



Office of
the Schools
Adjudicator

Determination

Case reference: ADA4712

Objector: A parent

Admission Authority: Gordon's School Academy Trust for Gordon's School, Surrey

Date of advice: 9 October 2026

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by Gordon's School Academy Trust for Gordon's School, for 2027/28.

I have also considered the arrangements under section 88I(5) and find that they do not comply with 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 this determination, unless an alternative timescale is specified by the school's adjudicator. In this case, revision is required by a date two months after the date of publication of this 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 for 2027/28 (the Arrangements) for Gordon's School (the School, Gordon's). The School is an all-ability state school for children aged eleven to eighteen years of age, located in West End, a suburb of Woking.
2. The Local Authority (LA) for the area in which the School is located is Surrey County Council.

3. The School is a state boarding school, educating some children who reside in term-time at the School and others who do not. The boarding provision is overseen by the Gordon Foundation.

4. Parties to the objection are:

- the Objector;
- the School;
- Gordon's School Academy Trust (the Trust, the Admission Authority);
- The Gordon Foundation (the Foundation); and
- the LA.

5. The Department for Education (DfE) is not a party to the objection. Communication to and from the School and Foundation by the DfE is extensive. It has been provided to me by the School, and copies have been supplied to all parties.

6. The objection is to the Arrangements for the admission of children to Year 7 at the School who are characterised as "day boarders". Over 70 per cent of the School's students are in this category. I will use this term in inverted commas, as the School Admissions Code (2021) does not include it. The School Admissions Code (the Code) is issued under Section 84 of the Act. It imposes mandatory requirements and includes guidance setting out the aims, objectives and other matters in relation to the discharge of functions relating to school admissions. Certain bodies, including Admission Authorities, have a statutory duty to act in accordance with the relevant provisions of the Code.

7. "Day boarders" may (or must) attend the School while in Years 7 to 11, for additional supervised activity and their evening meal, until 7.30 pm. I will detail below different views on the degree to which such attendance is a term of enrolment or an operational requirement with the same effect, and whether School requirements are clear in their Arrangements. "Day boarders" do not sleep on the School site except with an additional permission and charge, and the School cannot accommodate them overnight to any significant degree. "Day boarders" were, in 2026/27, required to pay a fee of £11,958 per annum.

8. A mandatory fee also appears to apply in the admission year under consideration, 2027/28. The Objector contends that this fee is compulsory, and that the support for families unable to pay it is inadequate. The Objector holds that this is in breach of paragraph 1.43 and footnote 36 of the Code which relates to state boarding. He believes that it is effectively impossible to enrol as a day student at the School or to continue to stay on roll if unable to pay the compulsory fee. The Objector holds that while some School paperwork describes the attendance out-of-hours as an "opportunity", operational practice and documentation presents it as compulsory.

9. With an annual cost of nearly £12,000 per child, the Objector states that Arrangements are such that seeking a place at the School is financially unrealistic for some families. The Objector holds that the determined Arrangements are unclear, unreasonable, and unfair.

10. I would like to take the opportunity to give my thanks to all parties. In each of four requests for information, the School either failed to reply to specific requests for information or asked for additional time (up to 6 weeks) to reply. In each case that extension was granted in full or with conditions that were accepted by the School.

Jurisdiction

11. The terms of the academy funding agreement between the Trust and the Secretary of State for Education require that the admissions policy and Arrangements for the School are in accordance with admissions law as it applies to maintained schools.

12. The Arrangements were determined under section 88C of the Act by the Governing Body of the School, which is the body responsible for determining the arrangements on behalf of the Trust (which is the Admission Authority of the School). I note here that footnote 4 of the Code states “Admission arrangements means the overall procedure, practices, criteria, and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered.”

13. The Objector submitted his objections to the Arrangements on 5 May 2026.

Applicability of the Code in relation to this objection

14. I have considered whether the objection has been properly referred to me in accordance with section 88H of the Act and if I have jurisdiction to consider it. I am required to consider the eligibility of the objection, particularly with regard to paragraph 3.3 (d) of the Code which states:

“Any person or body who considers that any maintained school or Academy’s arrangements are unlawful, or not in compliance with the Code or relevant law relating to admissions, can make an objection to the Schools Adjudicator. The following types of objections cannot be brought:

d) objections in respect of an agreed variation from the Code in relation to admission arrangements for an Academy.”

15. The School has asked me to consider whether the terms under which it became an Academy in 2013 might affect the degree to which it is required to comply with admissions law. The Code states at Paragraph 4, that “Academies are required by their funding

agreements to comply with the Code and the law relating to admissions, although the Secretary of State has the power to vary this requirement where there is demonstrable need.”

16. The School has asked that I consider whether two documents prepared in connection with the School converting to academy status may have involved such a variation. These are the Academy Funding Agreement dated 22 November 2012 (the Funding Agreement); and the Deed of Agreement between The Gordon Foundation, the Secretary of State for Education and Gordon’s School Academy Trust dated 31 December 2012 (the Tripartite Agreement). The School opened as an academy in January 2013.

17. From 1 February 2012, the School was required to act in accordance with the Admissions Code 2012, which came into force on that date. Subsequent Codes were issued in 2014 and in 2021, each requiring similar compliance.

18. The School stated that considerable negotiation took place at the point when the School closed in its Voluntary Aided form at the end of 2012 to open as an academy. It is clear that at that time, converting “as is”, complete with its previous Arrangements for “day boarders” being charged a compulsory fee, was important to the School. This issue of entitlement to depart from the provisions of the Code by way of agreement with the DfE was the core of the School’s initial response to the objection and continues to be so.

19. In correspondence with me, the School stated:

“The provisions of clause 4 of the Tripartite Agreement import many of the provisions which we are advised would typically have appeared at clause 33 of the Funding Agreement but with one key differentiator, being the preferences to all pupils at the date of the Agreement being provided with “board and/or lodging”. This gives a very clear indication that the parties were fully aware that not all pupils were in receipt of both board and lodging, thereby reflecting the “day boarder” concept.

The School is clearly required to comply with a wide range of legal obligations, including the requirements of its Funding Agreement with the DfE. Under the terms of that Funding Agreement there is a requirement, at clause 12(c), that “the admissions policy and arrangements for the school will be in accordance with admissions law, and the DfE Codes of Practice, as they apply to maintained schools” and that “there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge”.

It is recognised that the School Admissions Code in turn sets out at paragraph 1.43 details with regard to the admissions arrangements for maintained boarding schools. The explanatory note (note 36) seeks to distinguish boarding and day places at maintained boarding schools as follows:

“Boarding places are places for pupils who are provided with overnight board and lodging by the school. Day places are places for pupils who attend school on a daily basis, including pupils who participate in optional school activities outside school hours (for example breakfast club, after-school clubs, music lessons, tea, and supervised homework sessions).”

We understand that the concern is that the admissions arrangements for Gordon’s are not “optional” but that, rather, we require all pupils attending the School to become boarders and for charges to be paid for those boarders, whether full, weekly or “day boarders.” For reasons that go to the heart of the ethos of the School, we consider that all pupils should be afforded the opportunity to benefit from the rich extra-curricular programme provided by the School and that, to do so, they must be a “boarder”, whether daily, weekly or full.

This has been the Gordon’s model for very many years and this intention to continue with these arrangements was reflected in the drafting of the Tripartite Agreement.

The School is faced with two contractual obligations – the Funding Agreement and the Tripartite Agreement:

The Funding Agreement brings, contractually, the requirement to comply with maintained school admissions law and codes of practice. The Admissions Code does not apply statutorily to academy schools.

The Tripartite Agreement provides a power to charge for board and/or lodging. As indicated above, the arrangements which Gordon’s entered into with the DfE at the time of its conversion to academy status were unique – the provisions dealing with boarding which would otherwise have appeared in the main body of the Funding Agreement appeared in the Tripartite Agreement. As such, the Tripartite Agreement is a key and vital document in terms of understanding the arrangements which apply to the boarding element of the operation of the School.

The drafting of clause 4 bears repeating here: “as at the date of this Agreement, all pupils at the Academy are provided with board and/or lodging by the Foundation and there shall be payable, in respect of such board and/or lodging, by the parent of the pupil concerned to the Foundation charges not exceeding the costs (direct and indirect) to the Foundation or providing the board and lodging provided that the Foundation accepts that: (1) any charges made by the Foundation pursuant to this clause 4 must comply with clause 33 of the Funding Agreement...”.

Clause 33 of the Funding Agreement sets out various statutory provisions which must be followed but does not, tellingly, include reference to section 458 Education Act 1996 (being the part of the Act dealing with charges for board and lodging at boarding

schools). Rather, the requirements of section 458 are addressed in the Tripartite Agreement, and it is in this document that, in the case of Gordon's, there is reference to the ability to charge for board and/or lodging, not, as is otherwise referred to in the Admissions Code, "board and lodging".

It is our view that, accordingly, the contractual matrix adopted for Gordon's permits the Foundation to charge for board and/or lodging. The contractual requirement to comply with the Admissions Code has been varied by the drafting of the Tripartite Agreement.

We note further that the Admissions Code itself states that "academies are required by their funding agreements to comply with the Code and the law relating to admissions, although the Secretary of State has the power to vary this requirement where there is demonstrable need". In our view, the Secretary of State exercised this power to vary the requirement to comply with the Admissions Code by entering into the Tripartite Agreement with the Foundation and the School back in 2012.

The School and the Foundation have therefore acted in good faith on their understanding of the agreement reached in 2012. We consider that the practices adopted by the School and the Foundation are consistent with the contractual agreements entered into at the time and we do not consider that there is any breach here."

20. The School also told me:

"Our position is not that the Code does not apply to the School but that elements of the Code do not apply as a consequence of the arrangements agreed at the time of the conversion of the School to Academy status in 2012. The Funding Agreement, as supplemented by the Tripartite Agreement, means that the School is permitted to charge for board and/or lodging – we will cover this in more detail below, but it is only to this extent that the provisions of the Code do not apply. We otherwise accept and agree that that Code applies to the School, and we seek to ensure that the School is operated in compliance with the Code."

21. I note that at the time those documents were signed, the 2012 version of the Code only distinguished between boarding places and day places at state schools. It did not define either term. The 2012 version of the Code was the first to specify the right of the Secretary of State to direct that the Code or some element of the Code may not apply to a given academy school.

22. The School contends, both now and in previous correspondence with the DfE and the LA, that the collective effect of these documents gave the School entitlement to close as a voluntary aided school and open as an academy with its day students continuing to be charged mandatory fees for board and/or lodging "as is" (a term used by the School).

23. School correspondence includes a record of a meeting in May 2012 between the DfE, the School, and the Foundation, which stated, “It was made clear at this point that at Gordon’s there are three types of boarder: Full, Weekly, and “day boarder”... and all three need to be maintained in the current format with fees being charged if we were to retain the status quo.”

