



Determination

Case reference:	ADA4123
Objector:	A parent
Admission authority:	The governing board of The Royal Grammar School, High Wycombe, Buckinghamshire
Date of decision:	7 September 2023

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2024 determined by the governing board for The Royal Grammar School, High Wycombe, Buckinghamshire.

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

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

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), an objection has been referred to the adjudicator by a parent (the objector) about the admission arrangements (the arrangements) for The Royal Grammar School (the school), an 11 to 18 selective secondary day and boarding school for boys, for September 2024. The school converted to academy status in 2011.
2. The objector asserts that the requirements for applicants living in rented accommodation to have to provide a tenancy agreement provided by an approved letting agent and evidence that the tenant will be living at the address at least six months after the

proposed admission causes there to be disadvantage to those applicants. I have tested this against the requirement in paragraph 14 of the School Admissions Code (the Code) that arrangements must be fair.

3. The local authority (LA) for the area in which the school is located is Buckinghamshire County Council. The LA is a party to this objection. Other parties to the objection are the school and the objector.

Jurisdiction

4. The academy trust that governs the school is a single academy trust (the trust) and its board of trustees is the governing board. 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. The arrangements were determined by the governing board, which is the admission authority for the school, on that basis. When referring to the school in this determination, this includes the governing board as the admission authority.

5. The objector submitted his objection to these determined arrangements on 18 April 2023. The objector has asked to have his identity kept from the other parties and has met the requirement of regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of his name and address to me. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

6. I have also used my power under section 88I of the Act to consider the arrangements as a whole and to determine whether or not they conform with the requirements relating to admissions and, if not, in what ways they do not so conform. I will refer to these as 'Other Matters' and these are covered in the sections of the determination under that name.

Procedure

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

8. The documents and other information sources I have considered in reaching my decision include:

- a. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 18 April 2023 and supporting documents;
- d. the responses of the school and LA to the objection and supporting documents;
- e. the LA's online composite prospectus for admissions to secondary schools;
- f. Google searches and maps;

- g. information available on the websites of the school, other selective (grammar) schools in Buckinghamshire, the LA, the Department for Education (DfE) (including 'Get Information About School's (GIAS)) and Ofsted;
- h. DfE guidance entitled 'School applications for foreign national children and children resident outside England – Advice for state-funded school admission authorities, independent schools, local authorities and parents'; and
- i. 'The State Boarding Forum' page of the UK Boarding Schools website (link provided by the school).

The Objection

9. The objector asserts that the requirements for applicants living in rented accommodation to have to provide:

- 9.1. a tenancy agreement from an approved letting agent, and
- 9.2. evidence that the tenant will be living at the address at least six months after the proposed admission,

causes there to be disadvantage to those applicants.

10. The following paragraphs of the Code are identified by the objector as being relevant to the objection:

- 10.1. Paragraph 14 (part): "[...] admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair [...]"
- 10.2. Paragraph 1.8 (part): "Oversubscription criteria **must** be reasonable [...] Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group [...]"

11. The objector asserts there is disadvantage to applicants living in rented accommodation caused by this part of the arrangements. All admission arrangements create advantage for some applicants and disadvantage to others; indeed, that is their purpose. However, any disadvantage must not be unfair and the test for me to employ in this determination is whether the arrangements are fair.

Other Matters

12. The aspects of the arrangements which I identified as not or possibly not conforming with the requirements relating to admissions are covered in detail towards the end of this determination.

13. In summary, the concerns I raised with the school were: its misuse of the term ‘PAN’ (Published Admission Number) in respect of year groups other than the years of entry; lack of clarity about the evidence the school is expecting parents to provide in certain circumstances; issues with the stated ‘late transfer procedure’; using out-of-date terminology; the necessity of there being an additional list of oversubscription criteria in respect of in-year applications; a number of matters related to the way the school has described how its waiting list is operated; and the need to meet requirements in respect of the random allocation process used by the school.

14. I also raised concerns in respect of the following aspects of the arrangements which deal with applying for a boarding place: placing requirements on parents making such applications which are, at best, unnecessary and, at the worst, likely to breach the Code and may be unlawful; lack of clarity around aspects of the boarding oversubscription criteria; matters related to the Boarding Registration Form (BRF); and a lack of clarity around how parents from year groups other than the year of entry are expected to make an application for either ‘full’ or ‘weekly’ boarding places.

Background

15. The school is a secondary academy for 11 to 18 year olds, located in High Wycombe in Buckinghamshire. The school converted to academy status on 1 February 2011. It is a selective boys’ school which has boarding places. Ofsted rated the school as ‘Good’ in 2019. The PAN for the school for 2024 is 182 day places and 10 boarding places. For Year 12, 30 additional places are available for students who fulfil the entry requirements, in addition to students from the school’s own Year 11 who have fulfilled the entry requirement.

16. According to the GIAS website, the school has a capacity for 1371 children. The school provided data, which I have put in Table 1, which show 1493 children are on roll in the academic year ending in July 2023.

Table 1: Number of day children and boarders in each year group (as of May 2023)

Year Group	Number of day children	Number of boarders
7	192	10
8	199	6
9	209	11
10	203	10
11	203	10
12	208	11
13	210	11
Totals	1424	69

17. The arrangements for 2024 were determined by the school’s governing board on 24 January 2023. Those arrangements state that:

“Boys are eligible to be considered for admission to the Royal Grammar School, High Wycombe, in Year 7 if they meet the required qualifying score of 121 in the Buckinghamshire Secondary Transfer Test (STT) or have been deemed qualified by a Selection Review Panel (or, in exceptional circumstances, an Admissions Appeal).”

18. The oversubscription criteria for ‘day places’ in the arrangements can be summarised as follows:

1. Looked after and previously looked after boys.
2. Boys living in the catchment area of the school who qualify for free school meals.
3. Boys living in the catchment area of the school.
4. Brothers of boys who are on the roll of the school at the time an application is made and who are expected to continue to be on roll at the time of admission.
5. Sons of members of staff.
6. Straight line distance from the school. Where there is an absolute tie in distance, each boy will be admitted.

