



Determination

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| Case reference: | ADA3502 |
| Objector: | An individual |
| Admission authority: | Rugby High School Academy Trust |
| Date of decision: | 3 July 2019 |

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 2020 determined by the academy trust for Rugby High School situated within the county of Warwickshire.

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

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by an individual, (the objector), about the September 2020 admission arrangements (the arrangements) for Rugby High School (the school), a selective secondary academy school for girls aged 11 to 18. The objection is to the effect of the oversubscription criteria which is said to be neither fair nor objective, and therefore irrational. The objector also considers the arrangements to be unclear.
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 governing board for Rugby High School, which is the academy trust for the school and thus the admission authority for the school, on that basis on 11 December 2018. The objector submitted his objection to these determined arrangements on 3 March 2019. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and is within my jurisdiction.

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 3 March 2019; subsequent representations and their attachments;
 - 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 LA's composite prospectus for parents seeking admission to schools in the area in September 2019;
 - e) confirmation of when consultation on the arrangements last took place;
 - f) copies of the minutes of the meeting at which the governing board of the school determined the arrangements;
 - g) a copy of the determined arrangements; and
 - h) Determinations ADA2877 dated 15 September 2018 and ADA3351 dated 12 December 2018 in relation to Rugby High School, and determination ADA3395 dated 27 September 2018 in relation to Lawrence Sherrif School which have been referred to me by the parties.

The Objection

6. In the form of objection, the objector stated that he considers that the school's oversubscription criteria discriminates unfairly against local pupils (which I have taken to mean pupils residing within what the school describes as the "priority areas" and which I consider also to be catchment areas for the purposes of the Code) who are placed between 100th – 120th on the initial rankings for the school. The objector states that this fails to conform to paragraph 14 of the Code. My view is that paragraph 1.8 of the Code is also relevant to the objection. I have set out these paragraphs of the Code in my consideration below.

7. The objector introduced additional points in response to representations made by the local authority and the school, and I have set these out below. As the process of exchanging information evolved, it became clearer that the objector's essential difficulty with the arrangements is that the setting of the Automatic Qualifying Score operates to give priority to more applicants who reside outside the school's catchment than would be expected on any reasonable interpretation of how the oversubscription criteria should operate.

8. The objector raised this point in relation to Lawrence Sherrif School last year, which I considered in ADA3395.

Background

9. 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 2020 for Year 7 is 120.

10. The arrangements state that 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. The LA administers the tests on behalf of the schools and commissions CEM at Durham University to provide the test papers.

11. 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 is awarded "a standardised score relevant to an application to the school". For admission to the Warwickshire grammar schools a body known as the Committee of Reference sets both an "automatic qualifying score" (AQS) and a minimum score for the waiting list for each school. There are two Committees of Reference, namely the Eastern Committee and the Southern Committee. The Eastern Committee sets the AQS for Rugby High School. I note that the AQS and minimum score for the waiting list vary from school to school and, in relation to each school from year to year, albeit to a lesser degree than the school to school variations. These scores are used in the application of the oversubscription criteria.

12. The total number of applications received for Year 7 entry in September 2019 was 366, and the number of first preferences applications was 237.

13. The school has two priority areas which, as I note above, meet the Code's definition of catchment areas and are accordingly subject to the Code's requirements as to catchment areas. These are described 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'.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)."

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

"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.

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 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) 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 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, 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 2020).

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.”

15. In relation to the setting of the AQS, the arrangements state as follows:

“Committee of Reference

The Role of the Committee of Reference

There will be a Committee of Reference whose function is to set the automatic qualifying score for each school in the Eastern Area, determine for each school the minimum score for the waiting list and review the arrangements made for any pupils with disabilities or special educational needs. Places will then be offered in accordance with the oversubscription criteria.

Setting the Automatic Qualifying Score

Performance in the tests and the number of applications for the schools will be used by the Committee of Reference in each area to set the automatic qualifying score. Above and at that standard a child will receive an offer from their highest named preference of selective school named (subject to living within the priority area and not being a late entry or having an offer from a higher preference of school).

The Committee will consider the descending score order and the number of children applying for each school (living within the priority area and who registered before the closing date) and set the automatic qualifying score as close to the planned admission numbers for the schools as possible.

The Committee of Reference will also consider the scores of students just below the automatic qualifying score and determine for each school the minimum score for the waiting list for that year.

Places will then be offered in accordance with the admission criteria”.

16. The school’s arrangements for admission in September 2019 were objected to and are the subject of determination, ADA3351, dated 12 December 2018. The objection was partially upheld, and concerned aspects of those arrangements which are different to those which are the subject of the objection considered here.

