



### Determination

**Case reference:** ADA3351

**Objector:** An individual

**Admission Authority:** Rugby High School Academy Trust

**Date of decision:** 12 December 2018

### Determination

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2019 determined by the academy trust for Rugby High School situated within the county of Warwickshire.**

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

**By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of 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 an individual, the objector, about the admission arrangements (the arrangements) for September 2019 for Rugby High School (the school), a selective secondary academy school for girls aged 11 to 18.
2. The local authority for the area in which the school is located is Warwickshire County Council (the local authority). The local authority is a party to this objection. Other parties to the objection are the objector and the school.

## **Jurisdiction**

3. The terms of the Academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the Rugby High School Academy Trust, which is the admission authority for the school, on that basis on 6 December 2017. The objector submitted his objection to these determined arrangements on 22 February 2018. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

## **Procedure**

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

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

- a. the objector's form of objection dated 22 February 2018;
- b. the admission authority's response to the objection and supporting documents;
- c. the comments of the LA on the objection and supporting documents;
- d. The objector's further comments and submissions; and
- e. a copy of the determined arrangements.

6. In his submissions the objector raised some procedural points in respect of my determination in ADA3349 (Alcester Grammar School) which I will deal with here. He suggests I should have requested documentation from the courts which dealt with injunction proceedings, which I refer to below. I have seen and considered the published judgements. The issues before the High Court are not the same as those I am considering here although some of the facts are relevant. I am satisfied that I have all necessary information. I do not consider that documentation such as statements of case would assist me in reaching a decision. The objector has also asked me to seek copies of earlier tests from the test provider. I do not consider that a comparison of earlier tests or a cross reference of the content of earlier tests to information published on websites would assist me in my consideration of this matter.

7. The objector suggested that I should have held a meeting of the parties and with Durham Centre for Evaluation and Monitoring (CEM), the test provider. Where an adjudicator seeks a meeting it is in order to clarify issues raised where these are unclear, or to gather further information where information is lacking. In this case neither arises. I do not consider that a meeting would assist me in reaching my decision.

## The Objection

8. In his objection the objector raised a number of issues. Some of these were held not to be within my jurisdiction. The objector was notified, as were the other parties, of the matters considered to be within and not within my jurisdiction in letters from the Office of the Schools Adjudicator dated 2 August and 14 September 2018. The matters within my jurisdiction are as follows:

- a. Whether use of the same test for selection by ability for later additional sittings is compliant with paragraph 1.31 of the Code.
- b. Whether the provisions relating to use of catchment areas, residency and those for proof of address are clear, reasonable and fair in compliance with the provisions at paragraphs 14 and 1.8 of the Code and compliant with paragraph 1.14 (Catchment Areas) of the Code.
- c. Whether the use of the words “expectation” and “beyond” in reference to a child’s address at the start of Year 7 are unclear in contravention of the provisions of paragraph 14 of the Code.
- d. Whether the test dates are unclear in contravention of the provisions of paragraph 14 of the Code.
- e. Whether the process for testing children seeking a place in Year 7 who are tested after 31 August 2019 and are 12 years old or over, set out in the paragraphs under the heading “Years 7 to 11”, comply with the provisions of paragraphs 14 and 1.31 of the Code.

9. Some matters raised in the objection were not considered to be within my jurisdiction. This is set out in the letter dated 2 August 2018, as follows:

*“The following matters are **not** within the adjudicator’s jurisdiction:*

1. *Whether the requirement of minimum grades for progression of pupils on roll at the school from Year 11 to Year 12 is lawful. This relates to the progression of a registered pupil from one year group to another and not to the admission of a pupil to the school for the first time and hence not to the admission arrangements of the school. Provision for removing a pupil from the school’s roll in these circumstances is specifically made in paragraph 8 (k) of the Education (Pupil Registration) (England) Regulations 2006 (SI 2006/1751) as amended.*

2. *The following matters are all outside the adjudicator’s jurisdiction as they do not concern the question of whether or not the determined arrangements conform with the requirements relating to admissions:*

- a. *Complaints that test material is available on other websites and that no action is taken against those sites while action is taken against 11plus.eu, a website registered to you;*

*b. Complaints about institutional racism or racially motivated actions, or some personal vendetta against you by third party organisations (that is organisations which are not the admission authority for the school);*

*c. Complaints about institutional racism or racially motivated actions, or some personal vendetta against you by the admission authority;*

*d. Complaints about the process of administering the co-ordinated admissions scheme in Warwickshire.”*

## **Other Matters**

10. In reviewing the arrangements I noted that there are a number of points where the admission arrangements may not comply with the provisions of the Code and statute. I set these matters out in the following paragraphs.

11. The definition of a previously looked after child in footnote 4 to the paragraph headed “*Category 1*” refers to “*residence orders*” which have been replaced by child arrangements orders (which are defined in the footnote). Consequently I consider that these provisions may be in breach of the requirements of the Code relating to clarity.

12. The paragraph headed “*Category 6*” relates to a further category of pupils, those who score below the automatic qualifying score, but above the minimum score for the waiting list. It is not stated expressly that looked after and previously looked after children are given the highest priority over other children. This may be in breach of paragraph 1.7 of the Code.

## **Background**

13. The school is designated as a grammar school by order made by the Secretary of State under Section 104 of the Act. The published admission number for entry in September 2019 for Year 7 is 120.

14. Entrance to the school is determined by a child’s performance in an entrance test operated by the local authority’s Admissions Service (the Entrance Test). The school is part of a consortium of schools, along with five other grammar schools in Warwickshire and eight grammar schools in Birmingham, which use a common entrance test.

15. The Entrance Test consists of two papers, of 50 minutes each, which test verbal ability, numerical ability and nonverbal ability. Each child taking the Entrance Test will be awarded a standardised score relevant to an application to the school. For admission to the Warwickshire schools a body known as the Committee of Reference will set both an “automatic qualifying score” and a minimum score for the waiting list for the school. These scores are used in the application of the oversubscription criteria as set out below.

16. The local authority administers the tests on behalf of the schools and commissions CEM at Durham University to provide the test papers.

17. The school has two priority areas (referred to in this determination as Catchment Areas, as that is the term used in the Code). This is set out in the arrangements as follows:

*“Priority Areas*

*The overall priority area for Rugby High School is based on a circle with a radius of 10.004 miles drawn from the Rugby Water Tower. In drawing a priority area in this manner, the grammar schools are able to comply with their duty to follow the Greenwich Judgement (1989).*

*However, this circle is then split further with a smaller area contained within, which includes the town of Rugby and its surrounding villages. This smaller area is defined as Priority Area 1 (“Area 1”), or ‘East Warwickshire’.<sup>1</sup> The whole circle is then defined as Priority Area 2 (“Area 2”), or the ‘Eastern Priority Circle’. The smaller area, which is known as ‘Area 1’ (East Warwickshire), is contained within the circle. Therefore, children who reside within East Warwickshire (Area 1) are also classed as residents of ‘Area 2’ – the ‘Eastern Priority Circle’. A map of the priority areas can be seen on the school’s website.*

*Evidence will be requested to prove that the child is resident within the priority areas by the deadline of Monday 31st December 2018 (see the appendix for further details).”*

18. The oversubscription criteria are set out below. Those with the highest scores in each category are given highest priority for a place.

*“Oversubscription criteria*

*There is no guarantee of a place being available, but places up to the Published Admission Number (PAN) during the normal round of admissions (i.e. the first round of offers published on 1st March 2019) will be allocated to eligibility entry requirements, assuming that an offer from a higher preference has not been made. Those with the highest scores in each category will be given highest priority for a place.*

*To differentiate in the case of children with the same score in any of the following categories, those who live nearest the school in a straight-line distance will be given highest priority.<sup>2</sup>*

*In the case of a tie-break situation where more than one child has achieved the same score, and where all home to school distances are*

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<sup>2</sup> Distance from home to school will be measured from the address point location coordinate of the home address to the centroid of the school. The centroid is a predetermined point.