19. The oversubscription criteria for ‘boarding places’ in the arrangements can be summarised as follows:

1. Looked after and previously looked after boys.
2. Sons of members of the UK Armed Forces who qualify for Ministry of Defence financial assistance with the cost of boarding fees.
3. Boys with the following boarding needs:
 - a. Boys at risk or with an unstable home environment.
 - b. Boys whose parents are members of the UK Armed Forces, Crown Servants, or key workers (e.g. charity workers, people working for voluntary service organisations, teachers, law enforcement officers and medical staff working abroad) whose work dictates that they spend much of the year overseas or working unsocial hours.
4. 11+ score.

(I have raised a matter with the school in respect of boarding oversubscription criterion 4., which is detailed in the ‘Other Matters’ section later in this determination).

20. According to GIAS, there are eight other schools admitting secondary-aged pupils within three miles of the school’s location. Seven of those schools are academies and the other a foundation school. The nearest secondary school with boarding is 10.84 miles away

in Holyport, Berkshire (Holyport School) and the nearest boys' selective secondary school with boarding is Reading School (also in Berkshire), which is 16.24 miles from the school.

21. The school told me that its arrangements, "are in line with other Buckinghamshire grammar (selective) schools". GIAS records 12 other selective (grammar) schools in Buckinghamshire (with miles away from the school (straight line distance) in brackets): Wycombe High School (1.82); John Hampden Grammar School (1.99); Beaconsfield High School (4.82); Sir William Borlase's Grammar School (5.24); Dr Challoner's Grammar School (6.04); Dr Challoner's High School (7.47); Chesham Grammar School (7.57); Burnham Grammar School (8.39); Aylesbury High School (12.13); Aylesbury Grammar School (12.25); Sir Henry Floyd Grammar School (12.46); and The Royal Latin School (26.56). Out of those 12 schools, three are boys' schools, four are girls' schools and five are co-educational.

22. I note here that the LA undertakes the admission process on behalf of the admission authority.

Consideration of Case

23. I will now turn to look at the concern raised by the objector in respect of the school's arrangements for 2024.

24. The objector is concerned particularly with the following sub-section under section 3.0 of the arrangements:

"In order to qualify for admission under rules referring to the school's catchment area:

a) the applicant must have been resident at their home address continuously since 1 September of the year preceding proposed admission. If the property is rented a formal lease agreement, provided through an approved letting agent, confirming that your lease has started and showing that you will be living at the address for at least six months after proposed admission is required."

This sub-section relates to oversubscription criteria 2 and 3.

25. About this sub-section, the objector asserts:

"I believe many genuine tenants will be unable to meet these additional requirements and that these requirements contravene the School Admissions Code paragraph 14 and section 1.8 [...]"

1. The policy requires a tenancy agreement provided by an approved letting agent. This requirement excludes and disadvantages tenants who rent directly from a private landlord. An assured shorthold tenancy [AST] is equally legitimate whether you rent from a private landlord or letting agent. Tenants often have limited choice and limited time to find a suitable property and requiring them to exclude a part of the private rented market is unreasonable. The only practical way tenants who are

already renting from [sic] a private landlord can comply with the requirements is to leave their current property and move into one that is rented through an approved letting agent. I am sure you will agree that this is not reasonable.

2. The requirements also state that the applicant must have been resident at the address since 1 September 2023 and that the tenancy agreement must show that the tenant will be living at the address for at least six months after the proposed admission.

This means that the tenancy must start before September 2023 and end after March 2025. That is a term longer than 18 months which exceeds the length of standard fixed term tenancies (Shelter website says fixed term tenancies are “often 6 or 12 months”).

In most cases the tenancy would have started some time before September 2023, in which case even an unusually long two-year tenancy may end before March 2025. For example, a two-year fixed term tenancy starting in January 2023 will end in January 2025.

In many cases, the tenancy may now [sic] be continuing indefinitely on a statutory periodic basis after the initial fixed term. A statutory periodic tenancy arises when a tenant stays on at a property after a fixed term tenancy ends without signing a new agreement. Shelter website says at the end of a fixed term, you can “stay in your home without signing a new contract – your agreement becomes periodic and rolls on monthly at the same rent”. Where the tenancy is continuing on a statutory periodic basis, the initial fixed term tenancy agreement will not show that the tenant will be at the address in March 2025.”

26. I want to be clear from the outset that the Code does not prohibit the use of residence requirements in prioritising admission. However, that use must be fair. In that respect, I note the following relevant paragraphs from the OSA Annual Report 2021:

“21. Where address affects the chance of gaining a place at a school, some admission authorities adopt residence requirements for the purpose of ensuring applicants really do live in a catchment area or close to the school. It is entirely fair and reasonable for an admission authority to set out circumstances in which it may further investigate a home address and to set out the types of evidence which may be required in order for it to make a finding of fact as to whether a claimed address is genuine or not. This addresses the legitimate need to prevent the use of false addresses in applications. That said, adjudicators are likely to find it unfair where admission arrangements include absolute requirements which some applicants may be unable to meet even though they really do live at the address concerned.

22. I deal first with tenancies. It is not uncommon for adjudicators to see admission arrangements which refer to tenancies needing to be for a minimum of 12 months or sometimes longer. Most residential tenancies involving private landlords are assured shorthold tenancies (ASTs) made under the provisions of the Housing Act 1988. The

tenancy will have an initial term, the minimum being six months, and, when that term expires, the tenancy will automatically continue on a periodic basis (determined by the intervals for paying rent, so usually one week or one month) unless the landlord and tenant enter into a further agreement for some other term. The website for Shelter England states “An assured shorthold tenancy is the most common type of tenancy if you rent from a private landlord or letting agent. The main feature that makes an AST different from other types of tenancy is that your landlord can evict you without a reason”. Shelter goes on to state that such tenancies are for a fixed term “often 6 or 12 months” or periodic “rolling weekly or monthly”. Government guidance “Tenancy Agreements: a guide for landlords (England and Wales)” states “The most common form of tenancy is an AST. Most new tenancies are automatically this type”. To sum up, tenancies will be for a range of terms but often this will initially be for six months and thereafter on a monthly periodic basis. Moreover, families with low income and/or in receipt of benefits may be more likely to have short tenancies as they are more likely to be in a poor bargaining position and shorter tenancies may suit the landlord.