Consideration of Case

17. The objector has raised a large number of points as this case has progressed. In order to provide a clear structure to this determination, I will first summarise the representations made by the objector and the responses of the other parties. I will consider, and set out my conclusions upon, the original objection. I will then consider, and set out my conclusions upon, the additional grounds of objection. These were as follows:

- The methodology for setting the AQS is unclear, and is not described in a way that parents are able to understand. It is incomprehensible as to how the AQS is set at the level it is year-on-year;
- The arrangements enable the Committee of Reference to set the AQS *“just as it feels like”*;
- In order for the AQS to be set objectively as a test of the ability to cope in the grammar environment, it would have to be set without the Committee of Reference knowing where applicants live, and without looking at the operation of the oversubscription criteria;
- The oversubscription criteria are considered by the Committee of Reference when setting the AQS, which is wholly wrong. The oversubscription criteria can only be used at the point when the AQS has been determined in order to allocate places where there are more children who achieve the AQS than there are places available;
- There is a difference between a pass mark (which indicates academic capability) and a cut off score (which is simply the lowest score of the last applicant to be offered a place). The arrangements confuse these two concepts;
- The objector says he has been told that the AQS is set to reflect the ability of the cohort applying each year, and so will vary from year-to-year. The objector argues that this statement is not borne out because, in some year groups, the test scores were higher than in the previous year, but the AQS remained the same;
- The AQS is said to be set at a level dependent upon the ability to cope with a grammar school education. Other grammar schools set a lower AQS than the AQS set for Rugby High School, so children on these lower scores must be able to benefit from a grammar school education;

- The school controls how its AQS is set. It is only nominally set by the Committee of Reference; and
- The arrangements operate in a way which allows more applicants who reside outside the school's catchment are offered places than would be expected on any reasonable interpretation of how the oversubscription criteria operate.

The Representations of the Objector and the Responses of the other Parties

18. As set out above, the school's oversubscription criteria provide that first and second priority is given to LAC/PLAC and pupils eligible to receive the Pupil Premium who meet certain specified requirements (Categories 1 and 2 of the oversubscription criteria). Thereafter, up to 50 places are allocated to 50 local applicants in Priority Area 1 and then up to 50 places are allocated to applicants in Priority Area 2 (Categories 3 and 4). The school has a PAN of 120. The objector submits (by way of an example) that, if no places are allocated under categories 1 and 2, as many as 20 places will fall to be allocated under Categories 5 and 6, as 120 minus the maximum of 100 to be allocated under categories 3 and 4 would leave 20 places. (I note that this number could, in fact, be higher if fewer than 50 places are allocated to Priority Area 2 applicants). Under Category 5, places are not allocated to applicants living in the Priority Areas but to the highest scoring applicants living outside the Priority Areas who have achieved the AQS. Category 6 places do not take account of where children live, and are offered to any applicants who score below the AQS and above the minimum score required for entry on the waiting list in ranked order. But, if 100 places have been offered to applicants living within the Priority Areas under Categories 3 and 4, and some other applicants in those priority areas have achieved the AQS they cannot be offered a place. This is because places cannot be offered to these applicants under Category 5 as they live outside the Priority Areas or under Category 6 because Category 6, by definition, comprises applicants who have scored below the AQS but above the minimum score.

19. The objector argues that the effect of this is that, as many as 20 Priority Area 2 applicants who have achieved the AQS and fall 100th – 120th in the ranked list, will not be allocated places because the remaining places must be allocated under either Category 5 or Category 6. As I have said above, the number could potentially be higher. The objector submits that this is neither objective nor fair, and therefore the arrangements fail to conform to paragraph 14 of the Code which states: "*In drawing up their admission arrangements, admission authorities **must** ensure that the practices and criteria used to decide the allocation of school places are fair, clear and objective*". Also relevant, if the effect of a set of oversubscription criteria falls to be considered as a whole, which in my view it can be, is paragraph 1.8 of the Code which provides: "*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation*".

20. The objector is not suggesting that Category 5 of the oversubscription criteria is irrational *per se*, (although I think he would prefer that all places at the school were offered exclusively to applicants living in the Priority Areas). What he is arguing is that, if places fall to be offered under Category 5 and the number of applicants in this Category is less than the number of places available, then places will be offered under Category 6 to applicants (living both inside and outside the Priority Areas) whose scores are lower than the AQS. Applicants falling under Category 3 who have achieved the AQS or above who have not been offered places due to the limitation on numbers under Category 3, cannot fall under Category 6.

21. There can be no doubt that the objector's example of what could happen is, in fact, a possibility. Whilst an admission authority may have lawful and legitimate reasons for limiting the number of places allocated to local residents (that is to say those living within a priority or catchment area) so as to offer some element of priority to those living further away, it initially seemed odd for selective school arrangements to provide that an applicant living in one of the Priority Areas would not be allocated a place because she was number 51 on the list of applicants living in Priority Area 2, whereas an applicant with a lower score – indeed a score below the AQS – also living in Priority Area 2 could be offered a place. Equally, an applicant living outside the Priority Areas with a score below the AQS would be offered a place.

22. The objector claims that inconsistent information has been provided and inconsistent statements made about how the AQS is set. He says: *“For the last 10 years or more, these 2 schools (RHS and LSS) have shown a clear and increasing tendency to introduce out of area applicants in numbers that largely surpass the other schools in the same county. In 2019, RHS admitted as many as 32 applicants from out of PA [Priority Area] for a PAN of 120. For the same year, the combined grammar school of Southern Area with a Pan [sic] of 357 only admitted 17 out of area applicants. Proportionally 6 times more out of area students for an AQS that is less than 10% difference. Another clear bias against PA students is the fact that their numbers are limited to 100 between oversubscription categories 1 to 4 for RHS, but there is not limits whatsoever in category 5. In fact, and given the appropriate test results (and the ever increase tendency of the school) we may have 100% intake from out of area applicants.*

I am not asking the Adjudicator to find that such bias has been taken place, but just to find proved that such bias is possible within the actual admission policy process and therefore should be changed”.

