



Office of
the Schools
Adjudicator

Determination

Case reference: ADA4106

Objector: A member of the public

Admission authority: The governing board for Bexley Grammar School, Kent

Date of decision: 25 July 2023

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 2024 determined by the governing board for Bexley Grammar School which is 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 Bexley Grammar School (the school), a selective co-educational academy school for pupils aged 11 to 18, for September 2024. The objection is that the arrangements do not comply with the need to be reasonable, clear and fair, as set out in the Code.
2. The local authority (LA) for the area in which the school is located is Bexley, although its postal address is Kent. The parties to the case are the objector, the governing board for the school (the admission authority) and the local authority.

Jurisdiction

3. The terms of the Academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing board of the academy trust, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 9 March 2023. Tom Brooke and I were appointed as joint adjudicators in this case. I was appointed as lead adjudicator and have drafted this determination which I have agreed with Mr Brooke. We are satisfied the objection has been properly referred to us in accordance with section 88H of the Act and it is within our jurisdiction. We have also used our powers under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

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

- a. evidence that the arrangements were determined;
- b. a copy of the determined arrangements for 2024;
- c. the objector's form of objection dated 8 March 2023;
- d. the school's response to the objection;
- e. the LA's response to the objection;
- f. further information provided by parties at my request or invitation; and
- g. information available on the websites of the school, the local authority and the Department for Education (DfE).

The Objection

6. The overall objection is that "the admissions policy is not clear", for the ten individual reasons set out below. We have identified the relevant paragraphs of the Code here, but not set them out. The relevant paragraphs are set out in full when we come to our detailed consideration.

7. First, the objector asserts that as the school is the admissions authority, the school must prescribe the selective standard to be met by applicants and cannot rely on a standard prescribed by the Local Authority (Code 11, 5).

8. Second, the objector asserts that the dates when one can apply for the tests are not stated by the school (Code 1.17).
9. Third, the objector asserts that the test date is not stated (Code 1.17, 14).
10. Fourth, the objector asserts that the test supplier is not stated (Code 1.17, 1.31).
11. Fifth, the objector asserts that there is no indication of which subjects the tests evaluate (Code 1.17, 14).
12. Sixth, the objector asserts that there is no clarity as to how tests are age-standardised or evidence to support this process or to show that age standardisation is required (Code 1.31).
13. Seventh, the objector asserts that the allowance within the arrangements for an applicant's primary school headteacher to request a review of selection decisions undermines the test process and is unfair to applicants who are home-schooled (Code 14, 1.8).
14. Eighth, the objector asserts that the published admission number (PAN) of 210 could be exceeded if more than 30 applicants were looked after or previously looked after children, when set against 180 guaranteed places for those students identified by Bexley Council as achieving one of the highest score in the selection tests (Code 1.8).
15. Ninth, the objector asserts that prioritisation on the basis of siblings should apply to siblings on roll at the point of entry rather than at the point of application as this would be considering alumni (Code 1.11).
16. Tenth, and finally, the objector asserts that the arrangements are unlawful in that they refuse to allow late applications for the selection test, such as when a child moves into the area, and that a child should not be able to sit a late test (Code 14).

Other Matters

17. As we considered the arrangements other matters came to our attention which may not comply with the Code. These are listed below (with the most relevant paragraphs of the Code in brackets).
18. The word 'applicants' is used in the arrangements both to mean those parents applying for a place for their child (in the section 'Basic Information'), and the students themselves (in the section 'Application Process'). This is potentially confusing for parents and therefore contrary to the Code (paragraph 14).
19. The arrangements refer to students with a "Statement of Educational Needs". On the basis that this is intended as a reference to statements of special educational needs, these no longer exist, and arrangements should therefore only refer to Education Health and Care Plans (EHCPs). (Code 1.6)