23. Some families may take short tenancies near to a school in order to seek to secure a place for a child with no genuine intention to make that property their main residence. It is understandable that admission authorities wish to prevent such families gaining an unfair advantage. Admission authorities take different approaches to this problem. Some specify circumstances in which they will make further enquiries in order to establish whether the address given is a genuine home address, a short term tenancy being a common example. Others make a longer term tenancy an absolute requirement. In the latter case some families, particularly those that have limited resources, will be excluded despite the home address being genuine. Such families may have had no choice but to accept a short lease. For that reason, any absolute requirement for a lease to be for a term greater than six months is likely to be found not to comply with the provisions of paragraph 14 of the Code which requires arrangements to be fair. Arrangements which exclude some families because of their financial situation are unlikely to be fair.”

27. In its response to the objection, the school told me that:

“• Our processes are in line with other Buckinghamshire grammar (selective) schools.

• Schools communally reached a conclusion that this was the only way to ensure that families continued to have a link to the area once their child had commenced an education within a Buckinghamshire Grammar School.

• The Royal Grammar School has a long, narrow catchment area. We are, year on year, unable to meet the needs of the north and south of our catchment area. This, understandably causes catchment area parents anxiety over perceptions that places are allocated to boys of families who have not made [the catchment] area their residence[.]

- Students who may well have lived temporarily near the school, but then move are not able to make the most of school provision e.g. co-curricular activity and are often subject to long journeys to and from school[.]”

28. Further to this response, the objector told me that out of the 13 grammar schools in Buckinghamshire, 10 of those schools do not include the requirements (all but the school and Dr Challoner’s Grammar and High Schools). Having looked at the corresponding section of the arrangements for all 12 of the other grammar schools, I can see that the objector has correctly identified that 10 schools do not include wording that would indicate that the schools are placing the same requirements on applicants in respect of tenancy agreements as are being required by the school. Regardless, the school is its own admission authority, and its arrangements are its own. Moreover, the circumstances of each school are different and what may be fair in one set of circumstances may not be in another. The school’s argument that ‘others are doing the same’ to justify including in its arrangements something which may unfairly disadvantage applicants, is not an argument that is reasonable or acceptable. Therefore, I have given no weight to the school’s argument in this regard in my consideration of the case.

29. As the LA co-ordinates admissions on behalf of the school, it has provided me with the most information on the process. The LA told me that:

“Where pupils are normally resident in the county and attend a local school who hold the same address as the parent uses for application then there is rarely detailed further investigation into the nature of their residence. As long as these addresses align and the parent has supplied us with their Council tax number then aside from some council tax spot checks these are rarely investigated in detail. You will appreciate with cohort sizes of in excess of 12439 (over 77000 [sic – LA later amended this to the correct figure of 7700] of which are Bucks resident) we will not be able to check every address in detail. [...]

Where families move into the area in the academic year prior to secondary transfer then we support all secondary schools in ascertaining the home address so that they can accurately apply their admission rules. We have an online form that we collect residence information for movers and will work with schools to ascertain whether the applicant meets each preference school’s particular admission arrangements with regard to residence. Some of the grammar schools (including RGS) currently set an earlier date for residence and/or require continuous local residence both before and after the point of admission.

Grammar school places are particularly sought by parents who move (often two or three days before the deadline) from neighbouring LAs into let accommodation in the county- in many cases without actually moving into the property and/or whilst still owning property used as a family home elsewhere. We have developed an online web page and questionnaire [...] for parents to complete, and where families have moved in we ask them to complete the questionnaire and provide evidence. [...] We ask that if they cannot provide evidence as requested then they should contact us for

advice. We will then agree what alternative evidence can be used to support the family that is resident but does not, for example have a long let agreement.”

30. The LA’s response indicates that the level of checking of addresses is constrained by the sheer volume of the applications it has to deal with each year. The LA says that it does not have the capacity to carry out detailed investigations into applications from residents in Buckinghamshire beyond checking address details and the alignment with council tax details. In respect of those with tenancies, the LA provides a webpage and form for applicants to complete. I have looked at the webpage. The evidence that would be expected in respect of a tenancy is specified as follows:

“Evidence that you have a new address can include:

- [...]
- an Assured Shorthold Tenancy agreement that is signed by both landlord and tenant (the tenancy should be for a minimum of 12 months), or;
- [...].”

31. I asked for more details from the LA about what it required when parents complete this form. In particular, I asked the LA to provide evidence that AST agreements in the Buckinghamshire area tend to be for a minimum of 12 months such that it might explain why that expectation has been placed on applicants. The LA’s response was:

“Currently, we do ask parents moving to the area and living in a let property to demonstrate access to the property is ‘an Assured Shorthold Tenancy agreement that is signed by both landlord and tenant (the tenancy should be for a minimum of 12 months)’. We ask for an assured tenancy agreement because the address should be an address appropriate for the parent(s) and their child to live in. The duration of 12 months enables that family to assure us that they are able to still be resident at the property at the point the child joins the school. When we are managing evidence of movers arriving in the county then the majority do provide a 12 month AST agreement, but this cannot be easily evidenced. For those who cannot, for example with a 6 month contract, or if they are living in a housing association property or are in a refuge, we will accept other evidence as long as it shows they are currently resident in that property. We can also check council tax information. The bottom line is if the family can clearly show that they are living here then the address evidence will be accepted even if they do not have a 12 month AST agreement, but we may ask later in the year for a current energy bill to evidence continued residence.”

