-2027 would support the need for places in the city.”

30. The trust did not comment directly on these projected figures but said that “...prior to the Local Authority’s most recent letter...we had received no evidence to support a further increase of PAN (sic).” It said it had received figures from the LA showing a decline in Reception numbers (actual and forecast) in local primary schools between 2018 and 2024 and that “these figures were discussed with Trustees as a potential risk to the existing CHS [the school] PAN of 226.”

31. I asked the trust what the relevance of these figures was to the matter of the school’s PAN for 2023, and whether in the light of what it had said I was to understand that it now felt that they had received evidence that supported there being a need for an increase in the PAN. It replied that it had only given me Reception admission numbers “to demonstrate the limited information that the Local Authority has made available to the Trust to date” but that the numbers helped to demonstrate why the trust did not have confidence in the LA’s Year 7 forecasts “as these are at odds with the continued decline in primary intake”. I have to say at this point that I do not see any connection between a decline in Year R numbers from 2018 onwards and the forecast of Year 7 numbers for 2023. The 2018 Year R intake does not reach Year 7 until 2025, and I have said above that the LA is fully aware of the decline in numbers from the forecasts which I have set out above. The trust did not accept that there was evidence of the need for additional places, and has in correspondence questioned whether the use of 3 per cent headroom is common practice saying that if that were the case it would “artificially increase the number of school places required across the country.” That may be the trust’s perception, but the trust is not the body charged with ensuring that there are sufficient school places and does not have to make these decisions. I have said that this practice is indeed common in my experience, and for good reasons.

32. I move now to the background concerning the school’s capacity. The LA has shown me the relevant correspondence between itself and the trust which states that it has allocated Basic Need Grant (and other funds) to provide for the construction of a three-storey block on the school site. Initially, two floors were brought into use, allowing an additional form of entry from September 2019 (the PAN for Year 7 being increased from 196 to 226 at that point). The new building was designed to provide spaces for an additional 300 pupils in total, that is, to allow for a second additional form of entry when the third floor was brought into use, or a total additional 60 children in each cohort in each of Years 7 – 11 compared to the original PAN of 196. The LA is clear in stating that it was always part of the arrangement with the trust that when this happened, and there was a need for the provision, the school would increase its PAN to 256. The LA has said that while there have been changes in personnel for both parties since the this process began, and that while it cannot provide a copy a signed agreement to this effect, that it does have clear records showing that the school was committed to creating the second additional form of entry in

the way stated above. The LA has provided me with a copy of the most recent net capacity assessment (NCA) for the school dated 2016 which shows an indicated PAN at that time of 196.

33. I asked both parties to give me a clear statement as to whether the third floor of the new building was now in use and available to the school, and both confirmed that this was the case. I was able to observe the new building and to assure myself that it was fully operational as part of the school when I held the meeting between the parties.

34. It is of course normal for there to be a current net capacity assessment for the premises available to a school, and the LA in making its referral said that it now expected the school to provide this, and that it anticipated that it would show a PAN of 256. I corresponded with the LA concerning DfE guidance dated 2002, which appeared to me (at least at one point) to indicate that it was for the LA now to carry out a revised capacity assessment for the school. However, the LA has helpfully pointed me to the DfE the School Capacity (SCAP) Survey 2022 which my further researches reveal constitutes more recent guidance to LAs. This says, so far as it is relevant here:

“We would usually expect the capacity of an academy reported in the school capacity survey to be based on the capacity recorded in the school’s funding agreement, which in turn should have been based on the most recent net capacity assessment before the school converted. After any changes have been made to the physical capacity of academies, the guidance for making significant changes to physical capacity or published admission numbers (PAN) should be followed and action taken to amend the capacity figure in their funding agreements where appropriate.”