20. With reference to those children whose EHCP (or Statement of Educational Needs as it is referred to in the arrangements) names the school, the arrangements state “he/she will be admitted to the school if he/she is deemed selective”. The arrangements do not comply with the Code in insisting that such children must be deemed selective as all children whose Education, Health and Care Plan names the school **must** be admitted (Code 1.6).
21. Oversubscription criterion 2 is stated in the arrangements as: “Guaranteed Grammar School Place- Those students identified by Bexley Council as achieving one of the highest 180 scores in the selection tests”. This is likely to be unclear for parents as no further explanation of this criterion is given and the arrangements do not specify whether the figure of 180 relates to the school or to selective schools in Bexley taken together (Code 14, 1.17).
22. The arrangements refer to home address under oversubscription criteria 5 and 6, but do not specify how home address should be defined in the event that a child spends an equal amount of time with two separated parents. The arrangements therefore do not comply with the Code (Code 1.13).
23. Oversubscription criterion 5 states “Home will be taken as...the address at which the child lives with the parent or legal guardian who is also the main carer, defined as the parent”. It is not clear what “defined as the parent” means in this sentence (Code 14).
24. Oversubscription criterion 5 states “Students will be admitted on the basis of proximity...with priority given to pupil living nearest the school (irrespective of selection score – excluding top 180 students)”. It is not clear why the “top 180 students” are referred to here, as they are dealt with by oversubscription criterion 2 and therefore this criterion is likely to be confusing (Code 14, 1.17).
25. Although the arrangements state that a waiting list will be maintained, they do not specify that the list will be held until at least 31 December and it may not be clear to parents that the list will be re-ranked when a name is added, which is contrary to the Code. It is also confusing that most of the information regarding the waiting list is on the second page of the arrangements, rather than under the ‘Waiting List’ heading on the third page. (Code 2.15)

Background

26. The school is situated in Welling, which falls within the County of Kent but the local authority area of Bexley. It has a Published Admission Number (PAN) of 210 for September 2024.
27. The school is a single academy trust and is designated as a selective grammar school. The arrangements state that only applicants “who attain the standard prescribed by the London Borough of Bexley for admittance to selective schools in Bexley” will be eligible to be considered for admission to the school.

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

- i. Eligible applicants who are looked after, or previously looked after, children;
- ii. Those students identified by Bexley Council as achieving one of the highest 180 scores in the selection tests;
- iii. Eligible applicants with a brother, sister, or step/half brother or sister living at the same address who are currently attending the school in years 7-11 at the time of application;
- iv. Eligible applicants who are children of members of staff who have been employed at the school for two or more years at the time of application;
- v. Eligible applicants living closest to the school;
- vi. Where two or more eligible applicants' proximity to the school is within 0.001 of a mile of each other, scores in the selection test will be used as a tie-breaker, with priority given to the higher score.

Consideration of Case

29. We have divided our consideration of the case into ten headings, each of which comprises one aspect of the objection.

The school must prescribe the selective standard to be met by applicants and cannot rely on a standard prescribed by the Local Authority

30. The objection is that: "The policy states, "Only applicants who attain the standard prescribed by the London Borough of Bexley for admittance to selective schools in Bexley (these pupils are 'deemed selective') will be eligible to be considered for entry to the school." Yet, the school is an academy and so its own admissions authority. The London Borough of Bexley cannot prescribe a standard in law. The school must prescribe a standard. This clause is not clear, it is misleading and its previous test supplier, CEM, in the past has used it to dupe First Tier Tribunals. (CEM have effectively quit as state school 11+ suppliers by withdrawing paper based tests)."

31. The objector is entirely correct in saying that the school is the admission authority. This is as stated in paragraph 11 of the Code, and paragraph 5 states: "It is the responsibility of admission authorities to ensure that admission arrangements are compliant with this Code. Where a school is their own admission authority, this responsibility falls to the governing body or Academy Trust". It is therefore for the school, and the school alone, to determine its admission arrangements in their entirety.

32. Although the school is responsible for its own admission arrangements and this responsibility cannot be delegated to any other body, there is nothing within the Code that

precludes an admission authority from co-ordinating with another body or bodies to administer specific aspects of its arrangements.

33. The LA coordinates a testing regime which the school has chosen to use. This is acceptable and within the Code. We accept the objector's point that it is for the school to prescribe the selective standard and not for the LA to do so; the school is, however, at liberty to choose to use the same standard as that used across Bexley, for admission to all grammar schools within the LA, if it chooses to do so and as long as this is clear within its arrangements.