24. As set out above, the School notes that the Funding Agreement includes the obligation to comply with the majority of the terms of the 1996 Education Act relating to school funding. However, this does not include Section 458 which relates to payments for board and lodging at state boarding schools. The School argues that this is significant. The terms of the Tripartite Agreement refer to payments for board and/or lodging, whereas Section 458 refers to board and lodging. The School suggests that the use of the amended term in the Tripartite Agreement is an implicit sign of the DfE’s acceptance of the concept of “day boarding”, in that some students at the School board but do not lodge.

25. The School makes limited reference to “day boarders” being provided with accommodation and no reference in its Arrangements bar specifying the fee. The School contends that it would be unable to provide the services it wishes within the DfE’s interpretation of admissions law, i.e. that the School is subject to admissions and charging legislation, without modification.

26. I note that the Tripartite Agreement included a number of required next steps to move the process forward. One of these was to draft a boarding agreement between the School and the Foundation on the way boarder provision would work (point (D) in the Tripartite Agreement). This step was never completed.

27. None of the letters or emails between the Foundation, the School and the DfE at this time (2012/13) made any reference to “day boarding” fees. The focus of communication was entirely on other procedural matters. However, the School and Foundation variously made claims that the DfE accepted the concept of “day boarding” to DfE and LA staff as early as July 2014, 18 months after its opening as an academy.

28. The School expanded on its argument in a meeting with me which took place at the School on 21 September 2026 which was attended by the School and its legal representative, the Foundation, the Objector and the LA. This date was the earliest opportunity available for all parties to discuss the main School and Foundation submission to the determination process, which was sent on 7 September 2026. The meeting was an opportunity for all parties to hear and respond to the various positions taken.

29. The School holds that it is largely compliant with the Code and other relevant law but it has an exemption from some of the 1996 terms relating to payment by parents of “day boarders.” The School’s view, therefore, is that as an Adjudicator I do not have jurisdiction over this objection.

The view of other stakeholders

30. The Objector has expressed no position on the issue of jurisdiction.

31. The LA's view, and that of the DfE, is that the School is in material breach of the requirements of the Code and other relevant law, and that the Adjudicator does have jurisdiction.

32. The DfE position in correspondence to the School in July 2014 states that:

"The department draws a distinction between children admitted as boarders, who have accommodation provided by the school, and day pupils, which includes pupils who attend extended day sessions outside the normal teaching day.

The law is clear that schools can charge the full cost of board and lodging. Schools can also charge for extended day services outside of school hours provided it is not education provided as part of the national curriculum, as part of a syllabus for a prescribed public examination that the pupil is being prepared for at the school, or as part of religious education.

The provision of activities before and after the school day is commonplace in many state funded schools and it is something that we look to encourage. However, schools cannot make attendance at or the payment of charges for extended day care sessions compulsory for day pupils and schools cannot make a compulsory charge for education. This would be in breach of the ban on charges in respect of admission in section 450 of the Education Act 1996 and the ban on giving priority based on the financial contribution a parent may give to the school or on the financial status of the parent in paragraph 1.9 of the School Admissions Code.

In examining the admission arrangement of your school, the department found that there is no provision for day pupils to attend without paying fees. To be eligible for admission for a day place only by paying for additional care is likely contravene the School Admissions Code and its supporting legislation. It is our view that you should take immediate action to review your existing arrangements and, if necessary, to vary those arrangements in accordance with paragraph 3.6 of the Code.

The department expects a variation to be made clear in the local authority composite prospectus and allow parents to make informed choices when applying for places for the September 2015 intake. If no action is taken the department will consider if your admission arrangements should be referred to the Office of the Schools Adjudicator."

33. The DfE further wrote in September 2014:

“I note the points made about your discussions with the DfE during the academy conversion process. During these discussions the department did not agree to your arrangements for charging day pupils. The tripartite agreement made clear that charging must be in accordance with the provisions set out in your Funding Agreement.

The legislative requirements for charging are in place to ensure that children from less well-off families have equal access to state funded education. All academies are required by their funding agreements to comply with the School Admission Code and the law relating to admissions. In this regard, I do not feel my jurisdiction is limited by the Funding Agreement or the Tripartite Agreement. Rather, they affirm limits on the School’s freedom of action.”

34. The letter from the Under Secretary of State for Schools in May 2017 could not be more emphatic in challenging the School’s interpretation of the Tripartite Agreement. It went on to share the Schools Adjudicator’s view of what “boarding” is in terms of the Code and it declined to renegotiate the Tripartite Agreement so that it specifically meets the School aspiration on “day boarding”. The School was aware by 2017 that referral of its Arrangements to the Adjudicator would be a likely next step if its arrangements were suspected of being contrary to the Code. The May 2017 letter detailed the personal view of the Under Secretary of State which stated:

“Lord Nash is supportive of schools providing extended day services for day pupils but is clear that such activities should be optional. His view is that introducing a new admission category of flexi/day boarder, allowing boarding schools to levy compulsory charges for extended day services, would be unfair as it would reduce the number of state-funded day places available to parents who are unable or unwilling to pay the compulsory charges.

In light of this policy position, we are unable to amend your tripartite or funding agreement or to consider whether to amend legislation, subject to any legislative procedures that would be needed, to allow your school to continue to levy compulsory charges for extended day services.”

35. I have found one document where an officer of DfE writes supportively of the position of the School, where a member of staff stated in 2022 that the 2012 documentation supported Arrangements being made for “day boarders”. This, however, was from the complaints compliance unit at DfE, rather than an area well versed in boarding Arrangements.

36. It is unhelpful that the School has been able to provide its record of only one of the meetings which took place post 2012 with DfE staff.

My judgement on jurisdiction

37. It is difficult to see as compelling the arguments made by the School now or during the decade following conversion to an academy. The School claims that the Tripartite Agreement specifies DfE concurrence with the practice of mandatory charging for “day boarders”, yet the School has not been able to indicate even the use of the term “day boarder” in that document, let alone show explicit approval of the School’s Arrangements. The School referred to what it described as “extensive negotiation” with DfE about the freedom to admit “day boarders” for a mandatory fee. However, it has not provided any documentation of this negotiation, despite my encouragement to submit any and all material relevant to defending its Arrangements.

38. Instead, the focus of the Tripartite Agreement is on the routing of boarding fees once paid, the status of those fees as public funds, conflict with other obligations of the parties, and the need to variously separate or consolidate funds. In simple terms, the Tripartite Agreement seeks to ensure that the School may continue boarding operations under a new academy management model.

39. I note that the Tripartite Agreement refers to the Funding Agreement, specifically clause 12 and clauses 31 to 33 of the Funding Agreement. In my view these clauses, in particular clause 12, negate the ability to charge as the School has done for out-of-hours activity which is presented as compulsory to Year 7 children day-to-day, as will be examined below.

40. Clause 12 crucially states that “The admissions policy and arrangements for the school will be in accordance with admissions law and DfE codes of practice as they apply to maintained schools...there will be no charge in respect of admission to the school and the school will only charge pupils where the law allows maintained schools to charge.” I see a contradiction here between the School stating that the effect of the two agreements is to exempt it from some elements of the Code, while the Funding Agreement includes this statement saying that its compliance is an unconditional requirement of the Conditions of Grant.

41. While the School is correct to say that the Funding Agreement does not include a requirement to comply with Section 458 of the 1996 Education Act, instead I note that the Tripartite Agreement itself includes a term which in great part replicates Section 458. The Tripartite Agreement states that “as at the date of this Agreement, all pupils at the Academy are provided with board and/or lodging by the Foundation and there shall be payable, in respect of such board and/or lodging, by the parent of the pupil concerned to the Foundation

charges not exceeding the costs (direct and indirect) to the Foundation of providing the board and lodging.”

42. As set out earlier in this determination, there is no evidence that the “terms of boarding” required by the Tripartite Agreement at the time of Academy conversion were drafted. Those present at our meeting on 21 September had no recollection of such an agreement. In my view this is a significant omission, as this document could have detailed specific terms of boarding to be provided and charged for. I view the case made by the School that terms of the Tripartite agreement gave them a right to open following conversion “as is” as unconvincing.

43. I do not hold any party responsible for not completing the required “terms of boarding”. However, it makes the argument put by the School significantly less compelling. The terms on which emphasis is placed by the School do not clearly or unambiguously, or even readily, lend themselves to the interpretation advanced by the School.

44. I found nothing in the Tripartite Agreement that specifies that the School can require children who are admitted as “day boarders” to remain on site out of hours nor for the parents of such children to pay a mandatory fee.

45. The DfE does not share the School’s interpretation of the Funding and Tripartite agreements. It is clear that, in the DfE’s view, there is no agreed variation from the Code. The School has stated that it would be wrong to see the DfE’s position as more compelling than the School’s position. I agree. However, the fact that the DfE has consistently taken the position (since at least 2014) that it is not possible to charge for “day boarders” is a relevant consideration in interpreting the contractual arrangements. Given this, I consider it unlikely that the DfE’s position would have been different in 2012, as the School claims.

46. In my opinion, there is no contractual position which allows the School to depart from the terms of the Code and Admissions / Charging Law. I find that the objection does not meet the criterion set out in paragraph 3.3 d) of the Code. I, therefore, judge that the objection is within my jurisdiction in general terms.

Are the issues raised by the Objector somehow “out of time” for consideration?

47. The Code makes clear in Paragraph 15 that admission authorities must determine their admission arrangements annually. Once arrangements have been determined, they can be objected to and referred to the Schools Adjudicator by 15 May in the school year before those arrangements are to apply. Paragraph 3.1 of the Code states that the Schools Adjudicator must consider whether admission arrangements referred to the Schools Adjudicator comply with the Code and the law relating to admissions.

48. While both a local authority and the DfE have the power to refer a school’s arrangements to the Adjudicator, they are free to seek a resolution to an issue by any

suitable means. It is not for me to criticise parties for not referring the School's Arrangements for adjudication if they decide that a slower and negotiated way forward is more appropriate. Each party may seek to discharge its duties in law as it sees fit.

49. The contention of the School, in August 2026, is that the School was granted a limited exemption from some aspects of the Code in 2012, and the lack of a complaint leading to an adjudication about its "day boarder" Arrangements means that this issue should be seen as "out of time." However, the requirement for Admission Authorities to determine their Arrangements each year means that each year's Arrangements can be referred to the adjudicator, barring the specific exemptions detailed in the Code.

50. The Arrangements of the School have been the subject of much correspondence between the School and the DfE since 2014, for example, July to October 2014; February to December 2015; March to July 2016; May to July 2017; January to March 2019; and, post Covid, in 2022 to 2026. On the DfE side, this correspondence came from three different departments: Funding; Admissions; and School Transport. It included two different Under Secretaries of State for Schools, as well as the local Member of Parliament. The DfE made sure that the School was aware of court findings upholding an Adjudicator determination to uphold objections to the arrangements of other state boarding schools, Hockerill and Old Swinford, who had determined arrangements similar to those in place at Gordon's.

51. The School has had two meetings with the DfE in this period regarding the School's Arrangements. The School has not taken any clear action in response to this continued challenge. Instead, it followed up a meeting with senior DfE staff in July 2017 by seeking a restatement from the DfE that perhaps the original Tripartite Agreement might, in fact, be adequate for the School to continue compulsory charges for "day boarders."