35. At one point during our correspondence, the school said “we cannot confirm whether the building can, in fact, accommodate a PAN of 256.....We are now in the process of obtaining an updated net capacity assessment and will update the adjudicator under separate cover....”. I was told that the school had “commenced a tender process to engage a professional firm to complete the work” and that I would be informed once a firm had been selected and a timeline had been established for the revised NCA to be provided. More recently the trust wrote to me, giving a number of reasons why it considers that it does not have the capacity to accommodate a PAN of 256. The trust also said that a former headteacher had informed the LA that the budget for the new building was insufficient to enable the PAN to be increased to 256 and that “For this reason, we do not believe that a net capacity assessment at this stage would be of benefit to either party, but await your further comment.” It has finally (on 24 November 2022) said, however, that it has pressed ahead with obtaining quotes for the assessment to be carried out “as a matter of urgency”. I have nevertheless not received any further communication on this matter.

36. On the subject of the financing of the building work that has taken place at the school, which has been another strand in the correspondence between myself and the parties, I need only give the briefest of summaries in order to provide the reader with sufficient background to appreciate the effect of this on the position of the parties concerning the school’s PAN. The trust in fact sought, and obtained, confirmation from the

OSA that this matter would not be within the adjudicator's remit to investigate before the LA submitted its objection. The trust's position is that the LA has withheld money from it. The LA accepts that this is the case but states that the only money withheld has been "the final retention payment" which relates to "the overpayment of the third floor fitout". The LA has stated that "The council would be happy to pay the final payment finalising the last amount owing for the third floor fitout, once it has assurances that the school will use the space to meet the demands for school places in the local area." It has maintained its position that since the school had managed to complete the entire building and bring it into use within the original budget, it is reasonable for it to expect that the PAN would be increased accordingly.

37. In the same letter to me dated 5 October 2022, the trust said both that:

"CHS agreed, prior to December 2018, that the school would move to a PAN of 226 from 196 and.....only expand to a PAN of 256 when demand can be evidenced", and that:

"...the issue surrounding the school's PAN is part of a bigger discussion between DET [the trust] and SCC [the LA] relating to funding for the expansion works, which we are keen to resolve in the interest of all parties."

Its final word on the matter on 23 October 2022 was however that:

"...this is not the appropriate forum for addressing these issues, which ultimately relate to the financing of the building work, which we are attempting to resolve with the Local Authority outside of the admissions process."

I have to say that find these last two statements somewhat contradictory in nature.

## Consideration of Case

### The Year 7 PAN for 2023

38. As I have stated above, I had informed the parties at an early stage that I had no jurisdiction to consider the objection about the 2023 PAN under section 88H of the Act for two reasons: that it was an objection that may not be brought, and because the arrangements were not determined until after the deadline for objections concerning them to be brought. Nevertheless, the trust argued that the objection could not be brought (as previously described) as late as 5 October 2022. I have dealt with this point, and have explained that I am considering whether the PAN for 2023 means that the arrangements are unfair and therefore that they fail to comply with the requirement of paragraph 14 of the Code which says that:

"...admission authorities **must** ensure that the practices and criteria used to decide the allocation of school places are fair, clear and objective."

39. There can be no doubt that the PAN is part of a school's admission arrangements, as provided for under section 88D of the Act and paragraph 1.2 of the Code and can be

considered by the adjudicator in accordance with section 88I of the Act. A PAN set low by reference to the capacity of a school could well operate to cause unfairness if it frustrated the opportunity for children to attend the school of their parent's choice and the school had capacity to accommodate those children and/or where it might prejudice the ability of the local authority for the area to meet its duty to secure the provision of school places. My consideration must therefore be based squarely on my understanding of two matters – the school's capacity and the demand for places in the local area.