32. Although it is not the same as saying that AST agreements in Buckinghamshire tend to be 12 months (which the LA told me is not easy to evidence), the LA does say that the majority of applicants are able to provide such agreements as part of their applications when required. However, there are a smaller number who cannot do so. I note that the expectation, as set out on the LA’s webpage and form, is that: “the tenancy **should** be for a minimum of 12 months” (bold is my emphasis) and not that it ‘must’. ‘Should’ implies that it

ought to be unless there is a good reason why it cannot be and ‘must’ that it has to be. It would appear in the cases where an AST agreement of at least 12 months cannot be provided that the LA are providing flexibility in the way that they process such applications on behalf of the school.

33. The LA also told me:

“The presence of grammar schools in Buckinghamshire and the residence deadline for 2023 falling after the results are known, means we have a significant number of families taking out tenancy agreements at short notice in the period 14 – 31 October and it is these families that we are particularly concerned to ensure that they actually move to live in the property and that the property is truly going to be their residence for the foreseeable future not just an address of convenience. Many of our schools (not just grammar schools), require families to continuously reside in catchment in order that they can benefit from the allocation of a place on the basis of a settled catchment address.”

34. On the school’s behalf, the LA provided data I requested and which I have put into Table 2.

Table 2: The number of children admitted (2020 to 2022) and offered (2023) with EHCPs and under each of the six oversubscription criteria

Numbers admitted / offered	2020	2021	2022	2023
EHCP	1	2	0	0
Oversubscription Criterion 1 (LAC / PLAC)	0	1	0	0
Oversubscription Criterion 2 (in catchment with FSM entitlement)	6	6	7	7
Oversubscription Criterion 3 (siblings)	34	33	32	35
Oversubscription Criterion 4 (in catchment)	159	143	130	145
Oversubscription Criterion 5 (sons of staff)	0	0	0	0
Oversubscription Criterion 6 (out of catchment by distance)	0	0	13	0
Total admitted / offered	200	185	182	187
PAN	182 *	182 **	182	182 ***

Note:

* The school agreed to increase its PAN to 200 (and 10 boarding places) for the second allocation round in order to accommodate more boys in the catchment area of the school.

** The school agreed to convert three boarding places to day places for the third allocation round.

*** From 31 March 2023, the school converted five boarding places to day places to offer more places to boys in the catchment area.

35. I also asked the school to provide the numbers of day place applicants in the years between 2020 and 2023 (inclusive) who, under oversubscription criteria 2 and 4, were offered places or had their applications refused on the basis of having fulfilled (or not) the qualification requirements (in respect of the catchment area) under criteria a) (that criteria being a tenancy agreement from an approved letting agent and evidence that the tenant will be living at the address at least six months after the proposed admission). On the school's behalf, the LA said it could not provide all of this data, stating that:

“We can only provide data for [...] 2023 as we moved to using an online solution for managing movers [...]. This was not in place for 2020 and 2021 and came in partially during 2022 entry. For 2023 entry the address for 12 movers has been reviewed and in the case of two we are still using the previous address as they have not as yet disposed of their previous property. It has not been the length of tenure that has been the issue rather it has been the lack of disposal of a previous family home within a radius of the school that has meant that the application has not yet been changed to the new address.”

36. The data in Table 2 show that between 75 and 83 per cent of those admitted (2020 to 2022) and offered places (2023) have been / are from the school's catchment area. The number of applicants that the LA has had to review on the basis of the length of tenure of their address in 2023 is 10 (putting aside the two described in the LA's response above). That is 5.3 per cent of the number offered places and 6.6 per cent of those offered places from the catchment area under oversubscription criteria 2 and 4. It is also important to bear in mind that this was the number being reviewed (it is not the number that did not get offered places on the basis of the length of their tenancy). In my view this indicates that a minority are affected by the entry requirements, as administered by the LA on the school's behalf.

37. Despite having requested the information twice from the school, it has not provided the definition of what it means by an 'approved letting agent' in its arrangements, instead telling me:

“We have been acting in good faith as we have several annual examples of families applying whilst living in the catchment area, only to find that they live many miles away once their son has started at the school. This is then further compounded by the sibling rule for younger brothers. We strive to be a selective school for local boys and I currently struggle to meet the needs of the catchment area.”

38. As well as not providing a definition, the school has not provided an explanation of how the issue it raises here can be linked to not having a tenancy from an 'approved letting agent'. It has also not provided any actual examples or evidence of families seeking to

indicate that they live in the catchment area when in fact they do not, or examples of families who have moved on relatively quickly having secured a place at the school.

39. Additionally, I note from the LA's responses that it has made no mention of seeking evidence of tenancies being from an 'approved letting agent'.

40. In considering both the school and LA's responses to the objection, it appears to me that there is a marked difference between how the school says it will prioritise admission (in terms of the aspect of its arrangements covered by the objection) and the reality of how the LA undertakes that role on its behalf. The LA does not expect evidence of a tenancy from an 'approved letting agent' and it does not expect there to be an AST agreement in place for at least 12 months for every applicant. The LA told me that it allows applicants who cannot provide evidence of that length of tenancy to provide other evidence of residence in catchment. In respect of the objector's concern that the admission authority are expecting evidence that the tenant will be living at the address at least six months after the proposed admission, the LA does not expect that evidence, but says that it will check 'later in the year for a current energy bill to evidence continued residence'. By that, I understand that later in the year would be from the point of a place being offered. I note also that paragraph 2.14 of the Code states that a place can only be withdrawn after the start of term if it was obtained fraudulently. In any event, I am of the view that there is no lawful basis for imposing a requirement that tenancies are to continue for at least six months beyond the child's start at school. The school is concerned about fraudulent applications. In which case, it should refer to paragraphs 2.13 and 2.14 of the Code for how to deal with these within the scope of the Act.