34. It would be wise for the school to ensure that the arrangements make clear the role of the LA in supporting the school's approach to selection, and to exercise caution in stating that the standard is prescribed by the LA. The school should also ensure that there is sufficient information for parents regarding the standard for selection, so that they can decide whether the school is the right one for their child. This matter is discussed further in our consideration of the fifth part of the objection. However, the use of the LA standard for selection, as part of the coordinated process for admissions, is allowed within the Code and therefore on balance we do not uphold this aspect of the objection.

The dates when one can apply for the test are not stated

35. This part of the objection is that: "The dates when one can apply for the test are not stated".

36. When the objection was submitted in March 2023 the school website stated: "You need to have registered your child to sit the Bexley Selection Test on the London Borough of Bexley website between May and June when the link is open". This statement does not appear to have been updated at any time and now, in July, is unchanged on the school website.

37. Paragraph 1.17 of the Code states: "The admission authorities for all selective schools **must** publish the entry requirements for a selective place and the process for such selection in their admission arrangements". The time period during which one can register to sit selection tests for a grammar school is a vital part of the process for selection and without this information parents are at risk of missing the deadline, which would result in their child not being eligible to be considered for admission into the school.

38. We asked the school how parents wishing to register for the test will know when they are able to do so. The school responded, "From the Local Authority Admissions Website" and provided a link to a page which states "The London Borough of Bexley is finalising the details of this year's selection test. Once finalised we will publish full details on our website...The Council are currently anticipating that the registration process for the September 2023 Bexley Selection Test will open by 15 May and will close on 30 June." This information is insufficient and the link to this page is not provided on the school website.

39. We also asked the school why specific dates for registering to sit the tests are not included on the school website. The school responded by saying, "We have found that it

confuses parents if we duplicate too much of the information on the LA website on our school website. Parents are directed to the LA for all centralised information about the tests, otherwise they may think that they should apply via the school website rather than the LA website". We note that the school website does include a link to the LA website, but this is to a page headed "Schools and Education" rather than to a dedicated admissions page.

40. The school has failed to provide parents with the time period in which they can register their child to sit the tests. We understand that the tests themselves are organised by the LA and it would be acceptable for the school to direct parents straight to the appropriate part of the LA website. The school has not done this, and it should be noted that if the school relies on the LA to provide information, that information must be available in a Code compliant way. If the LA information is wanting then the school is also wanting. In not providing, in a clear and accessible manner, the registration dates for the tests the school has failed to publish a key element of the process for selection as required by the Code, and for this reason we uphold this part of the objection.

The test date is not stated

41. The initial objection was that "the test date is not stated". On 6 April 2023 the objector submitted an email to us which read, "Even as of today the exact test dates are not known."

42. Paragraph 1.17 of the Code requires the admission authorities of selective schools to publish the process for selection in their arrangements. Although the Code does not specifically state when, or indeed if, test dates should be published, it is right to consider what is appropriate in terms of the information available to parents. Paragraph 14 of the Code is also relevant here as it states, "In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear, and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."

43. We have looked at the school website, and found that it says "Children who will start at secondary school in September 2024 can sit the Bexley selection tests in September 2023 when they are in Year 6 of primary school... The test sessions are planned for week commencing Monday 11 September 2023". We asked the school whether test dates may include weekends and were told that they do not, but this information does not seem to be available to parents.

44. In response to our queries the school provided us with a link to the LA website page which states: "It is anticipated that the test will be held between 9 and 14 September with the exact dates to be confirmed" and also that tests will take place "week commencing Monday 11 September 2023". The information here is contradictory, the link does not appear on the school website and this page is not directly accessible from that which is linked on the school website.