*equal, and there are not enough spaces to offer all applicants who fulfil the relevant criteria, the remaining place(s) will be allocated using a computerised random number generator. This process will be carried out by Warwickshire Admissions on behalf of the School, in the presence of a witness from Legal Services who is independent of the school and the admissions process. The above will also apply to the waiting list after the 2nd March 2018.*

*The automatic qualifying score for this school, for this particular year of entry, will be set by the Committee of Reference during the Local Review Process using the results from the 11+ test. The minimum score for the waiting list for this school, for this particular year of entry, will also be set by the Committee of Reference.*

*Children with an Education, Health and Care Plan (EHC) or Statement of Special Educational Needs (SEN)<sup>3</sup> that names the School will be admitted first, subject to them achieving the automatic qualifying score or above for the school for this particular year of entry. In this event the number of places that remain for allocation will be reduced.*

*Categories 1 - 6 below relate to children whose 11+ registrations and secondary school applications have been received on time.*

#### *Category 1*

*Looked-After and all previously Looked-After Children<sup>4</sup> who achieve the automatic qualifying score for this school for this particular year of entry or a mark above it, or a mark up to 15 marks below it.*

#### *Category 2*

*Children who live in the priority areas, who qualify for the Pupil Premium via eligibility for Free School Meals<sup>5</sup>, who achieve the automatic qualifying score for this school for this particular year of entry or a mark above it, or a mark up to 15 marks below it. Up to 20 places will be offered in this category (including any re-offers which are made from the waiting list from this category after 1st March 2019).*

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<sup>3</sup> A Statement of Special Educational Need is a statement made by the Local Authority under Section 324 of the Education Act 1996 specifying the educational provision required for that child. An Education, Health and Care Plan is a plan made by the Local Authority under Section 37 of the Children and Families Act 2014 specifying the educational provision required for that child.

<sup>4</sup> A Looked-After Child is one who is in the care of the Local Authority, as defined by section 22(1) of the Children Act 1989. A Previously Looked-After Child is a child who immediately after being looked-after became subject to an adoption, residence or special guardianship order. This includes children who were adopted under the Adoptions Act 1976 (Section 12) and those adopted under the Adoption and Children Act 2002 (Section 46). Child arrangements orders are defined in Section 8 of the Children Act 1989, as amended by Section 12 of the Children and Families Act 2014. Special guardianship orders are defined in Section 14A of the Children Act 1989.

<sup>5</sup> Children attracting the Pupil Premium via Free School Meals are those who have been registered for free school meals at any point in the six years prior to the closing date for test registration (08 July 2016). See Admissions Code (2014) section 1.39A.

*Warwickshire Admissions will require, on behalf of the School, evidence of Pupil Premium eligibility and the School reserves the right to withdraw the offer of a place if the offer has been made on the basis of an incorrect, fraudulent or misleading application.*

**Category 3**

*Children who live in Area 1 – East Warwickshire, who achieve the automatic qualifying score or above for this school, for this particular year of entry. Up to 50 places will be offered in this category.*

**Category 4**

*Children who live in Area 2 – Eastern Priority Circle, who achieve the automatic qualifying score or above for this school, for this particular year of entry. Up to 50 places will be offered in this category.*

*Within categories 3 and 4 the number of places available may be reduced dependent on the number of offers made within categories 1 and 2. In the event of there being an uneven number of places to distribute between category 3 and category 4, the odd place will be awarded to category 3.*

**Category 5**

*Children living outside of the priority areas who achieve the automatic qualifying score or above for this school, for this particular year of entry.*

**Category 6**

*Children who score below the automatic qualifying score, but above the minimum score for the waiting list for this school, for this particular year of entry.”*

## **Consideration of Case**

19. A letter dated 2 August 2018 was sent to the objector by the Office of the Schools Adjudicator (OSA) explaining the process to be followed in this case. That letter sets out the matters to be considered, together with one further matter set out in a letter to the objector dated 14 September 2018. The letters refer to an earlier determination of his objection relating to Alcester Grammar School (ADA3349). I will deal first with those matters where same or substantially the same issue has been considered and determined in ADA3349. In relation to those matters the letter dated 2 August 2018 states:

*“I copied to you my letters of 4 May 2018 to the head teacher and Chair of the Governors of Rugby School and to the head teachers and Chairs of Governors for a number of other schools. In those letters, I explained that the adjudicator had decided to adopt a particular procedure to consider the objections you have made to the admission arrangements of 12 schools. I am writing now to explain the way in which your objection to the admission arrangements of Rugby High School will be considered.*

*Having considered your objection, the adjudicator has concluded that under section 88H(4) of the School Standards and Framework Act 1998 (the Act) he has jurisdiction to consider the following points.*

- 1. Whether use of the same test for selection by ability for later additional sittings is compliant with paragraph 1.31 of the School Admissions Code 2014 (the Code). In relation to this:*
  - a. the adjudicator notes that the same or substantially the same issue has been considered and determined in ADA3349, dated 27 July 2018, a copy of which is attached. The whole determination should be considered but paragraphs 18 to 48 specifically address this point. On initial consideration it appears to the adjudicator that the conclusions and the reasons given in ADA3349 apply equally to this issue as raised in the current objection;*
  - b. the adjudicator invites any representations as to why this issue in the current objection ought to be considered or determined differently.*
  
- 2. Whether the provisions relating to use of catchment areas, residency and those for proof of address are clear, reasonable and fair in compliance with the provisions at paragraphs 14 and 1.8 of the Code and compliant with paragraph 1.14 (Catchment Areas) of the Code. The adjudicator notes that you have not specified which provisions of the Code you consider are engaged but considers the above are the provisions which may be relevant. In relation to this:*
  - a. the adjudicator notes that, save for the issue of clarity, separately referred to in paragraph 3 below, the same or substantially the same issues have been considered and determined in ADA3349, dated 27 July 2018. The whole determination should be considered but paragraphs 49 to 59 specifically address these points. On initial consideration it appears to the adjudicator that the conclusions and the reasons given in ADA3349 apply equally to these issues as raised in the current objection;.*
  - b. the adjudicator invites any representations as to why this issue in the current objection ought to be considered or determined differently.*
  
- 3. Whether the use of the words “expectation” and “beyond” in reference to a child’s address at the start of Year 7 (second paragraph in the appendix to the arrangements) are unclear in contravention of paragraph 14 of the Code. In relation to this:*
  - a. the adjudicator notes that the same or substantially the same issue has been considered and determined in*

*ADA3349, dated 27 July 2018. The whole determination should be considered but paragraphs 60 to 61 specifically address this point. On initial consideration it appears to the adjudicator that the conclusions and the reasons given in ADA3349 apply equally to this issue as raised in the current objection;*

- b. the adjudicator invites any representations as to why this issue in the current objection ought to be considered or determined differently.”*

20. The letter dated 14 September 2018 states:

*“The Adjudicator has noted that the letter to you dated 2 August 2018 omitted one matter which was raised by you in the objection and which falls within his jurisdiction. This would have come after paragraph 3 in that letter, as follows:*

- 1. Whether the test dates are unclear in contravention of the provisions of paragraph 14 of the Code. In relation to this:*

- a. the adjudicator notes that the same or substantially the same issue has been considered and determined in ADA3349, dated 27 July 2018. The whole determination should be considered but paragraphs 62 to 65 specifically address this point. On initial consideration it appears to the adjudicator that the conclusions and the reasons given in ADA3349 apply equally to this issue as raised in the current objection;*
- b. the adjudicator invites any representations as to why this issue in the current objection ought to be considered or determined differently.”*

21. The objector responded to the letter dated 2 August 2018 by email on 16 August 2018, following responses from the local authority and the school which were copied to him, with a document headed “Forensic Analysis” together with two attachments. This document sets out the reasons why he disagrees with the consideration and conclusions in the determination of his objection regarding Alcester Grammar School (ADA3349). It is clear that the objector considers that ADA3349 was wrongly decided on the issue identified at paragraph 1 of the letter of 2 August 2018; his submissions do not touch on any of the other issues identified. The school and the local authority were sent letters in similar terms and both have confirmed that they do not consider that these issues should be considered or determined differently to ADA3349.

22. ADA3349 was published on the OSA website on 27 July 2018. Decisions of the adjudicator are binding on the admission authority in question and any other person or body. There is no provision in the statutory framework for an appeal from an adjudicator’s determination. A person who considers that the decision is defective may apply to the High Court for leave to bring proceedings for judicial review and if leave is granted may bring such

proceedings. No application to bring proceedings for judicial review had been made at the time of completing this determination. Consequently ADA3349 stands as published.