40. The trust has told me that "... although Southend City Council may have had an aspiration that Chase High School would increase its PAN to 256, our view is that the school does not have the classrooms and facilities to accommodate this number, even with the third floor being fitted out". I have been given no detailed justification for what it says or concerning the specific types of room that are said to be needed. I shall refer below to the meeting which I held with the parties, but it is relevant here to say that I made it plain at that meeting that the issue in front of me was the PAN for 2023, and not "a permanent increase in CHS' (sic) PAN" as referred to in a more recent letter from the trust, and I can only assume that it is that thinking that may have influenced its view about some of the things it has said to me about the deficiencies of its accommodation. In any case, there is a methodology for assessing the physical capacity of all publicly funded schools on an equal and fair basis. This is the net capacity assessment and I have explained above how the DfE guidance deals with changes to the physical capacity of academies. In the continued absence of an updated NCA for the school, the reasons for which I have given above, the firm ground which exists concerning the physical capacity of the accommodation is the 2016 NCA, which I have seen, together with the additional building (which is now in operation and available to the school), which the LA is adamant was designed to permit an additional two forms of entry, and so a PAN of 256. I have set out above what I have seen which indicates that the trust was originally prepared to see that happen at the point when the need for the places could be demonstrated.

41. I have also set out above the information which I have been given concerning that demand. I consider it entirely reasonable for the LA to seek to maintain a 3 percent headroom in the number of places which it seeks to secure in order to meet its statutory obligation to ensure adequacy of provision, particularly so in the circumstances which attend its ability to forecast need with precision. As far as I can see, its methodology for forecasting is sound, and the results of it have to be taken seriously. At the meeting which I held with the parties, the representative of the LA responded to a query about its forecasting methodology by stating that new forecasts are produced each year, and that for the last two years the methodology had produced an under-forecast of the need for Year 7 places. As I have said, as far as 2023 goes, and that is my only concern, the LA's current forecast says that even if the school's PAN were 256, the target of 3 percent headroom in the number of Year 7 places available locally would not be reached. In other words, it is my view that there is a demonstrable need for the additional places that would become available if the PAN for the school were to be greater than that which the trust has determined.

42. There has been much mention in the exchange of views between the parties about the school's willingness to accept a "bulge" year, that is to say, admissions over and above the determined PAN. The LA has said that it asked the trust to accept an additional form of entry above its determined PAN in both 2021 and 2022, but that the school was only prepared to admit "a small number of pupils" over PAN in those years. When it wrote to the trust in May 2022 explaining why it intended making a referral to the adjudicator, the LA said that for admissions in 2022 following the school's response, that "... capacity was created at another school that was already overcrowded. The LA cannot risk further refusals from the only school with the net capacity to meet local need and where basic need grant funding has been used to provide additional places without requesting a formal agreement." Referring to the same point made by the LA in later correspondence, the trust simply stated, correctly, that it is not necessary to increase a school's PAN for it to admit more children than the determined PAN. My understanding is that the LA has used the term "bulge" to mean a temporary additional form of entry, and that the school has not been willing to facilitate that. The difference between an increased PAN and an agreement to admit over the existing PAN is that the former provides certainty, and it is the certainty of there being an additional 30 Year 7 places available locally in September 2023 that the LA has been seeking to secure.

43. However, in view of the fact that the LA had from the outset said that it would be content were the school to agree to a "bulge" year in 2023 (meaning an additional 30 places), and since the trust had said it would expand to admit 256 to Year 7 when the demand could be demonstrated, I felt that it would be of benefit if I were to meet the parties in the hope that common ground could be found between them concerning the number of Year 7 admissions for September 2023. This meeting took place at the school on 18 November 2022, and I was able to view the three-storey building and to assure myself that it was indeed fully operational. Nevertheless, and somewhat frustratingly, both parties essentially presented to me at the meeting views which it seemed to me had become entrenched, and which repeated the arguments which had been set out in the correspondence which I have described above.

44. The trust's final letter to me before the meeting, as well as expressing the views I have described above about the adequacy of the buildings, referred to the school's progress in terms of its Ofsted rating. The trust said that "... now is not the right time for Chase High School to increase its PAN given the risk that poses." It went on to say that "Adding a further 30 students per Year Group .... will have an adverse impact....Therefore, our view is that it is not simply a case of looking at the numbers." It referred me to DfE guidance which says that academy trusts should "...work collaboratively with the LA to ensure the right number and type of places are provided, considering the quality and diversity of provision." During the meeting at the school, and in the trust's letter which followed it, mention was made of the effect for the school of having vacant places. The letter to me put it this way "Our over-riding concern is that a permanent increase in CHS' PAN would leave the School (sic) with both unfilled and unfunded places, making the School (sic) vulnerable to "off-rolling" [by other schools]."