45. In response to other questions on this matter, the school stated that the setting of test dates is an LA responsibility, and again directed us to the LA website when we asked

how and when prospective parents are informed of test dates. The school provided a link to an “Information for Parents Leaflet” where the following was found: “If your child will be sitting the test in their own Bexley primary school, you will receive a letter via the school at the start of the autumn term. Other notifications of the date, time and location of the test session will be sent by email by Friday 1 September.” We understand that parents are not given exact dates until after the closing date for registration as final arrangements cannot be confirmed until the number of applicants is known; we find this acceptable. The information the LA provides is helpful, but the issue remains that this is not provided by the school as part of its arrangements, either directly or via a link to the LA site.

46. A parent visiting the school website would see only that tests will take place in the week commencing 11 September. There is no information for parents as to whether tests are held on weekends, or how and when they will be informed of specific test dates. There is further information for parents on the LA website, but this is not immediately accessible from that of the school. Although the school is keen to direct parents to the LA website for some details of the admissions process, we do not believe that it is doing so effectively. As the body responsible for its admissions, the school should not expect parents to have to click through various web pages to access the information that must form part of its arrangements.

47. It is possible that parents may experience difficulties, given the lack of information from the school, in terms of knowing whether tests may coincide with other commitments. It is for the school to decide how it provides information; however, it would be acceptable to provide an accurate indication of the testing period, together with information on which days of the week are used and an explanation of how and when parents are informed of the specific date for their child. In not including this information in the arrangements or on the school website (or providing a direct web link to it) the school has failed to publish a key element of the process for selection as required by the Code, and for this reason we uphold this part of the objection.

The test supplier is not stated

48. This part of the objection reads: “The test supplier is not stated”. We agree that this is true; the test supplier is not stated within the arrangements or on the school website. The matter for this determination is whether there is a requirement for an admissions authority which uses selective testing to publish the name of the test supplier.

49. The Code states in paragraph 1.17: “The admission authorities for all selective schools **must** publish the entry requirements for a selective place and the process for such selection in their admission arrangements” and paragraph 1.31 that, “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.”

50. We are not of the view that the test supplier in use is a required part of the process for selection, and the Code makes no reference to this being required as part of admission arrangements. We also note the clarity the Code provides in stating that it is for the

admission authority to decide the content of the test. For the avoidance of doubt, we do not mean by this that the school must itself design and produce the test. We therefore do not consider the arrangements to be non-compliant with the Code in this regard and do not uphold this part of the objection.

There is no indication of what the tests evaluate

51. The objection is that: “There is no indication of what the tests actually evaluate”.

52. The arrangements state, in the document “Admissions Policy 2024-2025”: “Applicants must reach the required standard in a set of tests. The tests are marked and the scores are standardised.” There is no further information regarding the content of the tests contained within this document or what the “required standard” is. We looked at the school website and examined each of the pages under the heading of “Admissions”. We were unable to find any information regarding the content or level of the selection tests.

53. Paragraph 1.17 of the Code states: “The admission authorities for all selective schools **must** publish the entry requirements for a selective place and the process for such selection in their admission arrangements.” Paragraph 14 states, in as far as is relevant here, “Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”

54. The school website links to a seventy-eight page booklet published by Bexley LA for entry to secondary school in 2023, which on page 18 states “An information leaflet about the selection test can be downloaded from the Council’s website” and provides a hyperlink. This link is to a LA webpage headed “Bexley Selection test 2023”, and two further clicks from this page takes us to one headed “The Bexley Selection Test 2023”. These two pages provide information regarding the content, difficulty and format of the tests which we regard as being helpful and sufficient. The question for this determination is whether the school, as the admission authority, has provided appropriate information on the process for selection as required by the Code.

55. We pause here to note some possible confusion regarding the available information and years of entry. The objection, and this determination, relate to admissions into the school in September 2024. The LA booklet linked from the school website concerns entry into secondary schools in 2023, notwithstanding some apparent errors within it which refer to tests and applications taking place in 2023. The pages on the LA website, noted in the paragraph above, relate to tests that take place in 2023 for entry into secondary grammar schools in 2024.

56. The information provided to parents by the school is minimal: that children must reach the required standard in a set of tests, but with no explanation as to what these tests entail or what the required standard is. The information which the LA provides is not directly accessible from the website of the school, and the booklet that is linked from the school website relates to admissions in 2023 not 2024. Parents are not able to look at the arrangements and easily understand how places are allocated, or indeed whether the school would be suitable for their child. We do not believe that the school has fulfilled its

duty under the Code to publish the entry requirements and process for selection and we therefore uphold this part of the objection.