52. I can, therefore, see no basis for considering the issues relating to the School's Arrangements as "out of time". Moreover, the objection has been made by a parent with no connection to local and national education bodies, as is their right in Paragraph 3.3 of the Code.

Is there some more recent dispensation from the Secretary of State to allow elements of the Admissions Code to not apply to Gordon's 2027/28 Arrangements?

53. Paragraph 4 of the 2021 Code states that the Secretary of State may permit schools to break with some terms of the Code and "has the power to vary this requirement where there is demonstrable need." The DfE has told me it does not believe that any such permission has been given. It disagrees with the view of the Tripartite Agreement and Funding Agreement taken by the School. The Tripartite Agreement does not explain a "demonstrable need" for the Code not to apply. The DfE's current view is that there is no such need. The only contractual agreements which have been provided to me are the Tripartite Agreement and the Funding Agreement.

54. If anything, any “demonstrable need” could potentially date back to the inception of the School and is more charitable in nature. The Foundation, a registered charity, stated in its Articles of Association in 1888 that its aim was “to educate or contribute to the education of boys and girls having particular regard to those with a specific boarding or educational need, with a view to fitting them for further education or for earning their livelihood, such object being in continuation of the work of the unincorporated institution known as the Gordon Boys' Home, established in July 1885 as a National Memorial to General Gordon.”

55. The Tripartite Agreement states at paragraph 3, “the Foundation is an independent charitable company limited by guarantee whose objects are to educate or contribute to the education of necessitous boys and girls”. Accounts in 1888 from the local media and residents clarified that at the point of opening, all pupils were in both in charitable need and were able bodied. They were male, 14-16 years old, and almost all were educated for free. The core of the curriculum for them was trades and crafts skills. The focus of the Foundation, and boys home, were thus on underprivileged children. The Foundation’s current aim, as stated in its Finance Report, is that its purpose is to continue this work, and the Foundation has referenced this goal in its communication to myself and others.

56. It was of concern to me that in our meeting of 21 September, the Foundation representative stated that its one purpose was to ensure the survival of the Foundation itself as a memorial to General Gordon. To me this seems at odds with the intent of Queen Victoria in establishing the Foundation, and the narrative of the 2025 Foundation Finance Report, the first dozen pages of which are entirely focused on the operation of the School as the living memorial to General Gordon.

57. The view of the DfE in particular is important in my judgement, that no more recent determination has been given.

58. Overall, I do not see any basis to set aside the jurisdiction which would normally apply to an objection such as this, i.e. that the Schools Adjudicator **must** consider whether admission arrangements referred to the Schools Adjudicator comply with the Code and the law relating to admissions (paragraph 3.1 of the Code). This is because:

- The written wording of the Funding Agreement and Tripartite Agreement do not appear to support the School’s case.
- There is no clear indication in those agreements that the School is exempt from any requirement of the Code, other admissions law and the law on charging.
- The School has not demonstrated that there was a forensic review of its Arrangements when the Code was updated and amended in 2021.

- The DfE and the LA have consistently challenged the admission arrangements set by the School since 2014. They have done so actively, with suggestions as to remedies which might make those arrangements compliant with the Code.
- The objection has been made by a parent, as allowed by the Code.
- Even if I were to find some element of justification that the terms on which the School opened as an academy included some right to vary from the normal application of the Code and other education law, it remains possible that over a decade later changed circumstances might make the Arrangements unclear, unreasonable, or unfair in effect. In particular, were the School's contention that it is allowed to charge for "day boarding" upheld, this would open up a number of other assessments to be made, including: whether charging £12,000 a year for non-compulsory out of hours food and activity is legitimate; whether the School is not following the Code in the oversubscription criteria required if "day boarders" are indeed "boarders" within the terms of the Code; and whether there is a potential lack of proper accounting of the spending of boarder fee income.
- Different views of previous agreements have prevented parties accessing an impartial and informed view of its arrangements. An Adjudicator view of the 2027/28 Arrangements is not only required but may be helpful to all concerned, whatever that judgement is.
- It has become increasingly clear that the arrangements operated by the School do not comply with the Code. The School has not dealt with this, and that even if the School was right that there was some dispensation granted in 2012/2013, the School has failed - despite being given opportunity - to obtain, from the DfE, a variation, or dispensation, which would clearly establish that it is not required to comply with the Admissions Code.

I conclude I have jurisdiction to consider this objection.

59. My jurisdiction is solely for the 2027/28 Arrangements. Therefore, I do not consider the terms of enrolment at the School for the Objector's children already on roll to be within my jurisdiction.

60. I do, however, consider relevant to the objection, materials submitted by the Objector where he exemplifies communication received from senior staff, orally and in writing, challenging his non-payment of fees in 2025/26. This evidence raised a real possibility from his point of view that his children may forfeit their places if fees were not paid. Such evidence I view as potentially relevant in that it provides an indication as to how the School may understand the 2027/28 Arrangements and therefore contributes to an analysis of whether or not they are lawful

61. 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 they are covered in the section of the determination under the title of that name. For transparency they relate to:

- Admitting students as “day boarders” without using the criteria required by the Code or assessing their suitability to board.
- The Arrangements not explicitly referencing that children in receipt of an education, health and care (EHC) plan naming the School will be allocated a place before other over-subscription criteria are applied as is required by paragraph 1.6 of the Code.
- The admission into 6th form of students as “day boarders”, without meeting the requirements of the Code on how such applicants should be ranked and assessed, and without assessment of their suitability to board.
- The requirement for those admitted into the 6th form to pay full “day boarder” fees, for out-of-hours additional activity which is of lower frequency than is required of students in Years 7-11.
- The lawful basis or otherwise of the fees required from 6th formers.
- The closing date of the waiting period for a 6th form place to become available.
- The requirement that the School decide which of a Full Boarding or “Day Boarding” place should be allocated if an applicant applies for and qualifies for both.
- Participation in the Local Authorities’ “Fair Access Protocol” arrangements to secure placements for hard-to-place children.

Procedure

62. In considering this matter I have had regard to all relevant legislation and the Code. The Code consists of mandatory requirements as well as statutory guidance, the mandatory requirements (denoted by “must” or “must not”) are akin to secondary legislation and must be complied with.

63. The information I have considered in reaching my decision includes:

- the objection dated 5 May 2026 and supporting documents;
- a copy of the minutes of the meeting of the School’s governing body on 12 December 2025 at which the Arrangements were determined;

- the Arrangements for 2027/28 which includes the Supplementary Information Form (SIF) and schedule of fees and related papers;
- responses from the LA, the Objector, the School, the Foundation and the DfE to the objections and to my requests for further information;
- the LA's composite prospectus for admissions to secondary schools;
- maps, including Google Maps, and those showing the location of the School;
- information available on the websites of gov.uk (including the 'Get Information About Schools' (GIAS) and the 'Financial Benchmarking and Insights Tool' (FBIT) websites), the LA, the School, the Foundation, and Ofsted;
- The Admissions Code, Statutory Guidance from the Department for Education, 2012 and 2021 versions;
- National Minimum Standards for Boarding, Statutory Guidance from the Department for Education, 2012;
- Charging for Boarding Provision, Guidance from the Department for Education, 2025;
- 2026 Gordon's School policies on Charging and Remission; Attendance and Punctuality; Discipline; Assessment of Boarding Need; and Complaints;
- The 2024 and 2025 finance reports of The Gordon Foundation, which details its income, spending, and assets;
- The Gordon's School website as published in May 2026;
- The Gordon's School co-curricular guide 2026;
- R (on the application of Academy Trust For Hockerill Anglo European College) v Office of The Schools Adjudicator [2016] EWHC 1642 (Admin) ("Hockerill");
- The OSA adjudication on an objection to the admission arrangements of Old Swinford Hospital School, ADA2743, March 2015 ("Old Swinford");
- Primary and Secondary Legislation on the lawfulness of compulsory charging of students in state education, including:

- Section 88D(2) of the School Standards and Framework Act 1998 says that if a school provides boarding accommodation, it may set separate PANs for boarding and non-boarding places;
- Section 458 Education Act 1996 (Charges for board and lodging at boarding schools) – (1) Subject to subsections (2) to (5), where a registered pupil at a maintained school is provided at the school with board and lodging, there shall be payable in respect of the board and lodging by the parent of the pupil concerned, to the local authority, charges not exceeding the cost to the authority of providing the board and lodging. This is applied to academies via their funding agreements;
- Other sections to the 1996 Act which set out basic principles regarding charging for state education, including:

The basic principle of the state education system is that primary and secondary education is provided free of charge.

Section 450 of the 1996 Act states that no charge may be made for admission to a maintained school (with limited exceptions set out in section 450, none of which are applicable here).

Some charges are permitted for “optional extras”, none of which would cover a compulsory charge for education.

The cost of providing board and lodging at a maintained boarding school may also be recovered by charging the parent, except that no charge is to be made if the school is the only one where the child can receive suitable education, and the charge must also be partly or fully remitted in order to avoid causing the parent financial hardship (section 458 1996 Act).

The charging provisions set out in Chapter III of Part VI of the 1996 Act generally apply to academies through their funding agreements unless there is an agreed variation under paragraph 4 of the Code.

- Section 88A School Standards and Framework Act 1998 (Prohibition on interviews) – (2) If the maintained school is one at which boarding accommodation is provided for pupils, subsection (1) does not apply in relation to any interviews intended to assess the suitability of an applicant for a boarding place.
- Section 10A Academies Act 2010 (Charges at boarding Academies) – (1) This section applies where: (a) a registered pupil at an Academy is provided with board and lodging at the Academy;

- Regulation 2(1) The Education (Independent School Standards) (England) Regulations 2010 (Interpretation) – In these Regulations “boarder” means a pupil for whom a school provides accommodation, whether or not the pupil is a pupil at that school. Academies are independent schools and covered by these regulations.
- Office of National Statistics Median Income Data, July 2026, and Lower Layer Super Output (LSOA) deprivation data for Surrey Heath as of July 2026; and
- A meeting at the School on 21 September 2026 which was attended by me, the School, the Foundation, the Objector and the LA.

64. I have been provided with a substantial amount of information / data by the Objector, the LA, the School and the Foundation. I have referred only to that which has a bearing on my determination.

65. Where parties have failed to provide evidence requested, I will explain how that has affected my judgement. It should be noted that the School and the Foundation have failed to provide documentation which might have assisted their case. For instance, admission committee or governors’ meeting minutes detailing the possible implications of revised Admission Codes on the School’s arrangements have not been provided. In other cases, the School has failed to provide requested information which might have demonstrated that the Arrangements are compliant, such as the way “day boarders” fees are composed. The effect of such omissions has been to weaken the School’s rebuttal of some of the objections.

Background

66. The School is situated in West End which is a village to the south of junction three of the M3 between Woking and Camberley. The School is understandably proud of its long history and Royal patronage. It offers 120 places in Year 7 of which 32 are described as full and weekly boarding places and 88 are described as “day boarding” places. The School also admits children into Year 9 and Year 12.