23. ADA3349 does not constitute a precedent and I am required to consider this objection on its own merits. I have considered all of the points raised by the objector in relation to ADA3349. In particular, I have considered whether any point raised would cause me to consider that the issues identified as being the same or substantially the same issue in the present case should be looked at differently from the way they were looked at in ADA3349.

24. I find that the points raised by the objector regarding ADA3349 do not lead me to consider that any point in ADA3349 was wrongly decided. A number of the points made in the “Forensic Analysis” are based on the assertion that the injunction proceedings brought against the objector by Warwickshire County Council showed that there was a real risk of the test process being compromised if children could remember information from the tests. In fact, as I explained at paragraphs 37-38 of ADA3349, that was not the finding of the Court. The objector’s further criticisms of the evidence given to the Court that I referred to in ADA3349 do not persuade me that any of the factual conclusions I reached were wrong.

25. I note that the objector does not consider that the work of Gathercole and Alloway referred to in paragraphs 25 and following of ADA3349 supports my conclusion that there is only a minimal risk of recall of specific content. I remain of the view that that work confirms that children have a more restricted working memory than adults. There is no evidence that the types of question that are commonly asked in the 11+ now are more likely to be recalled than those that were in use at the time of publication of that work, and for those reasons together with the other evidence referred to at paragraphs 28-29 of ADA3349 I am satisfied that in normal circumstances the risk of specific recall would be minimal.

26. The objector has made some new factual points. He says that he did not, as I had understood, ask his nephew questions soon after the test had finished but “much later in the day” which he believes is the optimum time to ask questions. In his arguments, the objector says he disagrees that “straight” after the test is the optimum time and I note that I actually referred to “soon” after the test which is somewhat different. I remain of the view that recall is likely to be best soon after the test, so this does not alter any of my conclusions.

27. I further note the objector’s assertion that some families are not aware that the same test is reused. Assuming that to be correct, it does not detract from the fact that competition will be an inhibiting factor in cases where they are aware. Nor does it have any impact on the amount of content that a child can remember. The objector says that I cannot know what is going on “under the radar”. That is correct, but if – as he says is the case – he is not able to tell me, then I am not able to take it into account.

28. The objector states that “major publishers sell authentic CEM 11+

mocks”. The word “authentic” is his choice of word. There are no “mock” papers produced or authorised by CEM. Otherwise the point the objector makes (insofar as I am able to understand it) relates to his understanding of the injunction proceedings and is dealt with in paragraph 24 above.

29. The objector also disagrees with a number of the conclusions I reached in ADA3349 about the likelihood of information being passed on, the likely impact of a child knowing in advance what one or more of the questions would be, the difficulties of ranking where different tests are used and the level of accuracy that is achievable in tests of ability. I have considered the points made by the objector, but I disagree with him for the reasons that I have already set out in ADA3349.

30. The objector has not given any reason or reasons why the facts in the present case mean that it should be considered differently to ADA3349 and has not addressed the further issues raised in the present case at all. Insofar as the issues decided in ADA3349 are the same or substantially the same as those arising in the present case I will, as set out below, adopt them in my consideration of this matter. A copy of ADA3349 is attached as Appendix 1 to this determination and is available on the OSA website via this [link](#). I will refer to the relevant paragraphs in respect of each issue considered below.

**Whether use of the same test for selection by ability for later additional sittings is compliant with paragraph 1.31 of the Code.**

31. The objector raises this point in identical terms to those he raised in ADA3349. In deciding this issue I adopt the reasons and conclusions set out in paragraphs 18 to 48 of ADA3349. It is not necessary to set out the relevant paragraphs of ADA3349 here. I do not uphold the objection on this point.

**Whether the provisions relating to use of catchment areas, residency and those for proof of address are clear, reasonable and fair in compliance with the provisions at paragraphs 14 and 1.8 of the Code and compliant with paragraph 1.14 (Catchment Areas) of the Code.**

32. Although the issues are the same as those considered in ADA3349 the wording in respect of catchment areas is inevitably not the same, as the schools are situated in different places. For completeness I set out the relevant wording in the arrangements as follows:

*“Priority Areas*

*The overall priority area for Rugby High School is based on a circle with a radius of 10.004 miles drawn from the Rugby Water Tower. In drawing a priority area in this manner, the grammar schools are able to comply with their duty to follow the Greenwich Judgement (1989).*

*However, this circle is then split further with a smaller area contained within, which includes the town of Rugby and its surrounding villages. This smaller area is defined as Priority Area 1 (“Area 1”), or ‘East Warwickshire’ [the footnote sets out a list of parishes which together comprise “Area 1]. The whole circle is then defined as Priority Area 2*

*“Area 2”), or the ‘Eastern Priority Circle’. The smaller area, which is known as ‘Area 1’ (East Warwickshire), is contained within the circle. Therefore, children who reside within East Warwickshire (Area 1) are also classed as residents of ‘Area 2’ – the ‘Eastern Priority Circle’. A map of the priority areas can be seen on the school’s website.*

*Evidence will be requested to prove that the child is resident within the priority areas by the deadline of Monday 31st December 2018 (see the appendix for further details).”*

33. Otherwise the relevant wording does not differ materially from the wording used by Alcester Grammar School which is set out in full in ADA3349. It is not necessary to set it out here.

34. In deciding this issue I adopt the reasons and conclusions set out in paragraphs 49 to 59 of ADA3349. It is not necessary to set out the relevant paragraphs of ADA3349 here. I do not uphold the objection on this point.

**Whether the use of the words “expectation” and “beyond” in reference to a child’s address at the start of Year 7 (the second paragraph in the appendix to the arrangements) are unclear in contravention of paragraph 14 of the Code.**

35. This wording does not differ materially from the wording used by Alcester Grammar School which is set out in full in ADA3349 at paragraph 49, although in the arrangements for the school it is set out in an appendix. It is not necessary to set it out here.

36. In deciding this issue I adopt the reasons and conclusions set out in paragraphs 60 and 61 of ADA3349. It is not necessary to set out the relevant paragraphs of ADA3349 here. To the limited extent set out in ADA3349 I uphold the objection on this point.

**Whether the test dates are unclear in contravention of the provisions of paragraph 14 of the Code.**

37. The relevant sentence in the arrangements states *“The main test session will be on the morning of 8<sup>th</sup> September 2018”*. I find that this is clear and complies with the provisions of the Code.

38. The other issues raised by the objector regarding test dates are the same as those raised in ADA3349. In deciding this issue I adopt the reasons and conclusions set out in paragraphs 62 to 64 of ADA3349. It is not necessary to set out the relevant paragraphs of ADA3349 here. I do not uphold the objection on this point.

39. The objector refers to *“a racist policy, initiated by an institutionally racist and dishonest local authority”* and suggests that the school or local authority is allowing some religious groups (he refers to *“Jewish and Seven Heavens followers”*) and states these groups are *“mainly Caucasian”* to *“sit the test one day late, when they know content”*. These are very serious accusations and I

must deal with them. Saturday has been the Jewish Sabbath for millennia and is also the Sabbath for some Christian denominations. Observant Jews and some practising Christians abstain from work on that day. This is well documented and respected by people and institutions across the country. As to the suggestion that the school and/or local authority is favouring particular groups, I find that the evidence falls far short of supporting the inference drawn by the objector. I find that allowing those who are prevented for religious reasons from taking tests on a Saturday an alternative date is good practice. I find no reliable evidence for the implementation of any discriminatory policy on the basis of race or any other protected characteristic.