There is no clarity as to how tests are age-standardised or evidence to support this process

57. The objection is that: "There is no clarity as to how tests are age-standardised and the evidence it is required in the particular tests used and there is no evidence as to how the standardisation process is accurate and what research was taken for the particular tests in question. One cannot apply generic analysis or guessing. One has to evidence that in a test a 1 month difference would equate to "x" extra marks. There is no such evidence."

58. Paragraph 1.31 of the Code states, "Tests for all forms of selection **must** be clear, objective, and give an accurate reflection of the child's ability or aptitude, irrespective of sex, race, or disability. It is for the admission authority to decide the content of the test, providing that the test is a true test of aptitude or ability."

59. The Code does not mention age-standardisation, and there is nothing within the Code to prevent the admission authority of a selective school from using it as part of its arrangements. The requirement for an admission authority is to ensure that the process for selection is clear, and that all processes that are used are proper.

60. The arrangements state "The tests are marked and the scores age standardised". This is clear to parents. The use of age standardisation is an accepted approach to testing, and there is no requirement within the Code for an admission authority which uses it to explain the detail of how it is applied. We are concerned with what is stated in the admission arrangements and do not agree with the objector that the school must set out how tests results are age standardised or provide evidence to justify the use of this approach.

61. The decision to use age standardisation is one for the admission authority, under the freedoms extended to it by paragraph 1.31 of the Code. We are of the view that the school is at liberty to use age standardisation as part of its selective process, that this is clearly stated in the arrangements and there is no requirement for any further detail of the age-standardisation process to be included in the arrangements. We do not uphold this part of the objection.

The allowance within the arrangements for an applicant's primary school headteacher to request a review of selection decisions undermines the test process and is unfair to applicants who are home-schooled

62. The objection is that: "A test is used to determine eligibility. The policy states: "The assessment decision is based on the test results. However, the applicant's primary school Headteacher may request a review of the decisions they disagree with. In such cases, the 'Head Teacher Review Panel' considers all the relevant information before making a decision." Either the eligibility is based upon the tests or not. It is not for a Head to disagree with a test or the standard. This undermines the test process, which children

prepare for. There is no point of having a test if a Headteacher can change eligibility for a child. This is also unfair to home-schooled children who do not have a Headteacher to challenge eligibility status. This clause should be removed and parents must rely on the statutory right of appeal.”

63. Paragraph 14 of the Code states, as far as is relevant here, that “In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear, and objective”, and paragraph 1.8, again as far as is relevant, that “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”.

64. The arrangements state: “Applicants must reach the required standard in a set of tests. The tests are marked and the scores age standardised. The scores achieved in these tests are then considered by the selection panel convened by Bexley Council in order to decide which students should be ‘deemed selective’. The assessment decision is based on the **test results**. However, the applicant’s primary school Headteacher may request a review of the decisions they disagree with. In such cases, the ‘Head Teacher Review Panel’ considers all the relevant information before making a decision. This can include the applicant’s test scores, recent school work and comments from the applicant’s primary school Headteacher.”

65. First, we will consider whether a process to review selection decisions undermines the test process as the objector states. We asked the school for clarification regarding how applicants are “deemed selective”, including how the selection panel determines who is deemed selective and to what extent this is, as the arrangements state, “based on the test results”. The response from the school was: “At Bexley LA level, not school level. A selection panel determines the lowest mark at which a child will be deemed selective. This mark is the single determinant of a child being deemed selective.”

66. We also asked how, and in what circumstances, applicants not reaching the required standard in the tests would still be deemed selective. The response to this was: “The Headteacher of a child’s primary school may request a review for a child who was not deemed selective. A ‘Head Teacher Review Panel’, convened by the LA, meets to consider such reviews and may, in extreme extenuating circumstances, recommend that a child is deemed selective having not met the required standard in the tests.”