67. According to GIAS, the School is a non-selective secondary academy for students aged eleven to eighteen with a maximum capacity of 790 students. There are 988 students listed as being on the School’s roll. The DfE’s own net capacity assessment, based on a 2024 survey, lists the minimum capacity of the School at 1173 and a maximum capacity of 1304.

68. The School is one of the UK’s 34 state boarding schools., These schools tend to have complex histories. In this case, the School was originally founded in 1888 as a boys’ home and school in memorial to General Gordon. While some maintained boarding schools only educate boarders, others have a mixture of types of boarders alongside day children. The

DfE funds each child's compulsory tuition and the school may charge parents or carers for costs relating to board and/or lodging.

69. The School was last inspected by Ofsted in October 2024. Ofsted judgements for the School found it to be "Outstanding" in all 5 categories, and it satisfied safeguarding arrangements. The School has very strong scores on both Achievement 8 and Progress 8 measures used by the DfE. It was rated highly by parent contributors to the most recent Ofsted Inspection survey and it was recently the Times Educational Supplement "Boarding School of the Year." I have no doubts about the commitment of all those involved with the School to continue its success.

70. The School has provided me with data showing the number of children in each year group as of June 2026. I have put that data into Table 1.

Table 1: Number of children in each year group (as of June 2026)

Year Group	Number of Full Boarders	Number of Weekly Boarders	Number of Day Boarders	Total Boarders
Year 7	24	5	89	118
Year 8	25	6	88	119
Year 9	33	6	88	127
Year 10	31	6	88	125
Year 11	30	10	88	128
Year 12	25	21	139	185
Year 13	30	16	136	182
Total	198	70	716	984

71. When the School is oversubscribed, children who wish to attend the School while residing at home will be prioritised according to the School's oversubscription criteria. The School calls these students day students or "day boarders". The over-subscription criteria for 2027/28 can be summarised as follows, in order of priority:

- a. Looked after or previously looked after children.
- b. Children living within 1500 metres of the School main gate with a sibling on roll at the school.
- c. Children of staff.
- d. Children without a sibling link who live within a 1500 metres radius, starting with those closest to the school.

- e. Children with a sibling link who live outside of a 1500 metres radius, starting with those closest to the school.
- f. Children who live over 1500 metres from the school.

72. A lottery should the children eligible for the final two places to be allocated live an identical distance from the school.

72. The School has stated that in four of the last ten admission years, the distance from School to the residence of the final day student or “day boarder” offered a place on National Offer Day has been less than one kilometre. In five of the years, the distance was between one and two kilometres and in only one year it was over two kilometres.

73. The fees charged by the School compared to those of other UK maintained boarding schools are shown in Table 2.

Table 2: Maintained boarding school fees in England and Wales 2026/27, from each school’s website, May 2026.

School	Fees	Admits day students for no fee	Notes
Beechen Cliffe	£12,000 full	Yes	none
Brymore	£14,154 full, £13,056 weekly	Yes	Day students are characterised as “out boarders”. They can pay as they go to stay on in school after 5.15 pm.
Burford	£14,985 full	Yes	none
Colchester RGS	£19,050 full	Yes	none
Cranbrook	£17,577 full	Yes	none
Dallam	Not available	Yes	School also offers “Dallam Immersion” 6 week boarding placements for overseas children in term time.
Exeter Maths School	£13,470 full	Yes	16-19 only
Duke of York’s	£23,100 full Flexi – entitled to 33 nights stay without further charge £4,800 per term.		An expectation that the 33 nights are taken up, but not compulsory. Individual bed space.

School	Fees	Admits day students for no fee	Notes
Gordon's School	£26,883 full £25,194 weekly £11,958 "day boarder"	No	No requirement for "day boarders" to sleep in school. If they ask to and are permitted, £64 or £83 is payable.
Haberdashers' Adams	£15,834 full Possible flexi boarding for 6 th formers, payable by the night, £77	Yes	none
Hockerill	£17,157 full £15,891 weekly £9,525 flexi	Yes	Flexi students expected to stay 7-10 nights per year. Boarding PAN not sub-divided
Holyport	£19,200 full	Yes	none
Keswick	£14,946 full £13,211 weekly £12,344 flexi min 4 nights	Yes	none
Lancaster RGS	£16,527 full	Yes	none
Liverpool College	£15,450 full £13,050 weekly	Yes	none
Old Swinford	£14,205 full £7,102 tailored	Yes	A variety of flexi and tailored arrangements bespoke to the child.
Peter Symonds	£20,000 full	Yes	6 th form only
Reading School	£15,849 full	Yes	none
Richard Huish	Full, weekly, flexi (the latter four nights or fewer per week). Fee information not available	Yes	6 th form only
Ripon College	£16,268 full £15,871 flexi	Yes	none
Royal Alexandra and Albert	£22,200 full £8,820 flexi	No – only in 6 th form for fee	Flexi 7-10 days per year out of hours and sleepover. 6 th form non-boarding package at a fee of £1000

School	Fees	Admits day students for no fee	Notes
Royal School Wolverhampton	£17,242 full £15,169	Yes	none
Sexey's	£16,704 £11,727 £14,661 £8,820	Yes	A variety of full, weekly, and flexi, the latter requiring staying overnight on site
St. George's	£18,630 full	Yes	none
Steyning	£18,599 full £15,999 weekly	Yes	none
Thomas Adams	£15,000 full £12,000 weekly	Yes	none
Wycombe RGS	£19,884 full £17,640 weekly	Yes	none
Wymondham	£16,950 £3,975 "Day Boarder"	Yes	All day students can apply after admission to become "day boarders" with an entitlement to an additional package of support. This is an optional choice, not an admission category.

Table 2 demonstrates that it is very unusual for maintained boarding schools to offer places to applicants as boarders without any requirement to reside in the school. Gordon's School is one of only two schools to do so. The fee charged at Gordon's, without any obligation or entitlement to sleep in the School, is close to or above the cost of residing each or most nights in school at some other institutions.

74. The following parameters will apply in my determination of the objection.

Reasonableness:

75. The Code uses the term 'reasonable' but does not define it. An everyday definition is of having sound judgement; being sensible and rational. It is the requirement of public bodies, including admission authorities, that they must act reasonably in adopting any policy or making any decision.

76. Where the Code requires that a particular criterion be 'reasonable', that means that the Adjudicator must consider whether or not the criterion is reasonable. However, that does not mean that it must be a criterion that the Adjudicator would have chosen. There may be a range of reasonable criteria that could be selected, or reasonable grounds for adopting a

particular criterion. It is only if the criterion selected (or grounds adopted) fall outside that range that the Adjudicator should conclude that the requirements of the Code are not met.

Fairness

77. Fairness is a concept, not unlike being 'reasonable', that is used in the Code but is, again, not defined. Fairness can be described as a 'protean concept', in that it cannot be defined in universal terms, but its requirements will depend on the circumstances. Fairness is focussed on the effect of the arrangements on any relevant group. A factor which is relevant in the consideration of substantive unfairness is the reasons (or justification) for adopting a particular oversubscription criterion. These must be considered in context. It may be the case that the justification for the adoption of a particular set of oversubscription criteria could override any unfairness. I should also add that where the available evidence does not establish disadvantage, there cannot be any unfairness.

78. Terms of admission arrangements can be unfair without being discriminatory (see below) where their impact is broader and runs beyond effects on a pre-determined vulnerable group.

Consideration of Case

79. I will now set out my consideration of the matters raised by the Objector.

80. The income due to the School from its "day boarding" activity is in the region of £8,500,000 per year. The School states this is used to meet the needs of those children between 3.35 pm. and 7.30 pm., (should the child be on site as my review of School procedure and documentation suggests is required). During that time, they would be supervised for a single additional period each day Monday to Thursday (either student or staff led), marching practice on Friday, and additional sport or sports fixtures. They can be provided with an evening meal and can be supervised for homework.

81. The Objector has expressed concerns about the following elements of the admission Arrangements for 2027/28.

- A lack of clarity, reasonableness, and fairness in the terms used in the Arrangements to explain how the admission process operates, and the expectations of successful applicants in terms of attendance.
- While formally offering admission as a "day boarder" without payment, the School imposes a charge of £11,958 (2026/27) for anyone seeking to accept such a place, characterising all such students as "day boarders". These students have no obligation to sleep overnight at the School. The Objector states that this charge is so substantial that it effectively excludes many local families from applying for a day place at the School. He states that "for three children, the fee (£35,874) would

require a pre-tax household income in the top few percent of the UK income distribution to be affordable... Gordon's offers most families no way to attend the School without paying."

- The School is failing to enable the cost of "day boarding" to be reduced or eliminated in case of need. The School has threatened that a child's place as a "day boarder" may be forfeit for non-payment of fees, including the use of third parties to collect funds it says are due for payment. The Objector claims that there is no provision in the arrangement to apply to attend without charge as a day student, only as a "day boarder" with payment of fees.
- The charge not being accounted for in a way which demonstrates that it meets the terms of a legitimate fee in terms of the Code.

82. In adjudicating these objections, I judge that it will be necessary to assess them against the following elements of the Code:

- Paragraph 14: "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."
- Paragraph 1.8: "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."
- Paragraph 1.9 (e) and (f): Arrangements **must** not "give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation...or give priority to children according to the occupational, marital, financial, or educational status of parents applying."
- Paragraph 1.43 and related footnote: "Maintained boarding schools can set separate admission numbers for day places and boarding places (footnote 36)."

Footnote 36: "Boarding places are places for pupils who are provided with overnight board and lodging by the school. Day places are places for pupils who attend school on a daily basis, including pupils who participate in optional school activities outside school hours (for example breakfast club, after-school clubs, music lessons, tea, and supervised homework sessions)."

- 1.44 "Boarding schools **must** give priority in their oversubscription criteria in the following order:

- a) looked after children and previously looked after children;
 - b) children of members of the UK Armed Forces who qualify for Ministry of Defence financial assistance with the cost of boarding school fees;
 - c) children with a 'boarding need', making it clear what they mean by this."
- Paragraph 2.14: "A school **must** not withdraw a place once a child has started at the school, except where that place was fraudulently obtained."

The legality of admitting students to the school in return for compulsory payment by characterising them as "day boarders".

The principle of charging fees to students who do not sleep in school.

83. The School has communicated a number of justifications for its practice of charging compulsory fees to "day boarders". The School sees as important that this is its traditional form of practice for nearly 40 years, and that this is a reason for it to feature in its Arrangements for 2027/28. The School has pointed out that "day boarders" receive an unusually diverse and varied experience through their time in School, funded by these fees.

84. The School accepts that this comes at substantial costs which may not be viable for some families. From the outset, this would be in breach of paragraphs 1.9 (e) and (f) of the Code, in that an offer of a place cannot depend on the financial status of parents. The School believes that what it offers is fair and consistent with value for the monies paid. It has rejected other ways of funding the activity as not consistent with the traditions of the School. The School has stated that despite the cost, it remains over-subscribed for "day boarder" places. During our meeting on 21 September, the School spoke at length about the affordability of "day boarder" fees for those living close to the School, and what it saw as the affordability of fees with "generous bursary support." Funding provision in this way provides helpful predictability of income for accounting.