40. I will now deal with a further matter raised by the objector but not considered in ADA3349.

**Whether the process for testing children seeking a place in Year 7 who are tested after 31 August 2019 and are 12 years old or over, set out in the paragraphs under the heading “Years 7 to 11”, comply with the provisions of the Code and statute relating to admission arrangements. The relevant provisions appear to be paragraph 14 and paragraph 1.31 (tests for selection) of the Code.**

41. This concerns children applying for a place outside the normal admissions round because they have recently moved into the area or have not previously been tested for some other reason. The school is usually full in all year groups and operates a waiting list to decide who should be offered a place should one arise, for example, because an existing pupil leaves the school consequent on moving to another part of the country. Some children may have been tested previously but others may not and a means needs to be found to rank them all, including those who are new to the waiting list. The school’s approach is to test such children to establish their overall eligibility and, if eligible, their place on the waiting list, ranked according to the oversubscription criteria. If such a child is under 12 years old they will sit the same test as the other children, which will be marked in the same way. If they are over 12 years old then the usual test is not considered suitable, as it is not designed for children over 11 years of age. This group of children are required to take tests in English, maths and science. The results of those tests are compared to results already obtained by children in their cohort already at the school. If their result in each of the three tests is equal to or better than the lowest performing child in their cohort they are deemed to be of the same standard as the cohort and therefore eligible for a place.

42. It is worth noting here that the adjudicator’s jurisdiction, and therefore my consideration, only applies to the admission arrangements for normal year of entry, in this instance Y7. I have no jurisdiction for, and cannot therefore consider, arrangements for admission to year groups such as Years 8 and 9 which are not normal years of entry for this school. I can consider the arrangements for the Y7 waiting list.

43. I find that the school’s approach is a pragmatic way of dealing with an issue affecting a relatively small number of applicants. It is reasonable in

these circumstances to use tests in English, maths and science to assess a pupil's ability by comparison with their cohort peer group. The alternative would be either to have them sit the same test as the other pupils, which, as stated above is not suitable for those who are 12 years old or above, or to sit an entirely new test which could not easily be compared to other sitters.

44. Consequently, I do not uphold the objection on this point.

### **Other matters**

45. The definition of a previously looked after child in footnote 4 to the paragraph headed "*Category 1*" refers to "*residence orders*" which have been replaced by child arrangements orders. This appears to be a drafting oversight as further on in the same footnote "*child arrangement orders*" are defined. However I find that the reference to "*residence...order*" is unclear contrary to the provisions of paragraphs 14 and 1.8 of the Code.

46. The paragraph headed "*Category 6*" relates to a further category of pupils, those who score below the automatic qualifying score, but above the minimum score for the waiting list. It is not stated expressly that looked after and previously looked after children who meet this criterion, and are not admitted under Category 1, are given the highest priority over other children. This may be in breach of paragraph 1.7 of the Code.

47. The local authority have informed me and I accept that no looked after and previously looked after children would need to be considered under this category. Under Category 1 these children are admitted if they score up to 15 marks below the "*automatic qualifying score*" (AQS). The "*minimum score for the waiting list*" over the last three years has been between 5 and 2 marks below the AQS. Consequently all looked after and previously looked after children who achieved the "*minimum score for the waiting list*" (or between 10 and 15 points below it) would have been admitted under category 1.

48. I am satisfied that no other children achieving the AQS or the "*minimum score for the waiting list*" would be admitted ahead of any looked after or previously looked after children achieving those scores or AQS and up to 15 points below the AQS. Consequently this meets the requirement of paragraph 1.7 of the Code. It would be more clear if Category 1 stated, for example, that such children would be admitted if they achieved a mark up 15 marks below AQS or the minimum score for the waiting list, whichever is the lower, but that is a matter for the admission authority.

### **Summary of Findings**

49. For the reasons set out above, I do not uphold the objections in relation to the use of the same test for selection by ability for later additional sittings.

50. For the reasons set out above I do not uphold the objections in relation to use of catchment areas, residency and those for proof of address, save as set out in the following paragraph.

51. I find that the sentence “*There is an expectation that the address used to apply for a school place will be the same as the one where the child is living at the start of Year 7 and beyond*” is not clear as required by the Code and I partially uphold the objection on this point.

52. For the reasons set out above I do not uphold the objection in relation to test dates being unclear. For the reasons set out above I do not uphold the objections in relation to the process for testing children seeking a place in Year 7 who are tested after 31 August 2019 and are 12 years old or over.

53. I have also set out that the arrangements are unclear by virtue of the reference to residence orders.

### **Determination**

54. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2019 determined by the academy trust for Rugby Grammar School situated within the county of Warwickshire.

55. I have also considered the arrangements in accordance with section 88I(5) and find there is one other matter which does not conform with the requirements relating to admission arrangements in the way set out in this determination.

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

Dated: 12 December 2018

Signed: 

Schools Adjudicator: Tom Brooke



### Determination

<b>Case reference:</b>	<b>ADA3349</b>
<b>Objector:</b>	<b>An individual</b>
<b>Admission Authority:</b>	<b>The academy trust for Alcester Grammar School</b>
<b>Date of decision:</b>	<b>27 July 2018</b>

### Determination

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2019 determined by the academy trust for Alcester Grammar School situated within the county of Warwickshire.**

**I have also considered the arrangements in accordance with section 88I(5) and find there is one other matter which does not conform with the requirements relating to admission arrangements in the ways set out in this determination.**

**By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of 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 an individual, the objector, about the admission arrangements (the arrangements) for September 2019 for Alcester Grammar School (the school), a co-educational selective secondary school for pupils aged 11 to 18.
2. The local authority for the area in which the school is located is Warwickshire County Council (the local authority). The local authority is a party to this objection. Other parties to the objection are the objector and the

school.

3. The arrangements were determined by the academy trust for Alcester Grammar School by electronic means and recorded at the Full Governing Board meeting on 27 March 2018.

### **Jurisdiction**

4. The terms of the Academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the Alcester Grammar School, academy trust, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 22 February 2018. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

### **Procedure**

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

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

- a. the objector's form of objection dated 22 February 2018;
- b. the admission authority's response to the objection and supporting documents;
- c. the comments of the LA on the objection and supporting documents;
- d. The objector's further comments and submissions;
- e. extracts from the minutes of the meeting at which the Alcester Grammar School determined the arrangements; and
- f. a copy of the determined arrangements.

7. In correspondence and in his submissions the objector raised some procedural points which I will deal with here. He invited me to request documentation from the courts which dealt with injunction proceedings, which I refer to below. As will be clear, I have seen and considered the published judgements. The issues before the High Court are not the same as those I am considering here although some of the facts are relevant. I am satisfied that I have all necessary information. I do not consider that documentation such as statements of case would assist me in reaching a decision. The objector has also asked me to seek copies of earlier tests from the test provider. I do not consider that a comparison of earlier tests or a cross reference of the content

of earlier tests to information published on websites would assist me in my consideration of this matter.

8. The objector suggested that I hold a meeting of the parties. Where an adjudicator seeks a meeting it is in order to clarify issues raised where these are unclear, or to gather further information where information is lacking. In this case neither arises. I do not consider that a meeting would assist me in reaching my decision.

### **The Objection**

9. In his objection the objector raised a number of issues. Some of these were held not to be within my jurisdiction. The objector was notified, as were the other parties, of the matters considered to be within and not within my jurisdiction in letters from the Office of the Schools Adjudicator dated 11 May 2018. The matters within my jurisdiction are as follows:

- a. Whether use of the same test for selection by ability for later additional sittings is compliant with paragraph 1.31 of the Code.
- b. Whether the provisions relating to use of catchment areas, residency and those for proof of address are clear, reasonable and fair in compliance with the provisions at paragraphs 14 and 1.8 of the Code and compliant with paragraph 1.14 (Catchment Areas) of the Code.
- c. Whether the use of the words “expectation” and “beyond” in reference to a child’s address at the start of Year 7 (paragraph 2.2.7 in the arrangements) are unclear in contravention of paragraph 14 of the Code.
- d. Whether the test dates are unclear in contravention of the provisions of paragraph 14 of the Code.