67. There is an apparent contradiction in the arrangements, and in the response from the school. It cannot be true both that the mark a child achieves in the tests is the **single** determinant of whether they are deemed selective and that a child who does not achieve the required mark may be deemed selective by the review panel. We consider this to be a fault with the arrangements as they are written rather than with the process itself.

68. We find it acceptable that a review process exists for applicants who have failed to meet the required standard in the tests, and accept the point made by the school that this

applies to “extreme extenuating circumstances”. There is nothing within the Code to preclude the use of such a review as part selection and we do not agree with the objector that this undermines the testing process. We do not uphold this part of the objection.

69. We now turn to the question of fairness for applicants who are home-schooled. We asked the school what arrangements, if any, are in place to review decisions for children who are home-schooled. The school responded that, “There are no specific arrangements, of which the school is aware, to review decisions for children who are home-schooled, but all parents have a right to appeal if their child is not deemed selective.”

70. We pause for a moment to consider the use, in the school’s response, of the phrase “of which the school is aware”. As we have established earlier, the school is the admission authority. It is for the school and the school alone to determine its arrangements; the school should and indeed must be aware of all aspects of its own arrangements as it is the school that has determined them.

71. For the sake of completeness we did ask the LA about any arrangements that are in place to review whether applicants are deemed selective for children who are home schooled, and where these arrangements would be found by parents. The response from the LA was: “The test is open to any pupil regardless of where they are schooled as long as they meet the age requirements as advised in the leaflet on the Bexley web site” and also that “The appeal process is open to any child who is unsuccessful in the test. The process can be made by the school or parent - documentation makes this clear”.

72. Neither the school nor the LA fully answered the question we posed. We have not questioned the opportunity for home-schooled children to sit the test or for their parents to access the appeals process; we are concerned with whether a review of decisions by the Head Teacher Review Panel, which is a separate part of the arrangements to the right to appeal, is equally available to those children with a primary school headteacher and those without. From the responses given we are to assume that there are, in fact, no arrangements for decisions for home-school children to be reviewed in the same way as for those who attend a primary school.

73. The Code requires that arrangements are fair, and that direct or indirect discrimination does not occur. There is a process in place for selection decisions for applicants who attend a primary school to be reviewed. There is no equivalent process for applicants who are home schooled. We uphold this part of the objection because the arrangements are not fair.

The PAN of 210 could be exceeded if more than 30 applicants were looked after or previously looked after children, when set against 180 guaranteed places for those students identified by Bexley Council as achieving one of the highest score in the selection tests

74. The objection is that “PAN = 210. Guaranteed places = 180. What if there are more than 30 looked after children? The PAN would be exceeded. It is not clear what happens.”

75. We note that a PAN is not a cap, and under paragraph 1.4 of the Code an admission authority may admit above its PAN. However, we understand the concern that is expressed by the objector. This part of the objection relates to the second oversubscription criterion which reads: “Guaranteed Grammar School Place- Those students identified by Bexley Council as achieving one of the highest 180 scores in the selection tests”. There is no explanation of this within the arrangements or on the school website.

76. Paragraph 1.8 of the Code states: “Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission arrangements **must** include an effective, clear, and fair tie-breaker to decide between two applications that cannot otherwise be separated.”

77. From looking at information provided on the LA website, and confirming our understanding with the school, we established that this oversubscription criterion refers to the following: All children who take the Bexley selection test, that is all children who take the test for entrance to any of the grammar schools within the Bexley LA area, are ranked in order of their standardised scores. From this ranking exercise, the 180 children with the highest scores are guaranteed a place at their preferred grammar school within Bexley LA. There are a number of grammar schools in the LA area, and the 180 children will be placed across these schools according to their first preference.

78. Children applying to the school will therefore fall into four main groups: Looked After or Previously Looked After children as in oversubscription criterion 1; ‘top 180’ children for entry to grammar schools within the LA, who will be admitted to the school if it is their first preference (oversubscription criterion 2); other children who are deemed selective and will be admitted in accordance with oversubscription criteria 3-6; and children who are not deemed selective and therefore will not be considered for a place at the school.