41. I also find the number of applications reviewed for 2023, in respect of their tenancy agreement length, is very small. On the basis of the practical application of the arrangements, I do not find there to be the disadvantage that the objector asserts. However, principally this is because this aspect of the arrangements is not operated as the arrangements describe.

42. As set out earlier in this determination, paragraphs 14 and 1.8 of the Code expect that arrangements are, amongst other things, fair, clear, and objective. Paragraph 14 also states that: "Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated." Regardless of how the admission process operates in practice, my jurisdiction is for the arrangements and not how they are applied.

43. Looking at the potential impact on the admission of those whose applications would be covered under sub-section a) in section 3.0 of the arrangements, if what is specified therein was to be implemented as set out, I find the following:

43.1. The arrangements do not define what is meant by the term 'approved letting agents' and this means that it is not clear for parents how any applications from those in the rented housing sector will be treated. A simple Google search of the term 'approved letting agents' does show the term in use, though it means different things in different contexts and between organisations utilising it. It is not a universally accepted or legally defined

term. It is not clear who would be undertaking to 'approve' such letting agents in any event. Without such a definition, it is difficult to see how applicants would know whether their tenancy agreement comes from such an agent; whether they would be treated as living in the catchment area; or how checks could be carried out that would enable admission to be prioritised. The requirement would also operate unfairly to any applicant who has genuinely rented through another route, which would not be interpreted as 'approved' by the arrangements. This part of the arrangements is contrary to paragraph 1.8 of the Code in that it is imposing an unreasonable requirement in terms of the agreement which must be entered into to 'prove' residence in the catchment area.

- 43.2. In respect of those applying for places at the school who live in rented accommodation, the LA has not kept records of the numbers affected by the application of the criteria forming the focus of the objection until 2023. I make the point that there was no requirement for it to do so. I cannot therefore establish any patterns or the scale of any unfairness caused by the arrangements from past data. However, I can say with certainty that those admitted under oversubscription criteria 2 and 4 (the catchment area) make up the majority of admissions and are the group affected by that which has been raised by the objector. If sub-section a) of section 3.0 were to be implemented as described in the arrangements, this is likely to impact on the largest number of applicants. It will also likely exclude applicants with genuine reasons for not having a tenancy of the specified length from gaining priority as a result of living in the catchment area. I can say this because the LA has employed more flexibility in the evidence it will accept. This means that those who cannot evidence a specific length of tenancy have not been disadvantaged. If the LA were to strictly implement the wording of this part of the arrangements, those applications previously treated flexibly would be disadvantaged. I stress here that: it is permitted for admission authorities to be able to check residence; and oversubscription criteria create advantage for some applicants and disadvantage to others (that is, in fact, their purpose). However, arrangements must be fair. The requirements disadvantage unfairly a particular group, namely lower income applicants, because they are less likely to be in a position to dictate the type of rental agreements they enter into. Additionally, those in LA or social housing accommodation (whose providers are unlikely to use lettings agencies), asylum seekers, refugees and others housed in temporary accommodation will all be disadvantaged.
- 43.3. The arrangements are contrary to paragraph 1.8 of the Code because they impose requirements which are unreasonable in terms of the types of agreements which must be entered into to 'prove' residence in catchment. Applicants will have needed to enter into ASTs of more than two years, which is uncommon; agreements with private landlords are not included; people are not always in a position to dictate their own terms with landlords. Whilst

admission authorities are entitled to take steps to ensure that applicants live where they say they live, I find that these requirements are disproportionate.

44. I therefore uphold the objection.

45. I pause here to note that both the school and the LA have recognised the need to look at this aspect of the arrangements:

45.1. The headteacher of the school told me:

“I am aware that that Buckinghamshire Council are reviewing their residency requirements and we shall, as of the next admissions policy, fall in line with their policy. This will then synchronise our requirements with some, but not all grammar schools in the area.”

45.2. The LA told me:

“[...] we are prepared to review our wording at this point to make it clear that if the tenancy length does not cover the full period between the move into the property and the start of the academic year then we may ask for other forms of evidence to substantiate their claim to residence in the property and if necessary will seek further information later in the year to demonstrate that the family is still resident.”

46. Whilst any review the school and LA intend to carry out will have no bearing on the arrangements already determined (save for a variation request being made), I recognise that this demonstrates a willingness to address the matter that has been raised. As a result of my determination, the school will be expected to address this matter in its arrangements in line with Paragraph 10 of the Code and to do so by the deadline I have specified.

Other Matters

47. Having considered the arrangements as a whole it appeared to me that the following matters do not conform with the requirements of the Code and so I brought them to the attention of the school. These matters are (paragraphs of the Code are indicated where relevant):

The arrangements for those applying for day places:

47.1. Under the section entitled ‘2.0 ADMISSION NUMBERS’, it is stated that: “The Planned Admission Number for Years 7–11 is 182-day places and 10 boarding places.”

As set out in paragraph 1.2 of the Code, the PAN (the term used in the Code is the Published Admission Number but I am clear that the meaning is the same) only relates to the ‘relevant age group’. Footnote 11 of the Code defines ‘relevant age group’ as: “[...] the age group at which pupils are or will normally be admitted to the school e.g. reception, year 7 and year 12 where

the school admits external applicants to the sixth form”. The PAN does not apply to other year groups. The statement opening this section of the arrangements is not in accordance with paragraph 1.2 of the Code. It is incorrect and therefore misleading as it states that the PAN applies to Years 8 to 11 which it does not.