23. The objector provided the minutes of a meeting of the Committee of Reference which took place on 19 January 2019 to set the AQS for admission to the school in September 2019. These minutes stated as follows:

“Rugby High School (RHS):

*The Committee of Reference members have agreed that the proposed qualifying score for RHS at this point in time = **208***

This would give a total of 120 potential offers using the school's admissions criteria, made up of:

□ Category 1 (LAC + QS) = 2 □ Category 2 (PP + QS or up to 15 below) = 2 □ Category 3 (East Area + QS) = 51 (down to a score of 215) □ Category 4 (East Circle + QS) = 37 (down to a score of 208) □ Category 5 (Out Area + QS) = 50 available □ Category 6 (Waiting list range) = N/A

Could potentially lose x2 from Category 4 to higher preference offers prior to 1st March, but can fill from the 50 available in Category 5. These will be split by score and then distance. Not all within this category will be offered a space.

There were 32 girls that scored above the proposed qualifying score, who could have received an offer, however, they did not comply with the residency requirements. As a result of this, their applications are being considered as late and will not be considered until after 1st March.

Rugby High Waiting List

QS = 208

Late applications will be processed after 1st March and placed on to the waiting list, in category order. This will, therefore, increase the numbers on the waiting list after 1st March.

Below the qualifying score (category 6):

9 on a score of 207

7 on a score of 206

= 16

+ approx. 18 Category 5 children who will not receive offers on 1st March.

Minimum waiting list score (provisionally) of 206 = 34 on waiting list (as at 1st March)

2 on a score of 205

- Also available

3 on a score of 204".

24. The minutes also contained the following statement: *"The WCC Officers reiterated that at this stage everything is provisional and nothing will be confirmed until later in the process. Data is due to be exchanged further with surrounding Local Authorities, such as Leicestershire, Coventry and Northamptonshire, so this may have an impact on the qualifying scores and waiting list information over the next few weeks. If the information within these minutes does change at any point then this will be reflected as an additional note (NB:)"*. I pause slightly here to make the point that minutes of a meeting are usually a summary of what actually happened at that meeting, so I do not quite understand how information can be added to a note of a meeting which does not reflect the information which was actually discussed by the Committee during the meeting. If the information which formed the basis upon which the Committee set the AQS and minimum score changed following the meeting, what would be expected would be that the Committee meeting be re-convened at a subsequent meeting and the scores re-set. There would then be minutes of that meeting, or a record of any further conversations which had taken place between the LA and the members.

25. There is no additional note. I have not seen minutes of any subsequent meeting. The Committee of Reference meeting for the September 2018 year of entry took place on 24 January 2018. The minutes of this meeting contain an identical statement about adding information. The AQS for the school was set at 207. The AQS for the September 2017 year of entry was set at 207. I have looked at the scores which were notified to parents, which were 207 (2017), 207 (2018) and 208 (2019). The AQS does not, therefore, appear to have changed after the Committee meetings, unless the minutes of the meetings were altered so that they refer to the final AQS, as opposed to a provisional AQS agreed by the Committee at the meeting.

26. In response to this objection, the school has said that the oversubscription criteria were considered in ADA2877, and in relation to the criteria for 2020 the school says: *"The objector is unhappy with the limits placed on the number of places available to be allocated under oversubscription criteria 3 and 4, but these limits were imposed in order to comply with ADA2877. The adjudicator determining ADA2877 did not conclude that the arrangements were unclear in relation to the setting of the AQS"*. As further points of

objection arose, and in response to questions from my office, the school made further representations. The head teacher confirmed that she agreed with the comments made by the local authority in an email of 22 March 2019, which I shall refer to below.

27. The school confirmed that Category 4 of the oversubscription criteria, which gives priority to applicants living in Priority Area 2, has only been in operation for three years, and that the maximum number of 50 places available under this category has never been offered. Some places were offered under oversubscription criterion 6 in 2018. (This criterion relates to children who score below the AQS but who achieve the waiting list score). The school has said that *“Once the AQS is determined, there will only ever be a maximum of 50 offers in each of categories 3 and 4. Where there are more than 50 applicants who can be offered in either category, prior to the AQS being determined, the AQS is then amended so that neither category exceeds 50 offers. These applicants will then be considered in category 6 as they are no longer eligible to be considered in either category 3 or 4. The predominant purpose of category 6 is to fill any vacancies that can arise after National Offer day, but it can be used prior to this, if required.”*

28. The school also confirmed that *“The aim is to ensure that all applicants who achieve the AQS – and who are considered within categories 3 and 4 – are offered a place on National Offer day. This has always been the case. The AQS is not a predetermined figure, but changes throughout the Local Review Process before finally being determined. The Committee that conducts the Local Review Process will have a range of figures in mind that they will consider for each selective school before finally deciding on a figure. Setting the AQS too low would not only dilute the ability of the cohort but would also mean that some applicants would struggle with the curriculum and pace of learning.”*

29. The school helpfully set out the history of why the arrangements are as they are. The objector had suggested a number of alternative arrangements which the school could have which, he says, would conform to the Code. It is not for the objector, or for me, to tell the school which arrangements it must have. As the Code makes clear at paragraphs 1.9 and 1.10 it is for each admission authority to determine (within the parameters of what the law and the Code allow) what arrangements would be appropriate in the light of local circumstances. Even if I concluded that the arrangements, or some aspect of the arrangements, did not conform to the Code, I could not compel the school to adopt a particular set of arrangements dictated by me. It is for me to decide if the arrangements are compliant; if they are not compliant it is for the admission authority to amend them to bring them into line with what is required. The school has explained that the arrangements are a *“compromise”*. They try to strike a lawful balance between giving priority to disadvantaged children and local children whilst maintaining a reasonably high standard of entry and not excluding applicants who live outside the county boundary. The school believes that the arrangements achieve the desired balance, and would like to keep them as they are.