85. As stated above, the School also takes the view that the terms of the Tripartite Agreement and Funding Agreement mean it has dispensation not to comply with some terms of the Code. As explained above, I have rejected that argument.

86. At no stage has the School contended that what they call "day boarder" places involve compulsory overnight board and lodging. The School has stated to me that the end of mandatory schooling each day is 3.35 pm.

87. The School has characterised the involvement of all students in out-of-hours activity as a fundamental dimension of the School. To support this, the School provides all students with "dress uniform" to use at occasional Saturday parades which it says are mandatory. The School also has a bursary scheme from which families can apply for support. The School views its annual spend of around £1 million on bursaries as generous.

88. I note that over the period 2010 to 2026 the increase in the fee for “day boarders” has been almost exactly consistent with the retail price index. This might suggest that the School is being mindful of the cost of its offer, whereas the cost of weekly and full boarding at the School has increased significantly above inflation.

89. I note, however, that recruitment of “day boarders” is not dependent on boarding accommodation. This means that costs and revenue can be balanced by increasing the number of “day boarders” either at Year 7 or Year 12 level. The figures in Table 1 might suggest that the School has a more consistent ability to fill “day boarder” places than weekly or full boarder places. The net capacity assessment suggests that the School has the capacity to increase its roll.

90. Furthermore, the Objector claims that the School making a compulsory charge for attending the School as a “day boarder” constitutes an unlawful financial barrier to access and is not compliant with the Code.

91. Previous adjudications and court proceedings have held that footnotes relating to paragraphs of the Code carry the same weight as paragraphs of the Code itself. In that regard, my judgement involves considering the footnote to paragraph 1.43 of the Code, which states that “Boarding places are places for pupils who are provided with overnight board and lodging by the school” (my underlining). Day places are places for pupils who attend school on a daily basis, including pupils who participate in optional school activities outside school hours (for example breakfast club, after-school clubs, music lessons, tea, and supervised homework sessions).”

92. I am satisfied that for “boarding places” the School may charge a fee as provided for by section 458 of the Education Act 1996. However, section 450 of the Education Act 1996 prohibits charging fees for the admission of day pupils to maintained schools. I am thus concerned that the School categorises “day boarders” as boarders and charges a boarding fee to parents. The Code defines “boarding” in Paragraph 1.43 and consideration of the Statutory Guidance on Charging (DFE, October 2014), alongside a reading of sections 450-457 and 459 of the Education Act 1996, leads me to consider that those who are “day boarders” are not in fact boarders but are day pupils who take advantage of an extended day placement and out of hours provision. While such extended day activities can quite lawfully be subject to a charge, these cannot be boarding places given that the accommodation to stay overnight is not in fact available other than at special request and extra charge.

93. However, the School’s correspondence with me suggests that it sees mandatory charging for this arrangement as the only way that the School can sustain the provision that is currently in place. The School has stated to me, “Under the terms of the Tripartite Agreement, it was agreed that the Foundation could continue to provide board and/or lodging at the School and that charges may be levied in respect of such board and/or lodging. This

enables the School to levy charges for board (meals etc) and, separately, lodging (overnight stays).”

94. The School, therefore, appears to be applying the same rules to charging for snacks and meals for a “day boarder” as it does to charging for full residence for a full boarder. Despite repeated requests, the School has not detailed its calculation for charging for supervision of “day-boarders” in non-mandatory attendance time.

95. The LA has confirmed that each year the School is over-subscribed in terms of first preferences for “day boarder” places.

Table 3: Preference data for admission to Gordons as a “day boarder” compared to other local Surrey secondary schools:

Name of School	Academic Year	PAN	1st Pref	2nd Pref	3rd Pref	4th Pref	5th Pref	6th Pref	Total
Gordon's School (“Day Boarders”)	2026/2027	88	176	83	92	43	31	17	394
	2025/2026	88	162	104	71	56	35	19	393
	2024/2025	88	148	93	71	33	30	14	345
Collingwood College	2026/2027	300	224	188	111	41	9	6	564
	2025/2026	300	226	231	113	34	16	9	604
	2024/2025	300	235	229	86	22	12	20	572
The Winston Churchill School	2026/2027	300	227	134	97	52	35	24	510
	2025/2026	300	222	151	104	62	40	13	539
	2024/2025	300	226	104	87	54	31	21	471
Woking High School	2026/2027	240	286	237	115	75	32	21	713
	2025/2026	240	277	217	161	71	35	18	726
	2024/2025	240	268	238	131	55	38	19	692

96. It can be seen from Table 3 that Gordon’s “day boarder” places are the most oversubscribed in the area in comparison to the number of places available. The Headteacher of the School has characterised “day boarding” spaces as 5 times oversubscribed. This is true if one includes all possible preferences down to fifth preference but, as an Adjudicator, reference to the number of first preferences is more normal. In those terms, the School has twice as many first preferences as places. The LA clarified in our meeting that while parents take different approaches to deploying their preferences, the system will in fact always allocate to a child the highest preference for which they qualify.

97. The LA confirmed that Collingwood College and the Winston Churchill School are habitually 30 places or more below their PAN at the time of each year’s October school census. These are the closest alternatives to Gordon’s at 2.85 and 3.3 miles in distance, with viable public bus services in each case. At face value, it would, therefore, appear that

children who fail to be allocated a place as a Year 7 “day boarder” at Gordon’s have appropriate alternative placements. The LA considers the other schools to be accessible and providers of appropriate education.

Defraying the effect of the fees charged

98. The School has put forward the argument that no child would be prevented from attending the School because the child’s family is unable to pay the annual fees. The School and the Foundation have provided evidence that bursaries are available to help those families who may require support. However, it is not clear whether the reality matches these good intentions.

99. I note that the School was challenged in 2017 by the Under Secretary of State for Schools to provide him with assurance that the School is accessible to all students and that the response sent to him by the School did not provide this assurance. Rather, it indicated the almost identical spending at the School at that time on Staffing and Services compared to its DfE grant.

100. While the use of a bursary could potentially be a means of demonstrating the School’s accessibility, communication between the School and the DfE in 2016 flags the availability of a bursary but without specifying any figures on the scale, nature and frequency of award of such support. This denied the DfE the chance to judge objectively the claims made by the School for the availability of support, which to me gives the impression that no child would be blocked from applying by limited finance. The Vice-Chair of the Foundation, in place at that time, stated to the DfE that “I confirm that the School is inclusive, and no child is denied access by reason of a financial inability to pay the day boarding charges.” This is a phrase used repeatedly in School and Foundation papers, yet it lies untested and is not convincing. The School has submitted no evidence of consideration of the reason why many families living close to the School do not select it as their first preference.

101. The School told me the degree of their engagement with bursary and foundation award payments to parents of children on roll. I view this sum to be substantial, and the School described it as generous. In 2025/26 £49,136 was paid in bursary funds to Year 7 “day boarders”. In 2024/25 £38,303 was paid. In the same academic years, fees received from “day boarders” in Year 7 alone would be just below one million pounds. The School is therefore voluntarily deploying around 5% of its income to bursary support. The School is clear that the families receiving this support are very grateful for it.

102. The School has indicated that it is looking to reduce costs. However, it has not provided any evidence that it has considered other means of funding out-of-hours activity, nor of scaling back its offer to save money. This is despite the fee for “day boarders” being 3 times the sum allocated by DfE for each child’s compulsory education. To me it does not seem a reasonable sum. I do not find the School’s case persuasive that families who enrol

their children at the School are capable of paying it, or that the level of demand for places shows it is reasonable.

103. Between 2013 and 2026, the School's position on its admission arrangements has been based on: its historic practice; its unique history and documentation; its over-subscription; and the quality of its outcomes. The School has made assertions about the impossibility of change but it has not provided any exemplification of any considerations it has made nor the potential benefits or drawbacks of different possible changes.

104. The School has understandably presented the possibility that some suggested revisions to its Arrangements might lead to "two classes of student". However, it has not submitted any assessment based on other state boarding schools of how such a division might be avoided or minimised. Moreover, this argument sets aside the fact that, even as now, the student cohort is divided between: residential and "day boarders"; those who started on roll in Year 7, 9, and 12; those required to attend on Saturday morning and those not so required; those exempt from out-of-hours attendance because they have started Year 11 or Year 13 exams, and those who have no such exemption. I note that the great majority of state boarding schools have a combined roll of residential boarders and non-paying day students, but the School has submitted no evidence of consultancy with or visits to these schools.

105. At some points in correspondence, the School's arguments in support of its Arrangements appear to run against logic. For instance, the School suggests that admitting unpaid "opt-in" day students would create a divergence between those students and residential boarders. They state that the latter would continue to enjoy the current selection of out-of-hours experience, when in fact that out-of-hours experience would have to be curtailed due to lack of funds.

106. I do not doubt the sincerity of the School's leaders and Foundation members to wish to support families needing assistance. My judgement is that their comments are not well founded in what the School and Foundation are able to award, and indeed, whether the School may charge a compulsory fee in the first place.

107. A "day boarder" charge of £12,000 per student per year is not a good indicator that attracting a broad range of students is a priority. It appears in stark contrast to the original intent of the Foundation to meet the needs of "necessitous children." The same can be said of the presentation used by the Headteacher when speaking to current and prospective parents in September 2026 which makes no reference to bursaries; neither do the student guidebooks or the house guidebooks.

108. I note that only around 5-10% of children each year are allocated such support. When support is awarded, it is generally a third to a half discount on fees. This still leaves a

significant number of potential applicants unable to access the School given a remaining burden of £6000 or £8000 per year per pupil.

109. I reviewed the School website at the point in May 2026 when the objection was lodged. There was no visible reference to the amount available for bursaries on the website and the frequency of such awards, which otherwise has around 85 sub-headings each leading to lower-level menus. I was struck by much of the higher level of information being about avoiding inheritance tax, paying into bursary funds, leaving legacies and so on. Potential applicants seeking bursary support are directed to email the School. The School is very clear that parents do follow that pathway. However, this lack of transparency does not support the School's statements regarding welcoming applicants of all backgrounds, as the Code requires, and it also means the requirement for clarity in its Arrangements is not met.

110. I note that, in any event, the sum of money available for such support must, in law, be limited since, by the Tripartite Agreement, fees paid by families for board and/or lodging can only be deployed for the cost of the board and/or lodging of that child. Additionally, the Foundation is very clear on its lack of independent resources to support such benefit.

111. I have offered the School the opportunity to detail the fees determined by the Trustees for "day boarding", to satisfy me that they are reasonable. It has not done so. I note that the Under Secretary of State for Schools had the same experience in 2016, when the School did not provide detail to show that boarder fee money was not being used to support core teaching and learning. In our meeting on 21 September, it became clear that a student could face a compulsory charge for "day boarding" without attending any out of hours activity. This makes the contention that their fees directly or indirectly meet the cost of their care questionable.