45. In summary: I am of the view that the need for there to be additional Year 7 places locally in September 2023 has been demonstrated. Data which I have set out above shows that both the total number of preferences for places at the school, and the number of first preferences, has increased steadily in the last three admission rounds. From the evidence which I have seen, and in the absence of any contradictory evidence (in the form of an up-to-date net capacity assessment which showed this to be the case), the school buildings do provide capacity for a PAN greater than the 226 which has been determined for the school by the trust.

46. I am mindful of what the trust has said to me that “It is important that we take a holistic and organic approach to looking at a potential PAN increase to ensure that any such increase is in the interests of our students and the community we serve.” I take the view however, that the community which the school serves, along with the other state-funded secondary schools there, is the secondary-age young people of Southend, and that they cannot have their educational interests served if there are insufficient school places for them to access. I do not consider that the trust’s concerns about the consequences of some Year 7 places potentially being unfilled should outweigh this more fundamental principle. I note here also for the avoidance of doubt that the PAN applies only to normal years of entry; any change to the PAN for 2023 does not mean that in other year groups the school must in consequence accept children until the numbers in those year groups also reach 256. I say more about this matter also later in this determination.

47. I made the point very clearly at the meeting that I held with the parties that the issue before me concerned the PAN for the school for September 2023 and not what the PAN might be in future years. I therefore found it slightly surprising that the trust in its final correspondence continued to set out its thinking in terms of what it described as a “permanent increase” in the school’s PAN. Admission arrangements must be determined annually, as it was necessary for me to point out to the trust in the initial correspondence between us concerning its determination of admission arrangements for the school. Whatever the PAN for 2023, it will be for the trust to determine the PAN for September 2024 and for each subsequent year, annually. However, my view is that the PAN of 226, as determined for admissions for September 2023, is not reasonable because it is too low in the light of the factors which I have set out above, and this means that the admission arrangements as a whole are not fair, contrary to paragraph 14 of the Code. It is my view, in the light of these considerations, that this would be the case were the PAN to be lower than 256, which is the figure which the LA would wish to see.

#### Other matters (concerning the arrangements for 2022 and those for 2023)

48. The trust’s response to the further concerns which I had raised with it, and which are set out above, was to say that these were “acknowledged”, and that they would be “covered” in a comprehensive review of its admission arrangements. This is helpful, and the trust will need to have regard to what follows here when revising its arrangements.

49. Although the trust made no detailed response to my concern that the arrangements say that there is an “admission limit” for Years 7-11, the LA did so. It stated that it was

aware that “some schools” (presumably schools in its area) adopt “the general practice of determining the PAN for Year 7 and also reinforcing the admission limits for all year groups on the determined arrangements”. It said that “We recognise that this is not strictly in line with the Code, and we will ensure that schools and academies are advised to only determine the PAN for the relevant year group.” For the avoidance of doubt, the arrangements determined for the school, and according to the LA those of other schools, are not simply “not strictly in line with Code” but are contrary to its provisions and therefore unlawful. Paragraph 2.28 of the Code, dealing with admissions to year groups other than a relevant year group (for which there must be a PAN) makes it clear that there can be no predetermined admission limits for such admissions. It says:

“With the exception of designated grammar schools, all maintained schools, and academies, including schools designated with a religious character, that have places available **must** offer a place to every child who has applied for one, without condition or the use of any oversubscription criteria, unless admitting the child would prejudice the efficient provision of education or use of resources.”

Section 86(5) of the Act says that prejudice cannot arise for admissions to a relevant age group as long as the PAN which has been determined for it is not exceeded. Paragraph 3.10 of the Code also provides for a limited ability for a school to refuse admission to a year group which is not a relevant age group, in specified circumstances.