30. The local authority responded initially by email on 22 March 2019 as follows: *“The objector seems to have the misguided impression that the school may find themselves in a situation where there are more than 100 applicants across categories 3 and 4 of the oversubscription criteria who have achieved the established automatic qualifying score. He questions what then happens to those applicants when places at the school are being considered, as they would then not fall within an alternative category.”*

The reality of the school ever being in such a situation is non-existent as, where there was potential for such a situation, the automatic qualifying score would be raised to ensure that no more than 50 applicants within each of those categories is made an offer. Any applicants who fall within the score range of the previous automatic qualifying score would then be considered in category 6 as they would then not have achieved the (revised) automatic

qualifying score. All such details are established and confirmed prior to national offer day on 1st March”.

31. On 26 March 2019, the local authority added that “*Whilst the qualifying score is, as far as possible, set before applying the over-subscription criteria, this is only provisional until all applicants have been considered and changes can, and do, occur prior to national offer day. The established qualifying score for any of Warwickshire's grammar schools is then confirmed on 1st March (or whenever offer day falls in that year).... in accordance with the School Admissions Code - grammar schools (i.e.: selective schools) are not legally obliged to fill all places up to PAN on offer day if it is felt that there are not enough applicants of the required academic ability”.*

32. In reaching conclusions on this objection, it is important that I set out clearly the extent of my remit. As stated above, it is not for me to tell an admission authority how its AQS must be set or which oversubscription criteria it must have. Neither is it for me to dictate the procedure which must be followed by the Committee of Reference in setting the AQS. It is reasonable for an admission authority to use a committee to set an AQS.

33. However, it is for me to determine whether the arrangements comply with the Code and to reach a conclusion as to whether the practices and criteria used to decide the allocation of school places are fair, clear and objective, and whether the oversubscription criteria are reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. When I read these arrangements, my initial conclusion was that they are unreasonable and that they operate unfairly to the group of children identified by the objector – namely any children living within Priority Area 2 who score above the AQS but who would not be offered a place due to the limitation on the number of places offered to applicants living within this area. Such children could also not be offered places under Category 5 (as they live outside the area) or Category 6 (as they score above the AQS).

34. It became clear from the further information sent by the local authority that what is said in the arrangements does not describe how they operate. The arrangements provide that the number of applicants in Categories 3 and 4 may be up to a maximum of 50 pupils in each category. What actually limits the number of pupils in these categories is the fact of those applicants achieving the AQS. The arrangements do not provide that the AQS is set in order to limit the number of applicants falling within Category 4. The arrangements provide that the AQS is set as close to the PAN for the school as possible. The specific wording is that the Committee will consider the descending orders of scores (in other words, the ranked list) which also indicates the number of children for each living within the Priority Area and who registered before the closing date, and set the AQS as close to the PAN as possible. Places are then offered in accordance with the admissions criteria.

35. At this point, it would be useful to undertake an assessment of what has been said to be the process of setting the AQS alongside what the arrangements say about how the AQS is set. What I understand the wording in the arrangements to mean is that the Committee is provided with a ranked order list which indicates which of the children on the list are living in the Priority Areas. It would set an AQS at a level which would allow offers of 50 places to be made to applicants in each of the two Priority Areas. The oversubscription criteria would then be applied, and any applicants falling within Categories One and Two would reduce the number of offers made to applicants living within the Priority Area.

36. The minutes of the Committee meetings show that what actually happen is that the Committee are provided additionally with data on the number of LAC/PLAC and Pupil Premium applicants so that, in setting the AQS, the Committee members are able to see the numbers of applicants who would be offered places from each of the different

categories (including applicants living outside the Priority Areas) and what their scores are. It is also clear that the AQS is set with reference to the level of ability required to cope in the academic environment at the school, although the arrangements make no reference to this.

37. What I also now understand from the information provided by the school and the LA is that the AQS is always set at a level which would give priority to less than 50 applicants from Priority Area 2. If the Committee of Reference sets an initial AQS, and the situation changes so that this would mean that more than 50 applicants achieved this score, the AQS will be raised. To a degree, in the sense that the arrangements provide that the Committee does take into account the number of applicants living within the Priority Areas, I can see that they could be said to allow the AQS to be revised if the number of applications from families living within the Priority Areas reduced as a result of parents withdrawing their application because they had accepted a place elsewhere. Since the Committee only appears to meet on one occasion to set the AQS, I could not understand how the Committee could subsequently change the AQS after this meeting without there being any record of this. In 2017, 2018 and 2019, the information I have been provided with indicates no record of the AQS being changed after the Committee meetings but before being notified to parents, and yet both the school and the LA have said that it does change.