79. We looked at the number of pupils who were admitted to the school under the second oversubscription criterion from 2020-2022 and found that the figures were 8 pupils in 2020, 12 in 2021 and 8 in 2022. For entry in 2023, 13 applicants have been offered a place under this criterion. There were no looked after or previously looked after children admitted or offered a place in 2021 and 2023, and one such applicant admitted in each of 2020 and 2022.

80. In response to this part of the objection the school told us that “Whilst theoretically it looks possible to exceed the PAN with the first two oversubscription criteria, Bexley Grammar School has never had more than 2 looked after or previously looked after children in a single cohort and no more than 20 top 180 children (often fewer than 10). In practice, a significant percentage of the top 180 children do not take up their places in a Bexley school (many go to the super-selectives in Bromley or to independent schools) and the remainder divide between the four Bexley Grammar Schools.”

81. It is our view that this part of the objection stems from an understandable misunderstanding of the second oversubscription criterion on the part of the objector. The criterion as it appears in the arrangements may well lead the reader to assume that 180 children could be admitted to the school under this criterion. The lack of clarity in the arrangements regarding this criterion is dealt with in this determination under other matters. From our investigation it is clearly not likely that 180 applicants would be admitted under this criterion, and indeed these students when taken together with looked after or previously looked after children have, each year, comprised a small fraction of the school's PAN. We find the oversubscription criteria to be fair and do not uphold this part of the objection.

Prioritisation on the basis of siblings should apply to siblings on roll at the point of entry rather than at the point of application.

82. The objector writes, "Why is sibling considered at the point of application as opposed to the point of entry? At the point of application year 13 child would have left before the year 7 sibling entered in 2024. It is considering alumni. This has no logical basis and is not reasonable."

83. The Code allows for oversubscription criteria to be used to prioritise siblings of current or former pupils, as stated in paragraph 1.11: "Admission authorities must state clearly in their arrangements what they mean by 'sibling' (e.g. whether this includes step siblings, foster siblings, adopted siblings and other children living permanently at the same address or siblings who are former pupils of the school). If an admission authority wishes to give some priority to siblings of former pupils, it **must** set out a clear and simple definition of such former pupils and how their siblings will be treated in the oversubscription criteria (bearing in mind the restrictions set out in paragraph 1.9 above)." The restrictions set out in paragraph 1.9 of the Code do not apply in this situation.

84. The arrangements prioritise siblings in the third oversubscription criterion, stating: "Those students with a brother, sister or step/half brother or sister living at the same address who are currently attending Bexley Grammar School in Years 7 – 11 at the time of application."

85. As the arrangements refer to siblings in years 7-11 only, the objector's point relating to year 13 does not apply. It is, however, true that a sibling who was on roll in Year 11 at the point of application would, if not continuing into Y12, have left the school when the applicant joined Y7. However, under paragraph 1.11 of the Code an admission authority may prioritise the siblings of former pupils should it choose to. The definition of a sibling is clear within the arrangements and we find this oversubscription criterion to be compliant with the Code. We note too that at the time the younger sibling applied for a place it could not be known with any degree of certainty whether the older sibling was to continue into Y12 at the school. We therefore do not uphold this aspect of the objection.

The arrangements are unlawful in that they refuse to allow late applications for the selection test, such as when a child moves into the area

86. The objector emailed on 6 April 2023 to add to the initial objection in asserting “The adjudicator should be aware of the stance of Bexley and the schools. They refuse to allow late applications ... It is accepted that this is unlawful, e.g. if parents move in to the area it has been deemed a breach of the admissions code not to allow late applications for the test.” On 16 June 2023 the objector emailed once again and said ““It seems the OSA believe that local children tend to apply for an 11+ exam in local schools. If they move a “long distance” they should be given the right to sit a test late. This is certainly the findings in the past. This does not form a precedence. I don't believe they should be given any such right of a late test as the test is open to all. If one child can have a late test (and know questions) why not all? One can game the system - fail tests in one area, move to another and take a test before offer day and then jump to the top of the waiting list.”

87. These assertions from the objector relate, in part, to an email from the school which read: “With reference to the “We are unable to accept any late applications” this specifically refers to the late applications for our selection test which has a closing date and therefore we will not be removing it and this is outside of the admissions code.” The school is incorrect in its assertion that the subject of late applications for the selection tests is outside the Code.