50. Taken together, these requirements mean that a school, including an academy, cannot lawfully set an admission limit for age groups which are not a relevant age group. The school’s arrangements do this, and they therefore fail to comply with the requirements concerning them. It is the test of prejudice set out above which is to be used when decisions are made about admitting children into year groups that are not normal years of entry. The point at which this would arise in, say, Year 9 at this school now is not dependent on what the PAN (that is the 2022 PAN) is for the current Year 7 cohort now or for the Year 7 cohort that will join in September 2023, or indeed the PAN when the year group itself joined the school.

51. The LA pointed out that the arrangements state, in respect of admissions to the sixth form, that “Up to an extra 30 students can be accepted into the Sixth Form from other schools, in addition to those already attending Year 11 in this school, who achieve the course entry requirements.” This statement does not fail to comply with the requirement that the arrangements for a school provide an admission number for Year 12, but it is not the statement which concerns me.

52. Paragraph 2.6 of the Code permits an admission authority to set academic entry requirements for Year 12, which must be the same for external and internal places. The arrangements properly do this, and so, even if there were 256 Year 11 students and all of them achieved the entry requirements for Year 12 and wished to remain at the school, an additional 30 places for external students would provide 286 students in Year 12. The arrangements say that there is an “admission limit” of 300 for the sixth form. In the absence of any detailed comment from the trust I cannot be sure, but it seems to me likely that the

trust is attempting to set a limit on the size of its sixth form (meaning Years 12 and 13 together), and I have said above why such a statement is not lawful in general. For a school sixth form, the number of students in each year is principally determined by the PAN set for admissions to Year 12 from students from other schools, together with students remaining at the school from Year 11, each subject to the academic entry requirements in the arrangements. The statement which I have highlighted must therefore be confusing to students and their parents reading the arrangements, and it therefore fails to comply with paragraph 14 of the Code, which requires that “Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”

53. Paragraph 2.18 of the Code says:

“Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.”

The school’s arrangements refer to how the LA’s coordinated scheme deals with the issue of admissions of children outside their normal age group, and states that it will “support any over or under age application where the above [the conditions in the LA’s scheme] has been met”. However, they nowhere say how a parent would make such an application and fail as a result to comply with what paragraph 2.18 requires.

## Summary of Findings and dates for changes to be made

54. Based on my understanding of the capacity of the school’s buildings, and of the recent and likely demand for places there, I have come to the view concerning the school’s arrangements for 2023 that the PAN of 226 is unreasonable by virtue of being too low and that this is therefore a practice or criterion used to determine the allocation of places which is unfair. The admission arrangements for 2022 remain relevant to admissions to the school during the current school year, and while the deadline for applications for places at the school from September 2023 was 31 October 2022, it is important now that a revised PAN for those admissions be published by the school as soon as possible, and well before the national offer date of 1 March 2023. I say this because the LA will need to have certainty about the number of Year 7 places available to it on that date, with as much notice as possible. I would not however expect the LA to re-run the co-ordinated admissions process.

55. The arrangements for both years state, unlawfully, that there are specific admission limits for admissions to Years 8 -11 at the school, and a statement concerning an “admission limit” for the Sixth Form at the school which makes the arrangements unclear for the reasons I have set out. Both sets of arrangements fail to comply with what paragraph 2.18 of the Code requires because they do not contain the statement that it specifies shall be present in all school admission arrangements.

## Determination

56. I have considered the admission arrangements for September 2022 and September 2023 for Chase High School, Southend-on-Sea in accordance with section 88I(5) of the



School Standards and Framework Act 1998. I find that in relation to the determined PAN for September 2023 and concerning the other matters set out in this determination, they fail to comply with the legal requirements set out in the Code and elsewhere concerning them.

57. 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 for both 2022 and 2023 within two months of the date of the determination, unless a different date is specified by the adjudicator. In respect of the PAN for September 2023, I determine that this date shall be 30 January 2023.

Dated: 25 January 2023

Signed:

Schools Adjudicator: Bryan Slater