38. I was also concerned that I had been told previously that the AQS is set by a committee whose function was to determine the level (score) at which a pupil could be expected to cope with the high academic standards of a grammar school environment. I was unable to understand how an applicant deemed capable of this by a committee in January could be deemed not capable of this in March, albeit that there had been no change in the child's score. This prompted me to request that my office write to the LA on 24 April 2019 as follows:

What now seems to be being said is that, if circumstances change between the setting of the AQS by the Committee and offers being made so that more than 50 applicants in Priority Area 2 would achieve the AQS, the AQS will be re-set at a number which will ensure that no more than 50 offers can be made to applicants in Priority Area 2. The adjudicator acknowledges that the local authority did explain in their response to ADA3395 that the AQS may change. But she wonders how a child who was deemed capable of coping with a grammar school education in January somehow is considered to become incapable of this at some point between January and March when the child's score (and therefore academic capability) hasn't changed.

The admission arrangements themselves do not ostensibly provide for the AQS to limit the number of places available to applicants in the various categories. What limits the number of offers being made is the number of places available within the various categories and the PAN. It would be possible under the arrangements as published for the Committee to set an AQS which is considered to be the level at which a child could cope with a grammar school education. There could be more than 50 applicants achieving the AQS in Priority Area 2, but only the maximum of 50 places would be offered under this category.

Is the AQS re-set if any of the categories appear to have more than their allotted number? For example, would it be re-set if more than 20 pupil premium applicants achieved the required mark under this category? (It is appreciated that this may never have occurred in practice, but what would happen if it did?). And how does this work as between Priority Areas 1 and 2?

What is the process by which the AQS gets re-set? Do the Committee meet to revise their assessment of academic capability? What would be the academic basis for this?"

39. Unfortunately, despite several prompts from my office, no response has ever been received from the LA. I therefore have determined what I think must happen in setting the AQS. Based upon the information I have it appears that the Committee of Reference sets an AQS which appears to serve the dual purpose of being both a pass mark and a cut-off score (although technically it could be said that the minimum score is the cut-off score). The AQS appears to be set on the basis of a yardstick which represents a score that appears to be roughly the score which is appropriate for each school.

40. The score also appears to be set having reference to the number of applicants falling into the various different categories of oversubscription criteria, the objective being to provide a rough fit of trying to get as close as possible to admitting 50 applicants from categories 3 and 4. There can never be more than 50 applicants admitted from Category 4, but sometimes the AQS is set at a level which allows substantially less than 50. This is said to be on the basis of an academic standard which is not objective, but neither is it claimed to be.

I will now set out my conclusions on each of the various aspects of the objection.

a) The school's oversubscription criteria discriminates unfairly against local pupils (which I have taken to mean pupils residing within the priority areas) who are placed between 100th – 120th on the waiting list for a place at the school.

41. In reaching a conclusion on this, the original objection, I must decide whether the arrangements, as published, are capable of causing an unfairness to the group of applicants identified by the objector. My conclusion is that the arrangements are so capable, and that they are also capable of being interpreted as the objector has interpreted them. For this reason **I uphold this aspect of the objection.**

42. However, I should also say that the arrangements are capable of causing an unfairness because they do not describe clearly what actually happens in practice. There is no substantive unfairness here because raising the AQS cures this unfairness. Priority Area applicants who had formally achieved that AQS will be considered under Category 6, and will be at the top (or near the top) of this category because places are offered in ranked order. Nevertheless the arrangements will need to be revised to make clear that the AQS will always be set at a level which allows fewer than 50 applicants to be given priority under Category 4

b) The methodology for setting the AQS is unclear, and is not described in a way that parents are able to understand. It is incomprehensible as to how the AQS is set at the level it is year-on-year.

43. The description in the arrangements of how the AQS is set is the same as the description in the arrangements for Lawrence Sherrif School which I considered in detail last year and determined that the arrangements were unclear. I have considered this analysis afresh in relation to this case, however my conclusion is unchanged.

44. The objector claims that the arrangements fail to conform to paragraph 14 of the Code because they are unclear. In fairness to the school I should start by saying that the school has chosen to include in its arrangements a reasonable amount of information about how and why the required score to be eligible for a place is determined. Other schools offer much less. There is no requirement to set out this detailed information in order to conform with the requirements of paragraph 1.17 the Code which simply provide that the entry requirements for a selective place and the process for such selection must be published. There is no requirement to set out the detailed rationale for and derivation of those requirements.

45. However, the requirement in paragraph 14 is the practices and criteria used to decide the allocation of places are clear. I probably do now understand how the AQS is set (though not necessarily what happens if the AQS is re-set after the meeting of the Committee of Reference, but I have not come to this understanding by looking at the arrangements themselves. The procedures followed by the Committee of Reference are not matters within my jurisdiction. It is not for me to comment upon how the Committee of Reference (or any other person) sets the AQS or waiting list score as long as the applicants' parents are told what these scores are before the deadline for making an application for a place at the school.

46. Generally, when oversubscription criteria are set out in priority order, the expectation is that they will be followed in priority order so that each category is filled before moving on to the following category. This will be the case where there are more than the maximum number of eligible applicants to fill a particular category (in the case of Pupil Premium applicants, for example, there may be less eligible applicants than the maximum number of places available). Where an oversubscription criterion uses the words "up to", this serves simply to determine the maximum number.