10. Some matters raised in the objection were not considered to be within my jurisdiction. This is set out in the letter dated 11 May 2018, as follows:

*“The following matters are **not** within the adjudicator’s jurisdiction:*

4. *Whether the requirement of minimum grades for progression of pupils on roll at the school from Year 11 to Year 12 is lawful.*
  - a. *This relates to the progression of a registered pupil from one year group to another and not to the admission of a pupil to the school for the first time and hence not to the admission arrangements of the school. Provision for removing a pupil from the school’s roll in these circumstances is specifically made in paragraph 8 (k) of the Education (Pupil Registration) (England) Regulations 2006 (SI 2006/1751) as amended.*
5. *The following matters are all outside the adjudicator’s jurisdiction as*

*they do not concern the question of whether or not the determined arrangements conform with the requirements relating to admissions.*

- a. Complaints that test material is available on other websites and that no action is taken against those sites while action is taken against 11plus.eu, a website registered to you;*
- b. Complaints about institutional racism or racially motivated actions, or some personal vendetta against you by third party organisations (that is organisations which are not the admission authority for the school);*
- c. Complaints about institutional racism or racially motivated actions, or some personal vendetta against you by the admission authority;*
- d. Complaints about the process of administering the co-ordinated admissions scheme in Warwickshire; and*
- e. Matters connected to contracts between Durham CEM and Warwickshire County Council.”*

## **Other Matters**

11. When I reviewed the arrangements, I noticed that the definition given there of a previously looked after child in footnote 4 to paragraph 2.2.6.1 refers to “*residence orders*”. Residence orders have been replaced by child arrangements orders.

## **Background**

12. The school is designated as a grammar school by order made by the Secretary of State under Section 104 of the Act. The published admission number for entry in September 2019 for Year 7 is 150.

13. Entrance to the school is determined by a child’s performance in an entrance test operated by the local authority’s Admissions Service (the Entrance Test). The school is part of a consortium of schools, along with five other grammar schools in Warwickshire and eight grammar schools in Birmingham, which use a common entrance test.

14. The Entrance Test consists of two papers, of 50 minutes each, which test verbal ability, numerical ability and nonverbal ability. Each child taking the Entrance Test will be awarded a standardised score relevant to an application to the school. For admission to the Warwickshire schools a body known as the Committee of Reference will set both an “automatic qualifying score” and a minimum score for the waiting list for the school. These scores are used in the application of the oversubscription criteria as set out below.

15. The local authority administers the tests on behalf of the schools and

commissions the Centre for Evaluation and Monitoring (CEM) at Durham University to provide the test papers.

16. The school has a priority area (referred to in this determination as the Catchment Area as that is the term used in the Code), a circle with a radius of 16.885 miles centered on the fountain in Rother Street, Stratford upon Avon.

17. The oversubscription criteria are set out below. Those with the highest scores in each category are given highest priority for a place.

*“Category 1: Looked-After or Previously Looked-After Children who achieve the automatic qualifying score or above for this school for this particular year of entry.*

*Category 2: Children who live in the priority area who attract the Pupil Premium via eligibility for Free School Meals who achieve the automatic qualifying score or above for this school for this particular year of entry. Warwickshire Admissions will require, on behalf of the school, evidence of Pupil Premium eligibility and the school reserves the right to withdraw the offer of a place if the offer has been made on the basis of an incorrect, fraudulent or misleading application.*

*Category 3: Children who live in the priority area who achieve the automatic qualifying score or above for this school, for this particular year of entry.*

*Category 4: Children living outside of the priority area who achieve the automatic qualifying score or above for this school, for this particular year of entry.*

*Category 5: Children who score below the automatic qualifying score, but above the minimum score for the waiting list for this school, for this particular year of entry. Looked-After or Previously Looked-After Children in this category will be given first priority in ranking within this category, with the rest ranked according to score.*

*[footnote] 4 A Previously Looked-After Child is a child who immediately after being looked-after became subject to an adoption, residence or special guardianship order. This includes children who were adopted under the Adoptions Act 1976 (Section 12) and those adopted under the Adoption and Children Act 2002 (Section 46). Child arrangements orders are defined in Section 8 of the Children Act 1989, as amended by Section 12 of the Children and Families Act 2014. Special guardianship orders are defined in Section 14A of the Children Act 1989.”*

## **Consideration of Case**

**Whether use of the same test for selection by ability for later additional sittings is compliant with paragraph 1.31 of the Code.**

18. I note that while I am considering in this determination only the arrangements of this school, the issue raised here is relevant to the admission arrangements of other grammar schools, to those schools which select a proportion of their pupils by reference to ability and to those schools which use banding to secure a comprehensive intake. Paragraph 1.31 of the Code reads:

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

19. The school's arrangements provide for the same test to be used for different groups of children on different days. The objector contends that at least some content will be remembered by some of the children sitting the test. This information may be passed to others who are sitting the test on a later date. This may bestow an advantage on some late sitters. If a late sitter has such knowledge it may affect his or her score in the test. Consequently, the objector argues, the test will not be *“an accurate reflection of the child's ability”*. If a late sitter scores higher, as a result of such information, than he or she would have done otherwise, that may result in a higher position in the ranking of test scores. This may result in that child gaining a place and another child, who would otherwise have gained a place, not gaining a place. That is potentially not fair and so in contravention of paragraph 14 of the Code; *“admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective”*.

20. The objector has drawn my attention to proceedings for an injunction restraining him from publishing or disclosing the contents of 11-plus tests used by Warwickshire County Council and taken by candidates in the years 2013 to 2015 (*Warwickshire County Council v Matalia [2015] EWHC 751*). The objector appealed to the Court of Appeal which held that the judge was fully entitled to grant the injunction (*Matalia v Warwickshire County [2017] EWCA Civ 991*).

21. I should firstly note that these proceedings are of limited relevance to the matters I am required to determine. The proceedings were brought primarily under the law relating to breach of confidence and the findings of the High Court (approved by the Court of Appeal) relate to the elements necessary to establish such breach. The courts were not considering whether or not this aspect of the admission arrangements complies with the provisions of statute relating to school admission and with the Code.

22. However, there was evidence before the High Court (and accepted by the Court of Appeal) which is relevant to the issues before me. I will therefore refer to that evidence in my consideration of the issues below. The issues arising in this determination have been considered in previous years by adjudicators, following objections by the objector in a similar vein. Although those determinations relate to the admissions arrangements for different schools the relevant issues are, to all intents and purposes, the same or

largely the same.

23. In the letter to the objector dated 11 May 2018 referred to above, the objector's attention was drawn to one such determination ADA2877 dated 15 September 2015. The letters to the other parties also drew attention to this previous determination and invited comments. The relevant paragraphs are 22 to 25. The adjudicator in that matter concludes "*In my view it is unlikely that a child would remember any content that would be helpful to another child who might take the test at a later date*".

24. The letter to the objector dated 11 May 2018 stated "*The adjudicator invites any representations as to why this issue in the current objection ought to be considered or determined differently*". The objector cited a number of reasons why he considered that the current objection ought to be considered or determined differently. The objector states that the adjudicator may not use a previous determination as a precedent. For the avoidance of doubt I will state that I am not doing so and that there is no question of any finding or conclusion in a previous determination being binding on me. Each objection, if within the adjudicator's jurisdiction as this one is, will be determined on its own facts. However, there is no prohibition in the statutory scheme within which this determination is considered on my having regard to determinations in earlier cases.

#### **Do children remember content from the tests?**

25. The conclusion of the adjudicator in ADA2877 is based, in part, on evidence provided by Rugby High School (the admission authority in that matter) which is quoted in the determination as follows:

*"The work of Professor Susan Gathercole and Tracy Packinam Alloway Understanding Working Memory concurs with earlier studies by Cowan which suggest that children have a more restricted working memory than adults. Working memory capacity is really stretched by the kinds of tasks set in the eleven plus e.g. multiplication and division without the aid of a calculator. When you add on top of this the need to complete the paper within the required time (which places a severe restriction on time available for memorisation strategies like covert rehearsal) and the child's lack of access to other memorisation techniques like repeated writing of the article to be memorised, it is very unlikely that a child could be in a position to remember very much at all."*

26. For completeness I should say that there is no book by Gathercole and Alloway called Understanding Working Memory. There is one by Alloway and Alloway of that name which is about children with learning difficulties. As it happens, the objector complains about reliance on Understanding Working Memory in relation to children's ability on the grounds that it is about children with learning difficulties. However, there is also a book Working Memory and Learning : A practical Guide for Teachers which is by Gathercole and Alloway. This is a more general discussion of working memory and covers children generally across a range of ages from 4 to 15 years old. I have read parts of

this book and I am satisfied that it confirms that children have a more restricted working memory than adults.