112. The School said in 2016 that, "In setting the charge, the School considers the total cost of delivering the day boarding provision, including running of the day boarding houses, catering, Co-Curricular activities, IT provision of a personal device for each student, personal accident insurance etc. The charge is reviewed annually to ensure that it makes an appropriate contribution towards those costs whilst remaining affordable and competitive within the sector."

113. This raises questions about how provision of social "day-boarder" facility during the school day could be chargeable; and how trustees can assess affordability and competitiveness in the sector when no other state school operates a similar "day boarder" scheme. The claim of the charge being "competitive" does not stand up, in the absence of a competitor offering similar provision.

114. I further note that "affordability" did not feature in the way I might expect in the Funding and the Tripartite Agreements or in the School and the Foundation submissions in our meeting. In that context. I was left with the impression that the determining factors were the

provision the School wished to offer, the perceived cost of that provision, and whether there was demand for it. The focus of the Foundation in our meeting was not on whether “day boarder” fees might deter a family from applying, rather being on families claiming bursaries without due reason.

115. I have considered the School document “Fees and Hardship Awards, 2024/25.” The tenor of this document is not consistent with the School’s communication with me in terms of its support for those unable to pay fees. It states:

“The following are not consistent with the receipt of financial support: frequent or expensive holidays, new or luxury cars, investment in significant home improvements, second property or land holdings, one parent not contributing financially to the household income unless prevented through ill-health or other circumstances.

The Awards Panel is unlikely to consider an application where there is one child at Gordon’s, and the family income exceeds £75k pa or the capital value of assets exceeds £500k (including free capital within the family home). The Awards Panel will look at the circumstances of making grants where there is more than one child in the family.

All applicants for Foundation Awards are required to complete a confidential statement of financial circumstances and to supply supporting documentation (additional information may be requested). As part of the process all candidates will meet with a representative of The Gordon Foundation, following which a video interview (sometimes a home visit) with a representative from Bursary Administration Ltd will be arranged.

All potential recipients of financial support have to meet Gordon’s School’s admissions criteria. Existing students who hold bursary awards are subject to an annual review of performance. Bursary holders are expected to be positive in approach and to participate fully in the academic and wider activity programme of the School. Their Awards are dependent on their fulfilling their obligations and meeting the School’s expectations.

Formal applications for Awards are made once a place at the School has been offered and before a student has entered the School. All recommendations for bursary awards are approved by the Awards Panel which meets at least termly.

Hardship Awards may be awarded on a termly basis, depending on the circumstances surrounding the provision of the award. In some cases, The Foundation may provide bursary support on entry for the two Sixth Form years, if it is considered in the best interests of the student. The Foundation will endeavour to provide parents with one term’s notice of any change to the level of assistance. All bursaries are discretionary and are subject to review.

All Awards are reviewed each year and the value awarded may vary year on year. Awards are expressed as a percentage reduction of the relevant boarding charge. There are strictly limited funds available each year. The decisions of the Awards Panel are final.”

116. According to this document, funds are limited in duration; limited to a percentage reduction in fees; subject to performance review; subject to interview; limited if there is more than one sibling; and so on. It is a limited system. A parent seeking a bursary would have to be alert to that bursary being withdrawn with very little notice, perhaps on the basis of their child not meeting expected standards, and even with the child in the middle of an exam phase. This is a disincentive to application.

117. The Foundation has stated that it has limited assets, its principal source of revenue being boarder fees. It is clear that it is not possible to apply for support prior to being allocated a place, thereby reducing predictability of support. I see this as a barrier to application and am grateful to the School for already agreeing to revise this.

118. While the School stated to the DfE a decade ago that it could look to increase the amount deployed on bursary support, guidance caps the monies that could be used to 8%, which is the working profit the School is required to achieve (Charging for Boarding Provision, DfE, 2025), or donations to the Foundation from elsewhere.

119. Details of bursaries for music and sport, which do appear on the School website, specify that the amounts involved are not of a magnitude to defray the annual cost of attendance. These awards are only available to students in the 6th form.

120. Overall, whatever the intentions of the School, the bursary support it offers cannot satisfactorily defray the impact of the fees on the families of “day boarders”.

The mandatory nature of the charge

121. The Objector has stated that senior school staff told him that it is compulsory for all day students to attend out of hours as required, characterising that attendance as “day boarding.” In our meeting, school staff could not recall speaking in those terms.

122. While the School has stated that a student has never been removed from roll for non-payment of “day-boarding” fees, the Objector has shared and documented a number of points regarding his experience in 2025/26 which challenge this. I view this experience as relevant to the likely application of the Arrangements of 2027/28. I am concerned that where the School denies a family a bursary during their time at the School, the family may be pressurised to remove their child. In our meeting, the School confirmed that this could be the case if a family failed to pay fees, consistent with the School characterising those children as boarders. The Objector stated that he believed some “day boarder” families had voluntarily withdrawn their child in the recent past on the basis of not being able to pay the fees.

Moreover, in at least one case, school staff have challenged a family looking for support for their child as to whether the parent felt able to sustain payments for the full term of their child's school career.

123. The Objector submitted an email he received from the School stating, "Please be advised that your situation has now been raised with... [senior staff and trustees] ...here at the school. They have confirmed that without an acceptable Payment Plan in place your children's places at the school for the school year 2026/27 are now at risk and maybe withdrawn." He contends that this demonstrates that continued attendance at the school is conditional on payment. In practice, this means, in my view, that access to a place at the school depends to a degree on a parent's ability to pay, in breach of the Code 1.9(e).

124. The Objector adds, "My personal experience on applying for a bursary when applying for a place for my third child was that I was rejected and received the following text by e-mail from Gordon's: "In some cases if a family is not awarded a bursary, they withdraw their application to Gordon's School, so I always ask as it may mean a family need to decide if Gordon's is still the right school for them." The Objector states this is a clear and explicit attempt to discourage a family with limited finances from sending a child to the School.

125. Gordon's offers a monthly payment option if parents do not pay the term in advance. There is a form to fill in for the monthly payment option which requires the acceptance of various conditions, one of which is "If you fail to pay any amount due under this agreement for a period of more than thirty days, then we may pass the debt to a third-party company for collection. The reasonable costs incurred in employing the third-party company will be borne by you including costs in tracing you, should you have changed your address without telling us." The Objector states this serves as a strong discouragement for parents struggling with the fee. In addition, when he had a meeting with a senior member of staff, he states he was verbally informed that debts can be passed to third party debt collectors.

126. I note in particular the correspondence of the Objector with the School and trustees between March and June 2026. At that point the Objector had been in arrears on payments for the "day boarding" of his three children for nearly two years. I reiterate that I have no jurisdiction to consider or rule on a proper outcome for that dispute. However, I note a divergent pathway between the two parties.

127. On one side, the School has detailed over five pages the support offered to the Objector, and special arrangements made to subsidise his fees in the period after March 2024. It is not usual for state school leaders, governors, and trustees to be engaging in such bursary support. It is clear that the School and its staff engaged in a considerable and creditable effort to help the family.

128. On the other side, the way the School has detailed its interaction with the Objector suggests a misunderstanding of the full implications of their determined arrangements, arrangements which are essentially replicated for 2027/28.

129. The revision of payment schedules and timescales and award of bursaries cannot carry adequate weight to overcome the objection if the requirement for such fees to be paid is not permitted by the Code.

130. I see that the Objector challenged the School directly, communicating to senior staff and trustees. He specifically challenged the School's practice of mandatory attendance at out of hours activities, accompanied by mandatory payment, and use of those fee payments for purposes other than the board and/or lodging of the child. He has referred to the possible School use of fee income to cover sports facilities and a theatre. The lack of detailed written response to these complaints from the School is striking. In my view, that lack of response could legitimately lead a parent to believe that the School's stated next steps for fee recovery may well take place.

131. I restate that I have no jurisdiction over the Objector's issues in 2025/26. However, the effect of his experience appears clear. Fees are compulsory; support is limited; and the School has threatened action up to and including the withdrawal of a child's school place for non-payment. Given the charging of the fee itself is not permitted by the Code, this would be contrary to Paragraph 2.14 of the Code. The School states that it "desires to ensure that financial circumstances do not unnecessarily (my underlining) prevent children from continuing their education at the School." It is clear to me that the Code does not allow any such financial barrier to application or admission, necessary or not. Further, section 450 of the Education Act 1996 states that no charge may be made for admission.

132. The School has evidenced well its procedure for recouping fees it believes to be owed and fairly allocating bursaries. However, it does not at any point reference what I see as its obligation to act within the Code and other relevant law. I have seen no record of any written reply to the Objector to the issues he raised. The detailed note submitted to me by the School indicates no such reply was made. While the School Complaints policy is based on Guidance issued in 2014 for Independent Schools, it seems that some of the procedures detailed in that policy regarding governors' investigation and or hearings were not followed. The specific legal issues raised by the Objector were not addressed, other than the School restating that the monies it perceived to be owed remained payable. The School has no record of, at any point, presenting to the Objector the reasons why its arrangements might be unique compared to other state boarding schools.

133. Instead, I note communication from one of the Directors in 2024 detailing the need for means-testing families ahead of acceptance for a 6th form "day boarding place", that good conduct and attitude makes it more likely that a bursary will be awarded, and that "any outstanding payments must be settled before GCSE results are issued. Failure to do so will

result in a place not being offered.” These elements of bursary award appear contrary to the School suggestion that bursaries are a means only of financial support. They are not.

134. The same member of staff previously wrote to the Objector that “In some cases if children are not awarded a bursary, they withdraw their application for Gordon’s School.” In my judgement this is a telling statement in terms of the compulsory nature of “day boarder” fees and the effect on some applicants of their family’s inability to afford them.

135. It is important to refer also to previous adjudications, case law (Hockerill), and legislation. As is stated above, legislation allowing the charging of fees to students does so on the basis of the provision of accommodation. The School accepts that it does not, and logistically cannot, require all those students admitted as “day boarders” to sleep overnight at the School on occasion. In the absence of an explicit arrangement with the Secretary of State exempting the School from these terms of the Code, it is hard to see how its Arrangements can be legitimate.

136. The School has, at some points in time, discussed possible ways of resolving issues seen as unacceptable by the DfE. I note particularly a meeting in July 2017 involving a senior Foundation member and the Headteacher, which discussed extending the School’s residential boarding numbers, and adopting some measure of “opt-in” unpaid day attendance. The meeting also considered some kind of “Grammar School style” waiver to the School’s obligations.

137. This meeting involved the most senior DfE staff relevant to the School. I note that through the meeting, Foundation and School staff make claims which are difficult to sustain, for example, that changes would reduce access to students who had EHC plans or were looked after or previously looked after, which it could not; or that it would lead to a reduction in bursary-destined income, which it need not. The School note of the meeting states that “the DfE is looking to break the Tripartite Agreement” (a matter of opinion). It finishes with an end note that at no point was affordability discussed when the DfE staff had raised in the meeting that this issue was a key personal concern of the Under Secretary of State for Schools.