47. Looking at the wording in the arrangements alongside what I now know to be how the AQS is set by the Committee of Reference, I find that there is information missing from the arrangements which renders them somewhat short of being clear. The arrangements state that "*Performance in the entrance test and the number of applications for the schools will be used by the Committee of Reference in each area to set the Automatic Qualifying Score*". This statement is both correct and clear. The arrangements continue with "*The Committee will consider the descending score order and the number of children applying for each school (living within the priority areas and who registered before the closing date) and set the Automatic Qualifying Score as close to the planned admission numbers for the schools as possible.*", which is also both clear and correct. They then say that "*All applications are considered against the oversubscription criteria*". From the minutes of the meetings, it is apparent that the Committee considers a provisional AQS (possibly) proposed by the LA alongside the number of applicants who would fall under Categories 1 – 4 if this score was adopted as the AQS. It also considers the number of out of area applicants who have achieved the AQS and the scores of those applicants.

48. I accept that, if one follows the wording of the arrangements to the letter, it might be possible to arrive at an understanding of the fact that there is some form of discretion being exercised by the Committee because Categories 2, 3 and 4 all use the words "up to". But because there is no explanation of how this part of the process actually works, the arrangements are not clear. The words "up to" could equally serve the purpose of preventing the admission authority being required to exceed the maximum number of applicants within each category where there is more than one applicant achieving the same test score.

49. The description of the role of the Committee of Reference in the arrangements is of no help because all this says is that "*The Eastern Area Committee of Reference sets the Automatic Qualifying Score taking account of the applications for the individual schools and the number of places*". My conclusion is that the arrangements are unclear on how the AQS is set as it is. **I therefore uphold this aspect of the objection.**

c) The arrangements enable the Committee of Reference to set the AQS "just as it feels like".

50. It is the case that the Committee of Reference has discretion to set the AQS. I have been provided with an explanation of the factors taken into account when the AQS is set. I would not say that this is the same as setting the AQS "just as it feels like" which could suggest a flippant or baseless approach. There is nothing inherently unreasonable or unfair about setting up a Committee with knowledge of the school to determine what the appropriate AQS should be. Neither is there anything inherently unreasonable or unfair about the school influencing what the AQS should be. Some selective schools set their own

AQSS. Arguably, the headteacher of a school is the most appropriate person to have some influence over how the AQS is set, given that it operates essentially as a pass mark. The headteacher is probably the person with most knowledge about the level of ability needed for a pupil to benefit from the environment operated at the school, and how this should be determined. Whilst the objector is correct that the Committee has a discretion to set the AQS. I do not consider that the Committee is exercising its discretion unreasonably. **I therefore do not uphold this aspect of the objection.** But I do re-iterate that the arrangements must set out clearly how the AQS is set. From the information I have received, and from the failure by the LA to answer my questions, I am unsure whether the final AQS is actually set by the Committee, and I further find therefore that in this respect the arrangements are unclear.

d) In order for the AQS to be set objectively as a test of the ability to cope in the grammar environment, it would have to be set without the Committee of Reference knowing where applicants live, and without looking at the operation of the oversubscription criteria.

51. It is true as a statement that, if the AQS is a pass mark, it would make no difference where applicants lived; whether they are eligible for the Pupil Premium etc. But as the school and the LA have made clear, the AQS is not a pass mark *per se*. It is not set with reference to an objective academic standard. It is set at a score which the Committee judges to be appropriate for each individual school. Statements have been made in relation to ADA3395 about the AQS being set with reference to capability to cope with the environment operated at a particular school being an overriding factor. The objector has focussed on these statements. My understanding is that the AQS is a rough benchmark of capability which varies year-on-year by only a small margin of one or two marks, and that what actually fixes its level is capability of benefiting from a grammar school education in a particular grammar school combined with matching of applicants to both the oversubscription criteria and the PAN. This is not set out clearly enough in the arrangements, and so they are unclear and possibly misleading, but the methodology for setting the AQS which they create is not unreasonable. **For these reasons, I uphold this aspect of the objection, but only insofar as I have concluded that the arrangements are unclear on how the AQS is set.**

e) The oversubscription criteria are considered by the Committee of Reference when setting the AQS, which is wholly wrong. The oversubscription criteria can only be used at the point when the AQS has been determined in order to allocate places where there are more children who achieve the AQS than there are places available.

52. The objector would be correct in this statement if it were the case that the AQS is required to be set using an objective academic standard. But this is not the case. The requirement is that the AQS is set in way which can be considered to be objectively reasonable. The question is whether a reasonable person would consider that the setting of an AQS by a Committee comprising the headteacher of the school and others with local knowledge and expertise, using knowledge about the school and the ability of the cohort is reasonable. In my view, this would be considered to be an objectively reasonable way of setting the AQS. The arrangements actually say. *“The Committee will consider the descending score order and the number of children applying for each school (living within the priority area and who registered before the closing date) and set the automatic qualifying score as close to the planned admission numbers for the schools as possible....*

Places will then be offered in accordance with the admission criteria”.