27. The objector also objects to the statement regarding the work of Gathercole and Alloway quoted above. First, he suggests there is an issue of bias, presumably because there is a connection to Durham University where CEM, the body which sets the tests, is based. I do not accept this. A mere connection to the same 0 Madagascar and questions on synonyms including the words “*thrifty*” and “*frugal*”. The Court of Appeal judgement summarises the position as follows:

*“The relevant test included a comprehension question on a passage concerning lemurs in Madagascar with a total of 23 questions. The “Matching Words” section required candidates to give “thrifty” as a synonym for “frugal”. The judge found that the section on the website headed “Longer maths” also “contained truth”.”*

28. The objector attended the venue when his nephew took the test and was therefore able to question him about the content face to face soon after the test ended. I find that these circumstances are not typical and that those sitting the test would not in normal circumstances be questioned on the content soon after the tests ended by an adult with a view to communicating that information to a child sitting a later test. I draw a distinction between questioning soon after a test has been finished, aimed at eliciting content on the one hand and the sort of questions a parent may ask about how their child feels the test went or the sort of conversations children may have with each other after a test, on the other hand. I go on to consider the latter in later paragraphs. Miss Taylor (who was then the local authority’s 11 plus admissions officer and is now its Lead officer - Coordinated Admissions) in evidence to the High Court said that “*it is her personal experience that children do not in normal circumstances remember much specific content*” and “*In our experience, it would be very very difficult for a child to remember any of the questions in enough detail to pass on to children who are yet to take the test in order for that child to be at any significant advantage. We also aim to monitor all internet based forum activity where discussion of the test papers and questions could be made public, although we do strive to keep the test papers in secure units with limited access so that they are not distributed within the public domain.*”

29. Consequently, I find that in some circumstances a child may remember some test content. I recognise that questioning soon after the test aiming at eliciting test material is likely to result in the child’s being able to recall the most information he or she possibly could. I also consider that this is not a normal circumstance and that in normal circumstances the specific content recalled would be minimal.

### **Will that information be communicated to other children sitting the test on a later date?**

30. The High Court heard from Mr Pratt (then the local authority’s lead officer for pupil and student services) that “*extreme care*” is taken to ensure

that the content of the papers is not disclosed before students take them. As set out in paragraph 29 above, the local authority monitor internet based forum activity and take steps, including successfully seeking injunctive relief against the objector, to prevent dissemination of test material.

31. This still leaves the possibility that a child, having sat an earlier test, may pass on some recalled content either directly or via a third party such as a parent, to another child still to sit a later test. Mr Pratt gave evidence to the High Court that he thought that *“the fierce competition for grammar school places would reduce the chances of children or parents passing on information to anyone yet to sit the test”*.

32. The judgement of the High Court states *“It is doubtless the case that some of the children who sat the test on 7 September will have told their parents, and perhaps others, something about it, but there is no good reason to think that any, let alone much, information about the contents has become generally known or available. The materials that [the objector] has produced certainly do not demonstrate that information about the contents of the test is widely known or available, and Miss Taylor said in evidence that she has not seen test content published on other websites or forums to such a degree or with such accuracy”*.

33. I note that the objector takes a different view as to the likelihood of children passing information to each other from that set out by Mr Pratt. The objector considers that a highly able child – confident he or she will exceed the required score – will have no incentive not to pass on content. In my view, few children are that confident about their performance in tests which, as is the case with the eleven plus, matter to them. I do not consider that there is much force in the objector’s argument and no evidence has been presented to make me doubt that Mr Pratt’s view is reasonable.

34. I find that it is conceivable that some content of the test may be recalled by a child and that it is conceivable that such content may be passed on to another child sitting the test at a later date. The injunction in place is one of the limiting factors on this of course. The likelihood of any significant amount of content being passed on to future sitters is minimal.

### **Might such content, if passed on, affect the outcome?**

35. One of the objector’s grounds for his appeal to the Court of Appeal was that the information published was in fact insufficient to compromise the tests. This is a reference to information published on the objector’s website (which has been prevented by the injunction obtained by the local authority) rather than information recalled by individual sitters and passed on to later sitters. The Court of Appeal judgement summarises the High Court judgement on this point as follows:

*“As to the triviality of the information published by [the objector], the judge...referred...to the email dated 10 September 2013 from the University which stated “I have gone through the papers and most of what has been reported on CEM11plus [the objector’s website] isn’t an*

*issue and won't confer any real advantage to children who may have seen it (although there is still a perceived advantage)". The judge also quoted the following from the same email: "I can identify one verbal question (1 mark) that is definitely compromised". The judge went on to refer to the oral evidence of Mr Pratt, the Council's lead officer for pupil and student services, that "a single "raw" mark can, when standardised, account for as many as six marks and increase a child's ranking significantly". It is worth adding that it was in the same email that the University said that as a result of the disclosure about the maths questions "day 2 candidates may be at an advantage", even though the exact questions were not revealed".*

*In the internal email dated 10 September 2013 quoted in subparagraph 2.3 of Ground 2, which was before the judge, Mr Pratt wrote:*

*"I have now discussed the situation with the supplier of the test papers and their view is that the testing process as a whole would not seem to have been compromised. There will, however, be a perception that certain candidates will be at an advantage, and there are certain questions where the feeling is that the information published will have an impact. However, there are around 250 questions in the test, and analysis of the results data will allow us to identify whether or not late sitters have any particular advantage in the questions where we have concerns. If there are issues we have the option of excluding these questions from the results."*

*Having regard to this evidence, there was more than sufficient material on which the judge could conclude that the information disclosed by [the objector] was far from trivial and had the necessary quality of confidentiality about it. It plainly does not follow from the view that the testing process "as a whole" had not been compromised that there was no breach of confidence in the disclosures made by [the objector]".*

36. I would reiterate here that the courts were looking at a different question than that which is before me. However, the evidence is that the material published on the objector's website "*won't confer any real advantage to children who may have seen it*" and that "*the testing process as a whole would not seem to have been compromised*". From the evidence before the court I find that the content published on the objector's website could have had an impact on the score achieved by some later sitters, but that that impact would have been minimal. Here I am concerned not with what may have been published on a website but with what may be passed on by one sitter, perhaps through parents, via playground conversations or social media such as snapchat or WhatsApp to another, later, sitter. I find this even less likely to have a significant impact on the outcome.

37. For it to have an effect of the sort the objector contends is possible all of the following would be required. Child A, having taken the test would need to remember a question, know the right answer and pass this on to child B. For this to make a difference to child B's results all the following would be

necessary. Child B would need not to have already known or have been able to work out the answer. The mark from this question would need to make the difference between child B's reaching and not reaching the threshold mark for admission. Child B would need to remember the answer given by child A and choose to give that on the test paper. This only needs to be stated for it to be seen that it is a long chain of causation. It is very different from, for example, knowing in advance that a history question will require a candidate to set out the causes of a particular war which can then be researched.

38. The objector states that the mean scores achieved by late sitters are higher than the mean scores of those taking the test at the first sitting. The inference is that late sitters enjoy an advantage, presumably, in his view, due to having received in advance information about the content of the tests. The local authority have provided me with data for 2017 which it provided to the objector in response to a Freedom of Information Act request, and on which it appears he bases his statements regarding mean scores. I have looked at that data and at the figures supplied for earlier years by the objector. It is not possible to draw any firm conclusions. There are a number of possible variables which may affect such figures, not only knowledge of content which is the objector's argument. For example the relatively small number of late sitters compared to the number sitting the original test. There may also be differences between different groups of late sitters. Those who take the test only a little while after the main test may perhaps comprise largely those who were sick on the day of initial testing, and later late sitters, may perhaps largely comprise those who have moved into the area. The groups may have different characteristics. I cannot conclude from this data that any advantage has been gained by late sitters from information about test content supplied by earlier sitters.

39. Overall, I find that children may remember some content of the Entrance Test but little specific detail. What is remembered is unlikely to be passed on to other children but may be in some circumstances. If such content is passed on it is unlikely significantly to affect the score achieved by a child sitting the Entrance Test at a later date. It is, however, conceivable that content will be remembered and passed on and that this might affect another child's score, notwithstanding that for the reasons I give above I find that this will be rare, and that score would need to fall at the threshold for admission. Consequently, I will consider the reasons for using the same test for later sittings and the possible alternatives.