138. The notes of the July 2017 meeting left me in no doubt as to the position of the DfE senior leaders on the School admission arrangements, as well as the fears of the Under Secretary of State for Schools on the effect of compulsory charging on equality of access. In that context, the School’s reference to a junior member of DfE staff in the Complaints Department in 2024 seemingly accepting the School’s Arrangements as legitimate is unconvincing. The DfE has made clear to me that its view of the School’s Arrangements is unchanged since 2012.

139. The Headteacher confirmed in our meeting that the fees expected of “day boarders” are mandatory. This amounts to a compulsory charge on admission which is prohibited by

legislation if the activities charged for are compulsory. I will deal with the latter element below.

The clarity of attendance obligations of students seeking “day boarder” admission.

140. Finally, the Objector has suggested a lack of clarity in Arrangements for “day boarder” students. This is in terms of the attendance expectations they will face and any consequences of non-attendance.

141. The LA has stated that it “finds the arrangements clear in their description of “day boarders”, although these are not boarders in the true sense of the School Admissions Code. As there is no requirement for them to board, the admission criteria do not give priority according to paragraph 1.44 of the Code, and they are not required to complete a supplementary form nor attend an interview to assess their suitability for boarding. Thereby the local authority accepts that use of the word 'boarding' might present some confusion for applicants and thereby be in breach of the Code. The policies and Arrangements of the School at this time do not appear clear regarding expectations of “day boarders.”

142. This lack of clarity is exemplified in the School’s turn of phrase in daily policy. The School’s terms and conditions of boarding state, “The school’s affairs are organised on a termly basis and it is not possible to reduce the amount of the boarding charges or activity costs or to obtain a refund by withdrawing your child from school or by your child ceasing to participate in any activity part-way through a term.”

143. However, they further state that ““day boarders” may stay on site until 7.30 pm, while other regulations say such attendance is “expected”. “Day boarders” do not sleep in School except by special arrangement, and in such cases, their annual fee has to be augmented by an additional charge. This is detailed in the extended terms of boarding, which are part of the Arrangements.

144. A School communication to me states: “As there is no requirement for “day boarders” to board they do not need to complete the supplementary form or attend a suitability for boarding interview.” Furthermore, I was able to see no consistency in School day-to-day policies as to the length of the School Day.. Documentation is inconsistent and it is unclear what the expectations actually are.

145. I am of the view that School leaders themselves may lack clarity in what boarding “is” in terms of the Code. I note the Foundation has stated to me that “The School’s position is that being a “boarder” is not solely about where a pupil sleeps. It is about being a member of a boarding house and participating fully in the wider life of the School.” In my opinion, this is at odds with any normal understanding of what “boarding” means, as well as being at odds with the Code.

146. The School's Charging and Remissions policy details which elements of tuition are state funded but then states that "education provided outside school hours which does not fall into the categories in paragraphs above. Participation in any such "optional extras" will be on the basis of parental choice and willingness to meet such charges as are made." This includes activity which would in other schools be seen as school-funded extra-curricular activity.

147. Attendance at evening Prep (supervised homework) is "encouraged" in some documents, such as the School Attendance Policy. However, it is "expected" in other documents, such as the School Handbook for Students. Some documents state that attendance is "required", others that parents of 6th form "day boarders" should specify which sessions a child will attend. The School Attendance Policy states that after the end of the School Day at 3.35 pm., "all students must have timetabled period 7 activities and must attend punctually. Attendance is expected in the same manner as the academic school day and is monitored and analysed in the same way."

148. The School's Suitability for Boarding Policy states, "If a child is determined to be unsuitable for boarding after a reassessment, the boarding place will be taken away, and the child may continue to attend the school as a "day boarder" only." It is hard not to see this as confusing, and to understand the view of the School that "boarding" can exist without any residential in-school element.

149. In presentations to Parents of Year 7, 8, and 9 students in the same week in September 2026, which are available on-line, the School presented as "compulsory" attending after the end of schooling at 3.35 pm, in both Years 7 and 8. The same applied to attendance on Saturday morning. Procedures are laid out for requesting absence from such activity. An outline of the School day to parents of Year 7 students showed no distinction between the compulsory curriculum up to 3.35 pm and the remainder of the day to past 7 pm.

150. I note in passing that none of these presentations included any reference to bursary support, in spite of the School claiming that priority is given in that area.

151. In my final communication with the School, I communicated "One of the key considerations for an Adjudicator is clarity of Arrangements for prospective applicants. [The Adjudicator] notes that in the School's original submission, the School stated of out-of-hours Arrangements, "All students are, accordingly, expected to attend but it is not compulsory." This statement, and other paperwork and website materials, appears unclear and contradictory regarding the terms of enrolment. Further comment from the School would be welcome."

152. The School responded to me on 7 September 2026, "As we have explained above, these are not terms of enrolment but are, rather, expectations. No student or parent is

compelled to attend out-of-hours school. We will review the website to ensure that consistent language is being used in this regard.”

153. In my view, the School’s response minimises the scale of the issue and is at odds with almost all the evidence above. The School’s operational documents and parent experience are clear that attendance out of normal school hours in Year 7 to 11 is “compulsory” or “expected”, or “required”, laying out elsewhere the various obligations of different categories of student. The School’s submissions during this process, and previously, have maintained the centrality of such attendance being required, and that no alternative could have similar effect. Yet the Arrangements themselves either fail to mention these obligations, or present them as optional, or present them in a way which is unclear.

154. It is relevant that in its submission to me, the Foundation stated that in 2019, following a DfE visit, “Gordon’s remains committed to ensuring that no student is denied access to, nor discouraged from, applying for education at the school and that each student is able to participate in the full range of activities the school offers, regardless of financial means. To this end, we will ensure that our admissions documents and webpages contain clear details of the availability of bursaries for less financially well-off families, bursaries which can, where appropriate, absorb the full cost of day boarding for these students.” A similar wording was used in a letter from the Headteacher to the DfE in May 2019.

155. In May 2026 such an update had not happened. The scale, nature, and terms of such support remained almost impossible to find other than by direct email to the School.

156. I have no authority to enforce operational changes but I do have a responsibility to judge the School’s Arrangements for 2027/2028. Their failure to accurately specify requirements for out-of-hours attendance of “day boarders”, or specification that “day boarding” entails only opportunity to remain at School when this is not the norm, is unclear and misleading.

157. “Day boarders” may not be admitted on the basis of mandatory charges for compulsory out of hours activities. The Arrangements show an understanding of this – but it has become increasingly clear to me that this does not reflect the School’s expectations or operational practice.

158. It is of real concern to me that the same “day boarder” fee applies to both a Year 7 student who is told their attendance after School and on Saturday mornings is compulsory; and a Year 12 student who is asked to attend but not required to. If the “day boarder fee” is to meet the cost of board and/or lodging of the boarder concerned, I remain perplexed as to how these Arrangements can be reasonable or fair. The School has not provided any justification that they are. I believe they are not.

159. At the end of my scrutiny, I am clear that the School's admissions position is that attendance at any element of out of hours provision is not compulsory. No sanction would be issued for failure to attend. But this is not clear in the 2027/28 Arrangements. It is at odds with policies and documentation which interchange terms such as "required", "expected", and "compulsory" as if they mean the same thing. They do not.

160. I felt some sympathy for the Headteacher in our meeting as he detailed the very real challenge for a School senior leader to manage teenagers, and that wording deployed operationally might have to bend legal reality to leverage students to attend. I was heartened to hear that while not a "disciplinary issue", the whereabouts of a student expected to be on site but absent out of hours would be pursued for safeguarding reasons. However, in school admissions terms, the Arrangements must be clear and reflect the way operations are conducted. They are not and must be revised to make them so. Operational policies and procedures need to reflect the legal position. The Headteacher's comment made clear that the School does not meet footnote 36 of the Code which states "Boarding places are places for pupils who are provided with overnight board and lodging by the school. Day places are places for pupils who attend school on a daily basis, including pupils who participate in optional school activities (my underlining) outside school hours (for example breakfast club, after-school clubs, music lessons, tea, and supervised homework sessions)." "Day boarders", in school vocabulary, are day pupils in the Code and may not face mandatory charge for compulsory activity.

The effect of the Arrangements on equality of access to day school places

161. The LA told me that around 200 children attending state primary schools within three miles of the School completed Year 6 in each of 2023/24, 2024/25, and 2025/26. This compares to 88 Year 7 "day boarder" places offered by the School. Table 4 indicates that many local children are not admitted to Gordon's.

Table 4: The percentage of state school Year 6 leavers who joined Year 7 in a school other than Gordon's in 2025 and 2026, when Gordons was the nearest secondary school to their home.

Academic Year - 2025/26				
Year 6 School	Distance of that school from Gordon's	Number of Pupils with Gordon's as nearest secondary school	Number of Pupils who accepted alternative secondary school	% of Pupils who attended elsewhere when Gordon's was their nearest school
Bisley Church of England Primary School	1.37 miles	27	24	89%
Holy Trinity Church of England Primary School	0.53 miles	48	18	38%
Lightwater Village Junior School	1.52 miles	37	34	92%
St Lawrence Church of England Aided Primary School	1.8 miles	16	14	88%
Academic Year - 2024/25				
Bisley Church of England Primary School	1.37 miles	21	18	86%
Holy Trinity Church of England Primary School	0.53 miles	49	19	39%
Lightwater Village Junior School	1.52 miles	38	36	95%
St Lawrence Church of England Aided Primary School	1.8 miles	11	9	82%

162. Holy Trinity Church of England Primary School is the primary school located closest to the School. In 2026, 38% of its Year 6 children chose not attend Gordon's despite it being highly successful. This is unusual but it may be because of the atypical attendance pattern of the School, and its high-demand standards and uniform affiliation.

163. However, it is difficult for the School to convince me that this will always be the case, and that there are not children applying elsewhere because their family's financial means are not sufficient to cover the cost. I noted in our meeting that those present had clear suppositions about the income and resources of families in the area around the School.

However, they were only suppositions, and no work had been done to research metrics of income, or why many local families chose not to send their child to the nearest secondary school, Gordon's, but instead choose schools that are further away. In our meeting, the Headteacher referenced the advantaged nature of the community local to the School, but he did not reference the additional costs of living in the region.

164. I note that the LSOA for the area around Gordon's School assesses its postcode as lying within an advantaged area compared to the rest of the UK, but not an advantaged area compared to the rest of Surrey Heath. Only 7% of Surrey Heath addresses are more deprived than the area around the School. This seems at odds with comment made by the School and Foundation in our meeting that the area around the School is affluent.

165. The School has not provided data or argument that would lead me to determine that there are always legitimate reasons for the patterns emerging in pupils transferring to secondary education. It is unusual for parents living next to such a successful school to decline to send their children to it. I conclude that some of those will be financially unable to consider their child attending as a "day boarder" because of the compulsory fees. This is unfair and contrary to the Code and other relevant legislation.