53. It is clear, therefore, that the Committee considers the number of children living in the priority areas which obviously is part of the oversubscription criteria. **For these reasons, I**

do not uphold this aspect of the objection. I will say, though, that the arrangements do imply that the oversubscription criteria are applied after the AQS is set, which is not the case. So, the Committee is operating a procedure other than that set out in the arrangements. This is not something I have jurisdiction to do anything about. My remit is to consider the arrangements themselves. **This aspect of the objection is not within my jurisdiction.**

f) There is a difference between a pass mark (which indicates academic capability) and a cut off score (which is simply the lowest score of the last applicant to be offered a place). The arrangements confuse these two concepts.

54. There is indeed a difference between a pass mark and a cut-off score. The AQS operates as both (although it is possible that the minimum score will operate as the cut-off score, which has been the case on one occasion). I cannot see how the fact that the AQS operates as both is unreasonable, unfair or otherwise in breach of the Code. The objector appears to be referring here to statements made which he considers confuse these two concepts, rather than to the content of the arrangements themselves. **Therefore I do not uphold this aspect of the objection.**

g) The objector says he has been told that the AQS is set to reflect the ability of the cohort applying each year, and so will vary from year-to-year. The objector argues that this statement is not borne out because, in some year groups, the test scores were higher than in the previous year, but the AQS remained the same.

55. Again, the objector appears to be referring here to statements made by the LA and the school which he considers confuse these two concepts, rather than to the content of the arrangements themselves. There is no statement made in the arrangements that the AQS will vary to reflect the ability of the cohort applying each year, so I cannot see how the fact that such a statement has been made would render the arrangements unreasonable, unfair or otherwise in breach of the Code. **Therefore I do not uphold this aspect of the objection.**

h) The AQS is said to be set at a level dependent upon the ability to cope with a grammar school education. Other grammar schools set a lower AQS than the AQS set for Rugby High School, so children on these lower scores must be able to benefit from a grammar school education.

56. Again, the objector here is referring to statements which have been made, rather than to the arrangements themselves. As above, it has been said by the school and the LA in a previous case that capability to benefit from a grammar school education is the overriding factor in setting the AQS, but it now transpires that this is not strictly true. As the objector has rightly pointed out himself, there is no objective standard for determining this. It is clear from all of the information supplied by the objector himself that the AQSs for the five Warwickshire grammar schools are all different. Indeed, there is a variation of 24 points between the AQS for King Edward VI School and Rugby High School.

57. What should have been said, because this is clearly the case, is that the AQS is set at a level at which the Committees (which comprise the headteachers of the relevant schools) consider to be appropriate for each individual school. There is no statement made in the arrangements that the AQS is set to reflect the ability of applicants to cope with a grammar school education, so I cannot see how the fact that such a statement has been made elsewhere would render the arrangements unreasonable, unfair or otherwise in breach of the Code. Neither do I consider that a set of arrangements which operate to fix the AQS at a level which is appropriate for the individual school can be said to be unreasonable or to operate unfairly. **Therefore I do not uphold this aspect of the objection.**

i) The school controls how its AQS is set. It is only nominally set by the Committee of Reference.

58. From the information provided, it is unclear whether, and to what extent, the school influences how the Committee of Reference sets the AQS. It would be extraordinary if the school exercised no influence at all over the way its own AQS set. However I cannot see that this would be unreasonable. The headteacher of the school attends the Committee meeting, and is likely to be the person who has the most knowledge about the academic standards at the school and the level of academic ability needed to cope with those standards. **Therefore I do not uphold this aspect of the objection.**

j) The arrangements operate in a way which allows more applicants who reside outside the school's catchment area to be offered a place than would be expected on any reasonable interpretation of how the oversubscription criteria operate.

59. As I have said above, there are five Warwickshire grammar schools. (There is also one partially selective school which I am not concerned with here). The Eastern Area grammar schools are Lawrence Sheriff and Rugby High School. The Southern Area grammar schools are King Edward VI, Stratford Girls School and Alcester. The Southern Area grammar schools and the Eastern Area grammar schools are said to set the AQS in the same way. The description in the admission arrangements for all five schools has the same wording. Under an FOI request, the objector has obtained figures for the AQSs for all 5 schools for 2017 – 2019 (inclusive). He claims that these figures provide evidence of the fact that the Southern Area grammar schools set their AQSs in accordance with their admission arrangements, whereas the Eastern Area grammar schools do not. The Eastern Area grammar schools deliberately set the AQS to facilitate the admission of out of area applicants on higher scores.

60. Whilst I am not concerned in this determination about the arrangements for any school other than Rugby High School, the figures provided by the objector do have some relevance here. If the AQS is set by reference to the ability of the cohort applying each year, this would explain the variation in the AQSs for individual schools year-on-year. This variation seems to be between one or two marks. There is a greater variation between the AQSs for the different schools, for example the AQS for King Edward VI School is around 230 – 232, whereas the AQS for Rugby High School is around 207 – 208. There is, though, an even bigger variation in the number of out of area applicants who have accepted places in the eastern area. For example, for the southern area in 2019, the numbers are 6, 7 and 4, whereas for the eastern area the figures are 12 and 32. The objector asserts that the Eastern Area Committee uses the oversubscription criteria to set the AQS, whereas the arrangements state that the AQS is set, and then the oversubscription criteria are applied. He also asserts that, whilst the AQS for the Southern Area is static or decreasing, the AQS for the Eastern Area shows a clear increasing tendency (although this was halted in 2019 for Lawrence School).