- 47.2. Under oversubscription criterion 2, it says at the end that: “Evidence will be required”. It is not clear to what evidence that is referring, and it is therefore not clear for parents (paragraph 14).
- 47.3. In respect of the section headed ‘6.0 LATE TRANSFER PROCEDURE’ under the subtitle ‘Information:’ it is stated that: “Only in exceptional cases will any place be offered in Year 10 starting after September, or at any time in Year 11, because of the nature of GCSE courses, even when the year group is below the Planned Admission Number.” Reference is once again made to there being a PAN for Years 10 and 11. The PAN does not apply to these two year groups.
- 47.4. Under the section entitled ‘6.4 Late Transfer Over-subscription Criteria’, reference is made to ‘statements of special educational needs’. Statements of special educational needs have been replaced by EHCPs and so using an obsolete term renders the arrangements unclear for parents. (Paragraph 14)
- 47.5. In respect of the section headed ‘6.5 Late Transfer Waiting List’:
- 47.5.1 The heading appears to imply that there is an additional waiting list to the waiting list described under section 5.1 of the arrangements, despite the rest of section 6.5 referring just to ‘the waiting list’. This is not clear for parents. (Paragraph 14)
- 47.5.2 The heading could also cause parents to believe that those applying in-year will be treated differently on the waiting list. The admission authority would want to avoid the impression that the arrangements contravene paragraph 2.15 of the Code which states (in part): “Priority **must not** be given to children based on the date their application was received, or their name was added to the list.”
- 47.5.3 It is stated that: “Boys who have qualified and have not been allocated a place may have their name placed on the waiting list” (underlining is my addition for emphasis). This statement is ambiguous. A parent will not therefore know for definite that their child(ren) is / are to be added to the waiting list and the reasons why that might / might not happen. This part of the arrangements is, therefore, not clear for parents. (Paragraph 14)
- 47.6. It is not clear what purpose the sections of the arrangements headed ‘10.0 EQUALITY’ and ‘11.0 POLICY UPDATES AND CONSULTATION’ serve:

47.6.1 In respect of section 10.0, whilst no doubt well-meaning, the school is already bound by law, including equalities law, and paragraphs 13 and 1.8 of the Code in this regard and the arrangements set out, insofar as they need to be addressed by what is set out in this determination, how any pupil (including those with disabilities) will be admitted. The way this section is phrased appears to suggest that the school will only make 'reasonable adjustments where a disabled student would be substantially disadvantaged', which is not representing the school's duty correctly.

47.6.2 In respect of section 11.0, this appears to be procedural information of benefit to the governing board and school and not to parents.

Inclusion of both of these sections, therefore, renders the arrangements unclear for parents. (Paragraph 14)

48. The school has told me that it will address these matters, as permitted by paragraph 3.6 of the Code, which is welcomed. As the school is actively seeking to address these areas, I will not mention them further in this determination.

49. I raised additional matters with the school which required more detailed explanations:

49.1. The section entitled '7.2 Sixth Form Over-subscription Criteria' includes the statement: "If the GCSE points criterion does not produce a clear outcome (i.e. two students achieve precisely the same score), the place will be determined by random allocation supervised by a person independent of the school". Paragraph 1.34 of the Code states: "Admission authorities that decide to use random allocation when schools are oversubscribed **must** set out clearly how this will operate [...]". The random allocation process is not explained in the arrangements and the arrangements are therefore in contravention of paragraph 1.34 of the Code.

About this, the school responded by saying the random allocation process is detailed on the LA website and provided me with a link to the relevant web page. The arrangements do not make clear to parents (clarity of arrangements is a requirement set out in paragraph 14 of the Code) that the information in respect of this process can be found on the LA website and there is no link provided to it. This can be very simply addressed by the school to ensure the arrangements are compliant with paragraphs 14 and 1.34.

49.2. In respect of the section headed '6.0 LATE TRANSFER PROCEDURE' under the subtitle 'Information:' it is stated that: "Only in exceptional cases will any place be offered in Year 10 starting after September, or at any time in Year 11, because of the nature of GCSE courses, even when the year group is below the Planned Admission Number." Paragraph 2.9 of the Code states: "Admission authorities **must not** refuse to admit a child solely because: [...] c) they followed a different curriculum at their previous school;" The Code

reiterates the same in respect of in-year admissions under paragraph 2.28 c) of the Code. There is no provision in the Code for a school to refuse admission in the manner that is set out in this part of the arrangements. Admission to year groups other than the 'relevant age group' can only be refused on the basis of 'prejudice to the efficient provision of education or use of resources' (paragraph 2.28) and, as the school is selective, by an applicant not reaching the required standard of ability (paragraph 1.18). This statement is therefore in contravention of the Code and the requirements of section 86 of School Standards and Framework Act 1998 which requires admission authorities to comply with parental preference unless certain specified exceptions apply. If the school is refusing to admit applicants to Years 10 and 11 other than as permitted under the legislation, this would be unlawful.

The school responded by saying:

"We recognise that, should we receive an application we should (and do) give it due consideration."

This response does not address the concern I have raised. It may be that the school does give this matter 'due consideration'. However, as I mentioned earlier in this determination, I am concerned with what the arrangements say. More importantly, all that parents will know is what is said. An argument that the school's approach differs from its arrangements so that it does not matter if those arrangements are themselves non-compliant is no argument at all. In this regard, the school needs to address the fact that this section of the arrangements is stating that the admission authority will undertake to do something it cannot lawfully do. Moreover, challenging as it may be for schools to cater for children changing schools after GCSE courses have begun, there are many reasons why children may need to move school at this time and they need to be found school places. Schools cannot simply say that they will not contribute to this even if they have capacity to do so other than in "exceptional circumstances".

- 49.3. The arrangements include two sets of oversubscription criteria. The first covers applications made for entry into the relevant year group (Year 7). The second is entitled '6.4 Late Transfer Over-subscription Criteria' (for 'in-year applications'). The only difference between the two lists is in respect of oversubscription criterion 3, which in the list for entry into the relevant year group reads:

"2. Boys living in the catchment area of the school who qualify for Free School Meals. Boys must be in receipt of FSM at the time of the application deadline (31 October). Evidence will be required."

In the '6.4 Late Transfer Over-subscription Criteria' section, the criterion is the same save for the date has been changed to '10 January 2024'.