### **Reasons for using the same test for later sittings**

40. As is set out in the arrangements provision is made for children to sit the test on a later day for a variety of reasons. This includes those who are unable to sit the test on a Saturday or a Sunday for religious reasons, those children who were ill on the main test day and children who were unable to attend the earlier test due to prior engagement. In each case the arrangements state that evidence is required. I agree with the determination of another adjudicator, when in 2014 determining an objection relating to Warwickshire grammar schools, that "*it would be unreasonable and unfair not*

*to offer additional days for those who cannot, for good reason, take the test on the first day provided” (ADA2608).*

41. In the proceedings referred to above the High Court sets out briefly the position adopted by other grammar schools, as follows:

*“The trial bundles include materials casting light on approaches that have been adopted to similar problems elsewhere. It seems that there is only one sitting for the Harvey Grammar School in Folkestone; no late tests are offered. In other areas, however, 11 Plus exams are sat on more than one day. Buckinghamshire County Council has said that its “tests schedule has been designed to offer as little time and opportunity for second sitting session pupils to be informed about the content of the test from the first sitting pupils as possible” and “[l]ate testing dates are only agreed where there is evidence of moving or where there is evidence of illness on the main test date”. The Slough consortium of grammar schools has assessment sessions in the morning and afternoon of the same day”.*

42. I find there are good reasons for offering later test sessions and that this practice is not unusual. If later test dates are to be offered then the question arises as to whether there are alternatives to having those later sitters sit the same test.

43. The reasons for using the same test given by Mr Pratt to the High Court are twofold. Firstly, that it helps to ensure that children are tested consistently against the same standard. Secondly, that it would be costly and time-consuming to commission a new test every time one was needed. I find that these are good reasons. If children tested on different days sat different tests the difficulties of placing them accurately in the same set of ranked scores are obvious. It may be possible to devise a process to gain a correlation between scores in different tests but this cannot be as simple as using scores obtained from the same test. The eleven plus tests used by the school are weighted according to age, and this means that there would be further complexities and costs in ensuring absolute comparability between two different sets of tests for the same cohort of children for admission to the same schools. The objector, in support of his argument that different tests can be compared, cites the practice of GCSE and A level exam boards standardising tests across different years in order to obtain a uniform mark scale. In my view this is a different process undertaken for different reasons. GCSE and A levels are not age-weighted and as I go on to consider in detail below are not tests of ability but of knowledge and understanding of particular disciplines. I do not accept that what is done in GCSE and A levels shows that there is some similar process that would straightforwardly allow the ranking of children who had taken different entrance tests. It is also worthwhile to avoid a process that will lead to significant cost to the public purse and a significant adverse impact on the time and resources of public bodies.

44. The objector also points out that for GCSE and A level exam candidates who cannot sit a paper at the same time as other candidates are

supervised at all times prior to sitting the paper at a later time. I do not consider that this is comparing like with like. The purpose of these exams is different and what is being tested is primarily acquired knowledge and understanding. It is obvious that a GCSE or A level candidate forewarned of the content of a question could research that issue and expect to gain a significantly higher mark. Conversely, in an eleven plus test of ability some prior knowledge is less likely to have a significant impact as the test is not of the child's knowledge of, for example, lemurs in Madagascar but of the ability (in this example) to read and understand a piece of text and answer questions on it.

45. Overall I have balanced the risk that outcomes could be distorted by late sittings of the same test against the practical reasons for adopting the process set out in the schools arrangements for September 2019 entry. There is a risk that content may be recalled, passed on and will assist a late sitter to obtain a higher mark which, to have a significant effect, must lift that child above a point threshold, so giving that child a place in the school and denying a place to another. However, for the reasons set out above I find that this risk is minimal and that the local authority, the school and CEM take all reasonable steps to ensure that content is not passed on. On the other hand, the reasons for using the same test for late sitting are good reasons. Consequently I find on balance that the process is fair.

46. I have also considered in light of the findings above whether the Entrance Test gives *"an accurate reflection of the child's ability"*. I have found that there is a minimal risk that information passed to a late sitter may affect that sitters score. However, no testing regime can be perfectly fair or guarantee an absolutely perfect assessment of a child's ability. A sitter may feel unwell, for example develop a headache or high temperature during the test, or may have suffered a recent emotional shock such as a bereavement. These factors may affect that child's performance. Another child may have, by luck, revised synonyms which in fact are included in the test. The Code's requirement is that it be an *"an accurate reflection of the child's ability"*. Accuracy is not, in any case, a concept capable always of a simple binary divide into accurate or not accurate. It is, for example, common to speak of numbers being accurate to a certain number of decimal places or measurements in engineering requiring accuracy to given tolerances. A possible factor which may affect an individual child's performance will not, provided the risk is reasonably low, detract from the test being capable of yielding *"an accurate reflection of the child's ability"*. Consequently I find that the Entrance Test is *"an accurate reflection of the child's ability"*.

47. The objector also questions the integrity of CEM. CEM is an organisation affiliated to a highly respected university. CEM is used for ability testing by many admissions authorities for selective school admissions. I find there is no valid reason to doubt the quality of the tests they provide.

**Whether the provisions relating to use of catchment areas, residency and those for proof of address are clear, reasonable and fair in compliance with the provisions at paragraphs 14 and 1.8 of the Code**

**and compliant with paragraph 1.14 (Catchment Areas) of the Code.**

48. The relevant provisions of the school's admission arrangements are set out as follows:

*“2.2.1.Priority Area: The priority area for Alcester Grammar School is based on a circle with a radius of 16.885 miles drawn from the Fountain in Rother Street, Stratford-upon-Avon to the County boundary south of Long Compton. In drawing a priority area in this manner, the school is able to comply with its duty following the Greenwich Judgement (1989). Evidence will be requested to prove that the child is resident within the priority area by the deadline of Monday 31 December 2018. Applications from children outside this area may not be considered in the first round of offers.*

*Warwickshire Admissions will require, on behalf of the school, evidence of the applicant's home address. Parents/carers will be notified each time this is required. The Admissions Service may also carry out a home visit to the family to further verify an applicant's address. The school reserves the right to withdraw the offer of a place if it is satisfied that the offer has been made on the basis of an incorrect, fraudulent or misleading application.*

*2.2.7.Residency requirement: The child's home address is the address where they are living on the date of the application. There is an expectation that the address used to apply for a school place will be the same as the one where the child is living at the start of Year 7 and beyond. Where parental responsibilities are equally shared, the home address will be considered to be the place where the child sleeps, and spends most of their time, from Monday to Friday. This is the address that will be used to apply the school's oversubscription criteria, such as distance from the school. Where the home address changes after the start of the autumn term of Year 7, consideration will be given as to the reason why. Where it is considered that the reason for the change of address constitutes the application being fraudulent or intentionally misleading, the place may be withdrawn.*

*2.2.8.Evidence of Residency required: Warwickshire Admissions (Local Authority) will request on behalf of the school evidence in support of the application. The Admissions Service will write at the beginning of December 2018 to all parents/carers who have listed the school as a preference, requesting copies of two documents to confirm the home address. Parents/carers will have fifteen working days to provide proof of the home address. The application will be considered as late if appropriate proof is not provided within fifteen working days. The evidence required is as follows:*

- *Council Tax letter or statement for the current financial year - this must be supplied if you are the council taxpayer; or*
- *Current Housing Benefit letter; or*

- *Utility bill, bank statement, or car insurance documents dated within the last six months.*

*Plus one of the following:*

- *Child Benefit letter for the current financial year;*
- *Child's National Health registration card;*
- *Child Tax Credit Award Notice for the current financial year.*

*Please note that these documents will be retained and not returned. The Local Authority will match each address with the one they have on their database. The Local Authority reserves the right to carry out random checks at any time and this may include an unannounced home visit"*

49. In the letter to the objector dated 11 May 2018 referred to above, the objector's attention was drawn to determination ADA2877 dated 15 September 2015, which made findings on this issue. The letters to the other parties also drew attention to this previous determination and invited comments. The relevant paragraphs are 42 to 49.

50. **Catchment Area.** The Code states:

*"1.14 Catchment areas must be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school"*.