166. In some ways, the School can rightly claim that it continues to look to support "necessitous children" in terms of its bursary support, and the extensive number of children on roll with EHC plans, and children who are looked after or previously looked after. However, for the reasons set out earlier, I judge that those least able to enrol will be economically "necessitous children" such as those who the Gordon Boys' Home initially set out to favour.

167. Such inability to access a family's nearest school might equally apply if their nearest school is not co-educational or if it has a faith connection that they see as unsuitable. Equally, the nearest school may operate banding or academic selection arrangements. However, all these restrictions are allowed by the Code in some circumstances. My view is that the School's Arrangements are not.

168. I have considered whether arrangements which I believe are unfair and discriminatory in theory have that unfair effect in practice. In this regard, the Arrangements which the School has adopted for "day boarder" admissions do not help its case.

169. For instance, a diligent way of assessing applicants to be "day boarders" would involve assessing their suitability to board and their need to board. This might have revealed some benefit to Arrangements for 2027/28 which outweigh their apparent unfairness. It may be that the high cost of living, allied with both parents working far afield, might lead there to being a group of children needing 8.20 am to 7.30 pm educational provision, and the needs of this group might outweigh the disbenefit to vulnerable groups who cannot afford fees. I make no judgement on this dilemma. However, the School did not follow this process, even though the

Code says that it must. It, therefore, has no proper evidence base to demonstrate any such benefit.

170. It seems clear that the LA did not pursue its concerns in 2015-2018 to a conclusion. I asked the LA for their view of any unreasonable detriment which might arise for a Year 7 child living next to the School but unable to apply to it because of inability to afford fees. They stated, "The local authority supports this aspect of the objection as we believe that by making the fee compulsory for day pupils, it restricts the applicants who can take up a place at the school to those who can afford it, which could be considered to be in breach of paragraphs 14, 1.8, 1.9 (e) and (f) of the School Admissions Code."

171. Their assessment appears to me to be correct. If "day boarders" are boarders they need to be assessed on entry for boarding suitability and need; if they are not boarders, they should be enrolled as day students, but that precludes them facing a mandatory charge for compulsory activity.

172. The 2027/28 Arrangements continue to be clear that no refund on fees will be given if a child discontinues an activity which they had begun in that fee-payment period. This reinforces my judgement that fees charged are not optional, and the School and Foundation confirmed this in our meeting. It is possible to attend the School and decline to do any out-of-hours attendance, but the family will still face a £12,000 charge, the same as for a child who chooses to attend all sessions. This is not in my view reasonable or fair in terms of the Code.

Overall view

173. "Day boarding" is not a term which appears at any point in the 2021 Code, nor in any earlier version. In my judgement, it is not in compliance with the Code to make a compulsory charge to students attending for activity out of school hours, except where that activity lies within the DfE guidance for provision of extra-curricular visits.

174. I, therefore, uphold this element of the objection.

175. I view that the Arrangements envisage a compulsory charge for "day boarders." While the School states that no student has been removed from roll for non-payment, the School's approach to non-payment by families is unsympathetic both on its own case and the evidence of the Objector. That charge does not sit within what is allowed by the Code and other legislation.

176. I, therefore, uphold that this compulsory payment must be removed for "day boarders". The School must abide by footnote 36 of the Code.

177. I welcome the School's stated efforts to recruit broadly, but the means by which they have chosen to do this are, in my view, limited in effect. They do not resolve the unlawfulness

of the “day boarder” charge in either the amount of support offered or the timing of arrangements, i.e. a child must be allocated a place before applying for a bursary.

178. I uphold the objection to the legality of “day boarder” compulsory fees as included in the Arrangements.

Other matters

179. Having considered the Arrangements as a whole it appeared to me that there are other matters which do not conform with requirements of the Code (and any relevant legislation if previously identified). I brought them to the attention of the Trust.

180. I have raised with the School the discrepancy in determined Arrangements between the School asserting a compulsory right to charge “day boarders” a fee but then stating that these children are not boarders in terms of their enrolment needing to follow the Code for boarder admission.

181. I cannot see that the School can hold the children to be “boarders”, allowing charging, but also “not-boarders”, avoiding consideration of boarding need and requirement on application. However, the School visibly does exactly that. Only children of staff seeking a “day boarder” place are required to complete the School Supplementary Information Form. This is not compliant with the Code. If the School proceeds to admit children as “day boarders” without charge in 2027/28, this must be resolved by assessing boarding need and suitability. This would also have the effect of safeguarding all parties should such a child take up an optional night sleeping in school in due course.

182. I have also considered the way the 2027/28 Arrangements cover the admission of students with EHC plans naming the School. The Arrangements state that the School will abide by the requirements of the law for such students but does not explicitly state that these children will be allocated places ahead of other candidates, as required by paragraph 1.6 of the Code. This must be resolved by adding the appropriate statement. I am grateful to the School for undertaking to change this, and they must do so.

183. I have, in addition, considered the determined Arrangements for the admission of students as sixth form “day boarders” in 2027/28. I am grateful to the School for agreeing to revise the closing date for the waiting list for sixth form places to become available to 31 December, as required by paragraph 2.15 of the Code, and they must do so.

184. However, other concerns persist. In great part, my judgement is that the Arrangements for 6th form students’ admissions as “day boarders” are unacceptable because they fail on the same basis as the Arrangements for admission to Year 7. Students may not attend free of charge as day students, only with compulsory payment as a “day boarder” which, for the reasons set out above, is unacceptable.

185. The School appears to consider external students joining Year 12 as boarders but does not utilise as required the terms specified in the Code to identify boarding need. The School does not require all such students to complete a Supplementary Information Form.

186. I note that these students may also complicate views of what is and what is not required attendance. The provision for such students is markedly different to the provision for students admitted to Year 7 in that:

- They may be excused attendance on Saturday mornings unless representing the School in Sport;
- They may leave the School immediately at the end of the compulsory school day at 3.35 pm; and
- Unlike students in Years 7 to 11 they are asked to nominate four after school slots which they will attend out of the seven available. They are “expected” to attend these slots, but it is not compulsory.

187. My judgement is that these differential Arrangements between Year 12 and Year 7 applicants add to the lack of clarity of what has been determined to be “day boarding.”

188. Such students are liable to pay the same “day boarder” fee as those in Years 7 to 11, with no discount to mark the lower level of engagement expected from them. This does not appear reasonable. 6th form “day boarders” were charged a lower fee as recently as 2019/20, and I am not clear why this was changed. The submission from the School is that a different charge was levied at one point as a marketing device.

189. Therefore, my finding regarding the determined Arrangements for the admission of current and external students to the 6th form as paying “day boarders” mirrors my judgement of Arrangements for students joining Year 7. “Day boarding” is not a term which appears at any point in the Code. In my judgement, it is not at sixth form level lawful to make a compulsory charge to students attending for activity out of school hours, except where that activity lies within the DfE guidance for provision of extra-curricular visits.

190. I view that the sixth form “day boarder” Arrangements include a compulsory charge. I, therefore, uphold that this must be removed for “day boarders”. The School must abide by footnote 36 of the Code.

191. I note that the Arrangements do not reference that progression for current “day boarder” Year 11 students may be curtailed if that student’s family is in arrears in their fee payments. This is stated elsewhere to be the operational practice of the School. This practice must cease.

192. I find that the 6th form “day boarder” Arrangements are unlawful.

193. I have considered the Arrangements in connection with the Surrey County Council Fair Access Protocol. The Code states:

“3.15 The Protocol must be consulted upon and developed in partnership with all schools in its area. Once the Protocol has been agreed by the majority of schools in its area, all admission authorities must participate in it. Participation includes making available a representative who is authorised to participate in discussions, make decisions on placing children via the Protocol, and admitting pupils when asked to do so in accordance with the Protocol, even when the school is full.”

194. The LA has communicated to me that no child has been admitted to Gordon’s through the Fair Access Protocol or some other form of managed move during the academic year in either 2024/25 or 2025/26. One or two students have been admitted on that basis to Collingwood College and The Winston Churchill School in each of those years. The School needs to comply with this element of the Code, and to make clear in its Arrangements that it does so.

195. I have considered the tie-break terms for a child applying for both a resident boarder place and a “day boarder” place, whereby such children are offered the residential place. While this appears to eliminate an important role for parents in determining the nature of future schooling for their child, the LA has stated that this is an administrative necessity to ensure the efficient allocation of offers and was introduced at their request. This term can remain part of the Arrangements.

196. Finally, I have considered the statement in the Arrangements regarding withdrawal of an offer of a place at the School. The Arrangements state that “Governors reserve the right to withdraw an offer of a place if information contained on the Common Application Form or Supplementary Information Form is found to be incorrect or intentionally misleading, even after a child has started at the school.”

197. This is at odds with Paragraph 2.14 of The Code which states “A school **must** not withdraw a place once a child has started at the school, except where that place was fraudulently obtained. In deciding whether to withdraw the place, the length of time that the child has been at the school must be taken into account. For example, it might be considered appropriate to withdraw the place if the child has been at the school for less than one term.” The Arrangements must be re-worded to align with the Code.

198. Where the School has accepted that changes are required, I will not discuss them further other than to make clear that the Code requires that the Arrangements be amended to address the points set out here. The necessary changes must be made to the other areas where I have found against the School’s Arrangements.

199. The School must address these matters, as required by paragraph 3.1 of the Code. Such amendments are permitted in line with paragraph 3.6 of the Code which states, in part: “Once admission arrangements have been determined for a particular school year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Schools Adjudicator or any misprint in the admission arrangements.”

200. This objection relates to the School and Foundation having a divergent view of an entitlement to continue charging “as is” for provision for “day boarders” to that held by the DfE and the LA. Efforts to resolve this divergence by negotiation have not succeeded. In my judgement, the School has not properly explored alternative lawful pathways. Meetings up to and including the level of the Under Secretary of State have involved the School and Foundation attempting to persuade others of the validity of their position. Alternative pathways to redetermining arrangements have focused on taking issues under dispute to judicial review. That remains the case in the most recent letter received from the School on 28 September 2026.

201. The School has had a dozen years of its arrangements facing contestation by the DfE, the LA, and Objectors. This should have enabled the School to determine a viable revision plan to the matters under contest.

202. This determination is late in its production essentially because of the School delaying compliance with many requests for information, and with the untimely scheduling of our meeting which eventually took place on 21 September.

203. I note that while complying with the determination may take time to achieve, there is expected to be a surplus of available Year 7 places in the Surrey Heath area roughly equivalent to the planned “day boarder” intake of the School in 2027/28. Parents need to be able to express their preferences in the knowledge that the objection to the currently determined Arrangements has been upheld.

204. The School must, therefore, make the directed changes to their arrangements for 2027/28 within two months from the date of publication of this determination.

Determination

205. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by Gordon’s School Academy Trust for Gordon’s School, for 2027/28.

206. I have also considered the arrangements under section 88I(5) and find that they do not comply with requirements relating to admission arrangements in the ways set out in this determination.

207. 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 this determination, unless an alternative timescale is specified by the school's adjudicator. In this case, revision is required by a date two months after the date of publication of this determination.

Dated: 9 October 2026

Signed:

Schools Adjudicator: Paddy Storrie