61. The school has said that the Southern and Eastern Areas differ in a number of respects. The Southern Area is larger (with a radius of 16.885 miles); the Southern Area was not affected by the 2009 adjudication, so it does not have two Priority Areas, and so uses a simpler system to set the AQS. Historically, the Southern Area schools have higher AQSs, partly because it is a larger area. *“The complexity for Rugby High School arises from past adjudicators. We live with it because we are doing our best to serve our community. If we were only interested in attracting the brightest students, we could have gone for the first past the post system and become super selective. Neither would we have been one of the first to give priority to Pupil Premium students and make a differential allowance for lower attainment”.*

62. Once again at this point, I need to explain exactly what my remit is. If an admission authority is operating a procedure which is different to that described in its published arrangements, this is not something I can do anything about. My concern is that the arrangements themselves comply with the Code and other relevant legislation. To describe this more specifically, I have to decide whether the practices and criteria used to decide the allocation of school places are fair, clear and objective, and whether the oversubscription criteria are reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.

63. The school has said that the arrangements aim to strike a lawful balance between giving priority to disadvantaged children and local children whilst maintaining a reasonably high standard of entry and not excluding applicants who live outside the county boundary. The arrangements achieve this aim. There is nothing unreasonable about these arrangements. Also, I see nothing unreasonable in having a Committee of Reference to determine the AQS and minimum score. There appears to be no objective academic benchmark as the means by which these scores are determined. This appears to be done using the Committee's discretion and first-hand knowledge about which scores are the appropriate scores for particular schools. Again, there is nothing unreasonable in this. But the objector has raised issues which question the clarity and fairness of the arrangements, and so now I will consider each aspect of the objection in turn.

64. The evidence I have received makes it clear that, in some years, significant numbers of children living outside the priority areas gain places. However, that in itself is not unreasonable or not compliant with the Code. The description in the arrangements of how the AQS is set is the same as the description in the arrangements for Lawrence Sherrif School. I considered the question of whether the arrangements operate unfairly to applicants residing in Priority Area 2 in detail last year and determined that the arrangements were unclear. However, I also determined that the arrangements did not operate unfairly. I have considered the reasoning I adopted in ADA3395, and concluded that it is appropriate to apply that reasoning here. Paragraphs 51 and 52 set out the reasons for my conclusion. It seemed sensible to set this paragraph out here because what is said leads in to my overall conclusion in relation to this objection. **I do not uphold this aspect of the objections for the reasons below.**

“51. My view is that this is not an unfair process. In any selection process which does not simply allocate places in rank order of the test scores, there must be a method of setting the qualifying score for admission to the school. However, any applicant who is disappointed by not being offered a place may consider the method of selection to be unfair where the description of the methodology for setting the AQS is described in a way that is unclear. The disappointment will be exacerbated by a feeling that the process is not being conducted properly, or not as they had been expecting.

52. In considering the question of unfairness, it is important to consider to whom the arrangements operate unfairly and why. The argument made by the objector is that the arrangements operate unfairly to local residents in the catchment areas who miss out on the offer of a school place because the AQS is set at a level which does not lead to the admission of the maximum permissible number of local applicants. My view on this point is that the setting of the AQS in the way that the Committee does is not unfair to these applicants provided it is clearly explained in the arrangements that this is how the process of selection operates. The evidence provided by the objector does indicate that the school is offering more places to out of catchment applicants than might have been expected from reading the arrangements. But the bar must be drawn somewhere. Where it is reasonably drawn, any potential unfairness can only arise from a lack of clarity, as opposed to the selection process itself. My conclusion,

therefore, is that the arrangements are unclear which makes them appear unfair, as opposed to operating in a way that actually does create a substantive unfairness.

Overall conclusions

65. I have upheld some aspects of this objection but not others. My conclusion about these arrangements is that they are unclear. From everything I have been told, I can see that the setting of the AQS is not an exact science, and therein may lie the difficulty in setting out a clear description of how the AQS is set. But this has to be done in order to comply with the Code. It is because the arrangements are not sufficiently clear that they create an unfairness in relation to applicants from Priority Area 2 who are between 100 – 120 on the ranked score list, and it is because the arrangements are unclear that they are perceived by the objector to exclude some applicants from Priority Area 2 from being offered a place whom the arrangements suggest logically should be offered a place.

66. The arrangements will therefore need to be revised, and I determine that they must be revised. Regulation 19 of the School Admissions Regulations 2012 provides that, once admission arrangements have been determined for a particular school year, they cannot be revised. However there is an exception to this where such a revision is necessary to give effect to a mandatory requirement of the Code, admissions law, or a determination of the Adjudicator.

Summary of Findings

67. I find that the arrangements are unclear because they do not explain how the procedure for setting the AQS and the waiting list operates in relation to the oversubscription criteria. The arrangements lack a key piece of information which is needed in order to make them clear. For this reason, I find that the arrangements do not conform to paragraph 14 of the Code, and I uphold aspects a), b) and d) of the objection.

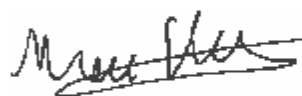
68. I do not find the arrangements to be unreasonable or to be unfair in their operation, therefore I do not uphold aspects c), e), f), g), h), i) and j) of the objection.

Determination

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 2020 determined by the academy trust for Rugby High School situated within the county of Warwickshire.

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

Dated: 3 July 2019



Signed:

Schools Adjudicator: Dr Marisa Vallely