I raised with the school that it appears to me that the purpose for having two sets of oversubscription criteria in this circumstance is not clear for parents because:

49.3.1 Oversubscription criterion 2 under the 'Late Transfer Over-subscription Criteria' specifies an application deadline date of 10 January 2024 which would not appear to apply to an in-year application. It would not make sense to a parent applying for a school place in November, for example.

49.3.2 Oversubscription criterion 2 already states 'at the time of the application deadline' which on its own appears to be clear in and of itself, without the need for dates.

Additionally, in respect of the 'Late Transfer Over-subscription Criteria', the arrangements repeat the same extensive definitions are already provided earlier in respect of those oversubscription criteria for entry into the relevant year group.

The school responded:

"We will use one set of oversubscription criteria with a deadline date of the closing date for admission applications for the following September which is 31/October for Y7 and 10 January for later entry processes."

This response does not address the concern raised. There is no rationale for the deadline in the 'in-year admission' oversubscription criteria list such that this list of oversubscription criteria is unreasonable. The school will need to ensure that including a second set of oversubscription criteria specifically for in-year applications complies with paragraph 2.29 of the Code.

The arrangements for those applying for boarding places:

50. Where the arrangements for those applying for boarding places is covered by the same points as raised above for the arrangements for those applying for day places, the admission authority should assume that they apply to both sets of arrangements. The points above are, therefore, not repeated in this section.

50.1. In respect of the section of the arrangements headed '3.1 Application Procedure':

50.1.1 It is stated that: "Following the offer of a place at the school, to secure the place, parents will be asked to send written confirmation of their acceptance of the offer and a non-refundable deposit (offset against the last term's fees). Parents of applicants for Year 7 must also withdraw their son from their other school choices as listed on the Local Authority CAF. Evidence of this withdrawal is required by the school and should be sent with the acceptance of the boarding offer. Where

this requirement is not met by the given date, the offer will be withdrawn and the place offered to another eligible applicant". This is contrary to Paragraph 1.9 a) which states: "It is for admission authorities to formulate their admission arrangements, but they must not: a) place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements". The LA co-ordinated scheme states: "The acceptance of offers should be notified to the LA by parents within 14 days either in writing or via the online portal response function." This part of the arrangements does not follow what the LA are telling parents. Additionally, the Code makes clear in paragraph 2.13 the circumstances under which an offer can be withdrawn. This statement does not conform to the provision as set out in that paragraph and is, therefore, in breach of the Code and is unlawful.

50.1.2 It is stated that: "A letter should also be sent to the school's Admissions Officer informing the school that an application for a boarding place is being considered". The school already require parents to complete an additional form (Boarding Registration Form (BRF)); this additional step therefore has no purpose when the BRF provides the necessary notification to the admission authority of the parents' intention to apply for such a place.

50.2. Boarding oversubscription criterion 4. states: "11+ score". It is not clear for parents (paragraph 14) in that it is not explained how this will be used to prioritise applications. Neither is it referenced to another part of the arrangements such that it provides this information.

50.3. In terms of applications for boarding places more generally, the arrangements state: "Applicants for a boarding place must complete the school's Boarding Registration Form, available on the school's website or by request to the school":

50.3.1 The website only includes a Year 7 Weekly BRF. It is not clear what form a parent of a Year 8, 9, 10 or 11 child will complete to apply for a weekly boarding place. In addition, neither the arrangements nor the website make clear what parents need to do in these circumstances. (Paragraph 14)

50.3.2 There are no BRFs for those wishing to apply for 'full' boarding and neither the arrangements nor the website make clear what parents need to do in these circumstances. (Paragraph 14)

51. The school has told me that it will address these matters, as permitted by paragraph 3.6 of the Code, which is welcomed. As the school is actively seeking to address these areas, I will not mention them further in this determination.

52. There are other matters I raised with the school which require more detailed attention:

52.1. Applicants for boarding places are required to complete the BRF. This type of form is referred to in the Code as a Supplementary Information Form (SIF) and is covered by the requirements as set out in paragraph 2.4 of the Code. About the BRF, I raised the following:

52.1.1 On the first page of the form, applicants are asked to provide details of the child's present school. Paragraph 1.9 b) prohibits admission authorities from taking into account applicants' previous schools (unless a named feeder school). My concern originally was that this would likely breach paragraphs 1.9 b) and 2.4 of the Code.

The school responded that:

"We are taking applications for boarding very early - we only get CAF information once the application deadline is closed. This is why we collect information on the BRF. The school has to assess 'suitability to board'."

I am content that the reason for the inclusion of the request for parents to provide details of the child's present school is not for purposes prohibited under paragraphs 1.9 b) and 2.4 of the Code, but forms part of the assessment of a child's 'suitability for boarding', as permitted under paragraph 1.43 of the Code.

52.1.2 On the second page of the BRF, it is stated that: "Please attach a photocopy of your son's passport to this registration form. This is a Home Office requirement and your application cannot be considered without it." This is in breach of the Code (paragraphs 1.9 a) and o) (the latter as the passport would include a photograph), 2.4 and 2.7).

It was not clear to me what Home Office requirements the BRF is referring to. I invited the school on two occasions to provide me with a copy of the document or link to a website in / on which the Home Office requirement is specified, but it has not done so.

The school responded:

"[...] we do not ask for passports for admission. However for entry to the boarding house, when families often live abroad, the custom of the school has been to ask to see a passport. Surely in order access a British education in a state school, we must satisfy ourselves that the student has rights to enter and remain [?]"

I disagree with the school's view that it does not ask for passports for admission for the following reasons:

- The BRF is part of the admission arrangements and there is a clear requirement by the school for the parent to “attach a photocopy of your son’s passport to this registration form”.
- It is also stated that: “This is a Home Office requirement and your application cannot be considered without it”. This has made the requirement to attach a copy of applicant’s son’s passports a condition of admission and therefore it is clearly part of the admission process.