51. I find that the catchment area is clearly defined. The Code permits schools to use a catchment area. I find that the use of a catchment area in the school's admission arrangements is not in contravention of the Code or any statutory provision.

52. **Residency requirement and proof of address.** The admission arrangements set out clearly that *"The child's home address is the address where they are living on the date of the application"*. This is a sensible provision as that is the date on which the parents/carers sign and submit the application form. In the normal admissions round application will be made on the common application form (CAF) to the local authority for the area in which the parents/carers live. The deadline for submitting the CAF in relation to secondary schools is 31 October 2018.

53. In addition, there is provision for a change of address after the date of application up to 31 December 2018. This reason for choosing this date is not explained but presumably is chosen in order to allow sufficient time for the schools and the local authority to process all applications by the National Offer Day 1 March 2019. For that reason changes of address after 31 December 2018 are processed as late applications. It is inevitable that there will be a cut-off date after which changes of address will have to be processed separately.

54. I find that these provisions are clear, fair and reasonable and are in compliance with the relevant provisions of the Code. The remainder of the provisions set out above relate to proof of residence at the stated address at the relevant time. Proof of the address at which the child is living at the time of application is required by 31 December 2018. Separately, where there is a change of address prior to 31 December 2018, proof of address is also required “as detailed above” so also by 31 December 2018.

55. The address is to be verified by evidence produced by the parents/carers. Paragraph 2.5 of the Code states “*Admission authorities may need to ask for proof of address where it is unclear whether a child meets the published oversubscription criteria*”. In the arrangements this takes the form of copies of official documents. I note that copies are required, not originals, and therefore that the objector’s concern that these are not returned is misplaced. The objector raises a number of issues with the documents required, some based on rather far-fetched scenarios such as the possibility that a family will not have utility bills. I find that the documents required (in each case from a list of possible documents) are typical of those required as proof of address by admission authorities across the country and by various institutions for many purposes. The vast majority of families would be able to provide this evidence. I find that the requirements documentary evidence of address are clear, reasonable and fair.

56. The arrangements also make it clear that in some circumstances further investigation may be carried out. This is stated a number of times, including “*The Local Authority [acting on behalf of the school] reserves the right to carry out random checks at any time and this may include an unannounced home visit*”. It is also clear that if the address at which the child is living at or after the start of Year 7 changes, further checks may be carried out. This is clearly designed to prevent the use of fraudulent or intentionally misleading addresses. Unfortunately admission authorities across the country have problems with false addresses being given by parents/carers in order to increase a child’s chances of gaining a place at a particular school. This is probably the most common instance of “*a fraudulent or intentionally misleading application*” as addressed in paragraphs 2.12 and 2.13 of the Code.

57. The arrangements (relating to both address at the time of application and changes of address by 31 December 2018) also flag up that subsequent changes of address may lead to further investigation and to a requirement for further proof of address. The issue is that some parents/carers will move temporarily to a different address, without an intention permanently to reside there, in order to apply to a school from that temporary address. I find that it is fair and reasonable for the admission authority, or, as here, a local authority on behalf of the admission authority, to take these steps in order to investigate what may be “*a fraudulent or intentionally misleading application*”. There is no difficulty with a move undertaken for genuine reasons.

58. Subject to my finding in paragraph 59 I find the provisions relating to proof of address to be clear, reasonable and fair as required by the Code.

**Whether the use of the words “expectation” and “beyond” in reference to a child’s address at the start of Year 7 (paragraph 2.2.7 in the arrangements) are unclear in contravention of paragraph 14 of the Code.**

59. The context of the statement “*There is an expectation that the address used to apply for a school place will be the same as the one where the child is living at the start of Year 7 and beyond*” is that of the prevention of fraudulent or intentionally misleading applications. This sentence is followed (after two intervening sentences dealing with the position where a child lives at more than one address for different parts of the time) by “*Where the home address changes after the start of the autumn term of Year 7, consideration will be given as to the reason why*”. When read together I find that the intended meaning is that changes of address may give rise to queries as to the veracity of the address originally given. That is that if at the start of Year 7 or a later date the child lives at a different address to the address given at the time of application this will give rise to doubts as to the truthfulness of the address given at the time of application, which may be investigated further.

60. However, I find that the use of the word “expectation” and the intervening sentences dealing with another aspect of addresses, may imply some wider expectation, beyond the truthfulness of the address given at the time of application. It could appear, although I accept that this was never the intention, that the school sets some value on continuity of address for its own sake, and frowns on families that move. This makes the meaning unclear, particularly as paragraph 14 of the Code states that “*Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated*”. To that limited extent I uphold the objection on this point.

**Whether the test dates are unclear in contravention of the provisions of paragraph 14 of the Code.**

61. Paragraph 2.3.1 of the arrangements refers to a test on Saturday 8 September 2018. Paragraph 2.3.4 says the main test sessions will be on Saturday 8 September and Sunday 9 September. Although not entirely consistent I find that this is sufficiently clear to comply with paragraph 14 of the Code.

62. I find the issues raised by the objector in relation to test dates to be unfounded. Whether or not some children were not allowed to sit the test on the main date is not a matter within my jurisdiction. I consider the arrangements as determined by the admissions authority rather than the administration of those arrangements by or on behalf of the admission authority.

63. I find no reliable evidence of any policy giving preferential treatment to some groups by allowing them late testing. The school’s main test date is a Saturday. The objector argues that it is unfair to allow late testing to those who cannot be tested on Saturdays for religious reasons and that they should be tested earlier or all the tests held on school days as is the case for some other schools and areas. The objector suggests as an alternative that the

tests should all be held on school days and schools closed to their pupils on those days to allow this. This may be appropriate in some places and in others tests may be administered in primary schools. However, the arrangements for the tests are for each admission authority to determine in the light of their own circumstances and there is nothing axiomatically unfair about a Saturday main test date and a later test date which is not a Saturday. He also suggests that those who cannot take a test on a Saturday should take the test earlier and makes the point that this will mean a smaller number of people see the test at its first outing and so reduces scope for passing on content. This is a reasonable point; however, it ignores the fact that late testing is also for those who are ill on the main test date. This, of course, cannot be predicted and must happen after the main test date.

64. The objector refers to "*spurious religious claims (which are not authenticated to any degree)*" and suggests that the school or local authority is "*in cahoots with these religious groups to give them an unfair advantage*". These are very serious accusations and I must deal with them. The objector does not identify any particular faith. However, Saturday has been the Jewish Sabbath for millennia and is also the Sabbath for some Christian denominations. Observant Jews and some practising Christians abstain from work on that day. This is well documented and respected by people and institutions across the country. It is certainly not spurious. As to the suggestion that the school and/or local authority is in cahoots with particular groups, I find that the evidence falls far short of supporting the inference drawn by the objector. I find that allowing those who are prevented for religious reasons from taking tests on a Saturday an alternative date is good practice. I find no reliable evidence for the implementation of any discriminatory policy on the basis of race or any other protected characteristic.

### **Other matters**

65. In reviewing the arrangements I noted that the definition of a previously looked after child in footnote 4 to paragraph 2.2.6.1 refers to "*residence orders*" which have been replaced by child arrangements orders. This appears to be a drafting oversight as further on in the same footnote "child arrangement orders" are defined. However I find that the reference to "residence...order" is unclear contrary to the provisions of paragraphs 14 and 1.8 of the Code.

### **Summary of Findings**

66. For the reasons set out above I do not uphold the objections in relation to the use of the same test for selection by ability for later additional sittings.

67. For the reasons set out above I do not uphold the objections in relation to use of catchment areas, residency and those for proof of address, save as set out in the following paragraph.

68. I find that the sentence "*There is an expectation that the address used to apply for a school place will be the same as the one where the child is living at the start of Year 7 and beyond*" is not clear as required by the Code and I

partially uphold the objection on this point.

69. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2019 determined by the academy trust for Alcester Grammar School situated within the county of Warwickshire.

70. I have also considered the arrangements in accordance with section 88I(5) and find there is one other matter which does not conform with the requirements relating to admission arrangements in the ways set out in this determination.

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

Dated: 27 July 2018

A handwritten signature in black ink, appearing to read 'Tom Brooke', written in a cursive style.

Signed:

Schools Adjudicator: Tom Brooke