

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint against
St Olave's and St Saviour's Grammar School
(reference number: 19 016 404)**

23 March 2021

The Ombudsman's role

For more than 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils or other bodies in our jurisdiction to follow our recommendations, but they almost always do. Some of the things we might recommend are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mr B	The complainant
X	His son
Mr H	Deputy head and head of sixth form
Mr S	Legal representative used by the School in the appeal hearing

Report summary

Education and children's services

Mr B complained about various matters related to his son's application for a place in the sixth form at St Olave's and St Saviour's Grammar School. The main areas of his complaint related to the way in which the admissions authority decided not to honour its conditional offer of a place after his son achieved a slightly lower grade in a GCSE subject that he did not intend studying at A Level, and the independent appeal panel's handling of his son's subsequent appeal against that decision.

Finding

Fault found causing injustice and recommendations made.

Recommendations

The School's governing body must consider the report and confirm within three months the action it has taken or proposes to take. (*Local Government Act 1974, section 31(2), as amended*)

To remedy the personal injustice caused to X we recommend that within one month of the date of this report the governing body:

- apologises to X and pays him £400 to recognise the injustice he has been caused in the form of avoidable frustration and distress;
- pays Mr B £100 to recognise the avoidable time and trouble he was caused in having to pursue his complaint to us for the matter to be resolved; and
- arranges a fresh appeal hearing with a different panel and clerk to consider X's appeal properly. Mr B confirms that X is still interested in a place in year 13 of the School's sixth form.

To ensure the faults identified in the admission arrangements and the admission appeal do not continue and adversely affect future applicants and appellants, the governing body should take the following action within three months of the date of this report:

- ensure that it writes to all applicants who have been made a conditional offer if their application is refused later on and that it informs these applicants of their right to appeal against this refusal;
- ensure the selection process for external applicants does not include any private discussions between teachers and individual applicants;
- ensure that the governing body is involved in decisions reached in the admissions process as it is the admissions authority for the School;
- consider re-writing its admission arrangements to make clear that the grade 6 requirement in maths and English is not one that the admissions authority will routinely consider exercising discretion on;
- ensure that it provides appellants with details of how to complain to us if they are dissatisfied with the administration of their appeal;
- consider how and who it decides to use as a presenting officer at future appeal hearings and ensures its approach contributes to the appellant having a fair hearing and adheres to the principles of natural justice; and

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- provide further training for its appeal panel members and ensure that they receive regular updates as required and detailed in the Appeals Code.

We will refer our concerns about the different methods used to assess suitability for a sixth form place for internal and external students, and whether this complies with the School Admissions Code, to the Office of the Schools Adjudicator.

The complaint

1. The complainant, whom I shall refer to as Mr B, complained that the independent appeal panel appointed by the admissions authority to consider his son's appeal against the refusal of a place at St Olave's and St Saviour's Grammar School sixth form, failed to properly consider:
 - whether the admission arrangements were legal, including an allegation that prospective art students were interviewed as part of the application process;
 - whether the admission arrangements had been properly applied to his application; and
 - the grounds of his appeal case.
2. Mr B also said the School failed to inform him or X of their right to appeal after confirming his son could not take up his conditional place because he had failed to meet one aspect of the GCSE grade requirements.

Legal and administrative background

Our jurisdiction

3. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. We cannot question whether a decision by a governing body is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)
5. When considering complaints, if there is a conflict of evidence, we make findings based on the balance of probabilities. This means that we will weigh up the available relevant evidence and base our findings on what we think was more likely to have happened.
6. The law says we cannot normally investigate a complaint when someone can appeal to a tribunal. However, we may decide to investigate if we consider it would be unreasonable to expect the person to appeal. (*Local Government Act 1974, section 26(6)(a), as amended*). An admission appeal panel is a statutory tribunal but is also a body within our jurisdiction under section 25 of the Local Government Act 1974. When considering a complaint after an appeal has been rejected, there may be parts which relate to what happened at the appeal and parts which relate to the original admissions process (for example something about the way a decision was taken by the admissions authority which the appeal panel did not consider). Governing bodies which act as admissions authorities are within jurisdiction as are appeal panels considering appeals against decisions of governing bodies.
7. We may investigate matters coming to our attention during an investigation, if we consider that a member of the public who has not complained may have suffered an injustice as a result. (*Local Government Act 1974, section 26D and 34E, as amended*)

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8. The Office of the Schools Adjudicator works with the Department for Education. It has the authority to consider whether a school's admissions arrangements are unlawful or do not comply with the School Admissions Code and to require the admissions authority to change these arrangements if necessary.