The school later responded:

“In order to access a state boarding education, we need to ensure that any students whose principal home is abroad, is a British Passport holder. Other than requesting a copy of the passport, I do not see how we can possibly be certain that the student has British Citizenship, needed for the state education aspect of the school’s provision.”

The school should note the guidance which applies to maintained boarding schools in this respect and which applies to academies by extension as it relates to admissions and academies are required by their funding agreements to comply with any provisions applicable for maintained schools. The guidance can be found in the DfE guidance ‘School applications for foreign national children and children resident outside England’. Under the sub-section entitled, ‘The responsibilities of state-funded schools and their admission authorities’, it states that:

“The admission authorities for state-funded schools (maintained schools and academy schools) must not check the immigration or nationality status of foreign national children as a pre-condition for admission.

Admission authorities for state-funded schools:

- [...]
- must not ask to see passports or other immigration information as a condition of admission (this would be a breach of paragraphs 1.9(a) and 2.8 of the school admissions code) [...]

In the same guidance, though under the sub-section entitled: “Parents’ responsibility to check eligibility for a school place”, it clearly states:

“It is the responsibility of the parents of foreign national children to check that their children have a right under their UK entry conditions to study at a school before applying for a place. It is not the role of state-funded schools or local authorities to ask for proof of eligibility before offering a place.”

The school should also note the following from under the section entitled 'Local authority responsibilities' in the same guidance:

“Local authorities should not require parents to provide proof of immigration status before allowing them to apply for a school or require proof as any part of the application process.

They should instead advise foreign nationals who do not normally reside in the UK but who wish to apply for a state-funded school place, to check that their children have an immigration status which permits them to enter the UK to access a state-funded school. Checking is the parents' responsibility, not the local authority's responsibility.

Children may be breaching their UK entry conditions by entering the country in order to attend a state-funded school if they do not have an immigration status that permits such study.

Local authorities can help parents further by adding a reminder of this to their admissions webpage and within their composite admissions prospectus. They can link to this webpage if local authorities find this helpful.”

In its response, the school provided me with a link to the UK Boarding Schools 'The State Boarding Forum' page. The only reference to a passport states:

“Admission to state boarding schools in the UK is limited to children who are nationals of the UK and are eligible to hold a full UK passport or those who hold a BN(O). [British National (Overseas)]”

The page does not contain any information which advises schools to check passports, only that those applying should hold a UK passport.

The school has not been able to demonstrate where the Home Office has made this a requirement.

Parents should not apply for a place for their child(ren) if they are not eligible. The responsibility for this therefore lies with the parents. Neither the school, nor the LA on the school's behalf, should be undertaking immigration checks or asking for copies of passports with which to do so.

52.1.3 Two sections of the BRF require parents to complete their details and sign the form:

- The first is the section entitled: 'DETAILS OF THOSE WITH LEGAL RESPONSIBILITY'. Details of the 'Mother' and 'Father' are expected.

The school did not provide a direct response to my request to explain this requirement.

For single parent families, families with two female or two male parents, or those who use gender neutral parenting terms, it would not be possible to complete the form where it asks for the details of the 'Mother' and 'Father'. I therefore find this requirement unreasonable.

- The second is that the end of the form in the section entitled: 'DECLARATION OF THOSE WITH LEGAL PARENTAL RESPONSIBILITY WHO MUST ALL SIGN THIS FORM'.

This section is in breach of paragraph 2.4 e) of the Code, which states that a SIF must not ask that both parents sign the form.

In its response the school said:

"We have to ensure that both parents (where there are two parents) are in agreement with the need to pay the boarding fees."

And in a later response, said:

"We need to be certain that both parents (even in a split marriage) are comfortable with a) the concept of boarding and b) the costs associated with it. We have had a number of examples of disagreement over the years; one most recent case ended up in the Family Court. Whilst we have mechanisms to withdraw a boarding place in the circumstances of non-payment of fees, they are not comfortably invoked within the spirit of state education."

The BRF is used by the school as an indication by a parent or parents that they intend to make an application for a boarding place or places for their child(ren). It is difficult to see how the school can infer how comfortable parents are about the concept or costs of boarding simply by both parents signing the form, particularly when the form does not mention or ask any questions about those issues. Equally, the BRF is not a contract, and cannot be used to enforce the payment of costs from parents.

53. The Code requires that the arrangements be amended to address the points I have raised within the timescale set out in this determination.

Summary of Findings

54. The objector is concerned that disadvantage is caused to applicants living in rented accommodation in the catchment area because they must provide evidence: of a tenancy agreement from an 'approved letting agent'; and that the tenant will be living at the address

at least six months after the proposed admission. These requirements are set out in sub-section a) of section 3.0 of the arrangements.

55. I have found that the LA, who undertake the admission process on behalf of the school, applies a more flexible process in respect of those applying with tenancies. It does not require to see the evidence stipulated in the part of the arrangements that is the focus of the objection. Additional flexibility is employed by the LA in respect of the evidence that it requires to see from applicants (such as with the length of their AST agreement). However, the determination must focus on what the arrangements say. The arrangements require tenancies to be from an 'approved letting agent'. That term is not defined and the school have not provided a definition when requested. The arrangements are contrary to paragraph 1.8 of the Code in that an unreasonable requirement is imposed in terms of the agreement which must be entered into to 'prove' residence in the catchment area and because they do not allow applicants who live in rented accommodation to provide evidence from a range of sources that they genuinely reside in the catchment area. Finally, I have also found that the arrangements disadvantage unfairly a particular group, namely lower income applicants, because they are less likely to be in a position to dictate the type of rental agreements they enter into.

56. I have found other matters in respect of the school's arrangements which I have detailed in the 'Other Matters' section. The school must address them in the timescale set out in this determination.

Determination

57. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2024 determined by the governing board for The Royal Grammar School, High Wycombe, Buckinghamshire.

58. I 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.

59. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

Dated: 7 September 2023

Signed:

Schools Adjudicator: Dr Robert Cawley