88. The views of the objector are therefore firstly that the arrangements are unlawful in that they do not allow applicants to register to sit the tests later than the deadline, and secondly that applicants should not be able to sit the tests later than usual as they could “game the system”. Although not part of the initial objection we are satisfied that we have jurisdiction to consider both these points as part of the overall objection that the arrangements are not clear.

89. Paragraph 14 of the Code states, in as far as is relevant here: “In drawing up their admission arrangements, admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear, and objective.”

90. We do not accept the objector’s assertion that applicants should not be able to sit the tests later than is usual due to a risk of gaming the system. For the scenario the objector suggests to occur, a child would need to sit a selective test in another area which uses the same test as the LA, remember the questions from it, receive their score and then seek a test in Bexley before 31 October 2023, which is the LA deadline for applications to secondary schools. The LA website states, “The new test provider for the Bexley Selection Test is GL Assessment and whilst they also provide the Kent selection test these are completely separate tests”. The likelihood of the suggested scenario actually happening seems negligible, and to prevent a late test may well disadvantage applicants unfairly. On balance the importance of fairness outweighs the likelihood of a child unfairly gaming the system.

91. There are a range of possible, exceptional circumstances which may result in either an applicant who has been unable to register to sit the selection tests by the prescribed deadline but who could sit the tests at the usual time, or an applicant who may move into the area after the usual tests have taken place. Examples of extenuating circumstances

may include housing issues, flight from domestic abuse or relocation by members of the armed services.

92. We are therefore of the view that in order for the arrangements to be fair and clear, as required by the Code, they should make provision for applicants in extenuating circumstances who either wish to sit the tests at the usual time but who were unable to register by the deadline, or whose circumstances change such that they wish to sit the selection test whilst in Y6 but were not able to do so at the usual time. Further, that such an applicant should not be disadvantaged by a genuine inability to adhere to the set timescales. For example, a child who moves into the area in July of Y5 should not be prevented from taking the tests for entry into Y7 and their application for the school being considered in the usual way. The reference to extenuating circumstances is important; we understand that the school needs to set deadlines and timescales for the usual operation of its arrangements.

93. The arrangements state: "Admission except at the beginning of Y7. Students wishing to join Bexley Grammar School except at the normal point of admission must be deemed selective under testing arrangements for selection similar to those required at the age of 11. Students may not undertake more than one test in an academic year and students that take the test at the usual time in Y6 and who are not deemed selective may not undertake a retest before the summer term of Y7." The arrangements deal only with the instance of admission other than at the normal point of entry and do not make provision for a child moving into the area after the window for applying to sit the test has closed or for a child who has missed the usual test date, such as one who joins a local school in Y6.

94. In response to our queries, the school directed us to information on the LA website which reads "Children can only take the test once while they are in Year 6. If you move into the area while your child is still in Year 6, arrangements may be made for a late test to be taken. Children deemed selective after a late test will be placed on the waiting list for their preferred school. Children can be re-tested when they are in secondary school or tested for the first time if they have not taken the test before, during Year 7, 8 or 9, if they are achieving the selective standard in an all-ability school. Children sitting the test for a second time will be tested at the end of the academic year. For more information, please contact your preferred grammar school." At the time of writing a different website page reads "The Bexley Selection Test registration period has now closed. We are unable to accept any late applications." These webpages provide some, but not all, of the required information. These pages are not linked from the website of the school and do not form part of the arrangements.

95. The arrangements do not make any provision for, or mention of, either late registration to sit the test at the usual time, or late tests for applicants in Y6. We find this to be unfair and therefore uphold the objection that the arrangements refuse to allow late applications for the selection test. We do not uphold the objector's assertion that applicants should not be able to sit the tests later than is usual.

Determination

- a. 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 2024 determined by the governing board for Bexley Grammar School which is in the London Borough of Bexley.
- b. 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.
- c. 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: 25 July 2023

Signed:

Schools Adjudicator: Jennifer Gamble

Tom Brooke