The law and guidance on school admissions

9. The School Admissions Code (the Code) is statutory guidance issued by the Department for Education under section 84 of the School Standards and Framework Act 1998. It provides details of mandatory requirements and guidelines for admission authorities on school admissions.
10. The Code confirms that admission authorities are subject to the Public Sector Equality Duty. This means they must have proper regard to, amongst other things, the need to eliminate discrimination.
11. The Code confirms that:
 - academic entry criteria for sixth forms must be the same for internal and external candidates;
 - places must be allocated on the basis of the determined admission arrangements only;
 - the decision to offer or refuse a place must not be made by only one individual in the admissions authority but by the whole governing body or an admissions committee set up by the governing body;
 - admission authorities must not interview children or parents. In relation to applications for sixth forms a meeting may be held to discuss options or academic entry requirements but that meeting must not form part of the decision making on whether to offer a place; and
 - when an admissions authority tells a parent of a decision to refuse their child a place it must include the reason why admission was refused and information about the right to appeal.

The law and guidance on admission appeals

12. Parents and carers have the right to appeal against an admission authority's decision to refuse admission. For appeals related to sixth form places the child also has their own right of appeal. This appeal is a statutory tribunal and is conducted by an independent school admission appeal panel.
13. The Admission Appeals Code (the Appeals Code) provides statutory guidance on admission appeals.
14. The Appeals Code confirms:
 - appeal panels perform a judicial function and must be transparent, accessible, independent and impartial. They are required to operate in accordance with the principles of natural justice;
 - the chair of the appeal panel is "...responsible for the conduct of the hearing including introducing the parties and explaining the role of the clerk and the panel, explaining how the appeal will be conducted...";
 - admission authorities must inform parents of their right of appeal when they inform a parent of a decision to refuse their child a place. For sixth form appeals "...where the offer of a place would have been conditional upon exam results, appeals must be heard within 30 school days of confirmation of those results...";

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- responsibility for making admission appeal arrangements lies with the admission authority for a school;
 - the clerk must provide the appellant with the names of the panel members in advance of the hearing;
 - the admissions authority must “...provide a presenting officer to present the decision not to admit the child and to answer detailed questions about the case being heard and about the school”;
 - a clerk must attend the appeal hearing. S/he must ensure an accurate record is taken of the hearing, including the proceedings, attendance, voting and reasons for decisions;
 - appeal panels must allow appellants the opportunity to appear in person and present their case. Appellants can be represented by somebody else or accompanied by a friend;
 - admission authorities must tell appellants about the arrangements for making a complaint to us if they consider there was fault in their appeal; and
 - admission authorities must arrange and pay for panels to attend relevant and up-to-date training. This must include training on the law relating to admissions, on procedural fairness and natural justice and panel duties under the Human Rights Act 1998 and the Equality Act 2010.
15. The Appeals Code confirms that appeal panels must consider whether the published admission arrangements comply with the statutory requirements and were applied correctly and impartially to the individual child. The panel must uphold the appeal at the first stage if it finds the admission arrangements were not lawful or correctly applied and that, if they had been, the child would have been offered a place.
 16. The Appeals Code also confirms that schools must have regard to their obligations under the Equality Act 2010 and this includes that their admissions arrangements must meet the requirements of that Act. The Appeals Code confirms that a failure to do so may be something for an appeal panel to decide.
 17. For sixth form appeals, where an applicant did not meet the entry requirements, the panel must not make its own assessment of their ability but must decide whether the admission authority's decision that they are not of the required academic standard was reasonable considering the information available to it.
 18. In certain appeals, where the admissions authority argues that it cannot offer a place because there are more eligible children than there are places available, panels must consider “prejudice”. This refers to the requirement for panels to consider whether a parent’s appeal for a place in a school outweighs the prejudice to the school of admitting an additional child where the admissions authority argues it is full and cannot accommodate another child.
 19. Panels must reach a decision on the appeal by a vote with the majority vote informing the decision to uphold or reject the appeal.

St Olave’s and St Saviour’s Grammar School

20. St Olave’s and St Saviour’s Grammar School (the School) is a selective voluntary aided Church of England secondary school. This means that the School’s governing body is the admissions authority for the School.
21. Places in year 7 are offered to pupils who perform sufficiently well in testing that takes place when they are in year 6 (the final year of primary school). The School

accepts applications from external applicants for a place in the School's sixth form (years 12 and 13).

22. The School's published admission arrangements for 2019/20 state "Entry to Year 12 will be on the basis of academic ability and achievement using a total points score in the best nine GCSEs. Points will be allocated as the number of the grade. Grades at 4 or lower will not be counted. The usual requirement for Advanced Level courses is the achievement of a minimum of 63 points, to include grade 7s or higher in subjects to be followed to Advanced Level (or related subjects) and at least a grade 6 in English and Mathematics. Year 11 pupils who meet this requirement may proceed into the Sixth Form...each year a number of places is available for students from other schools. External candidates whose predicted grades meet the above requirements will be asked to take written tests at the School. Entry is open to both boys and girls and a standard number of 110 external candidates may receive conditional offers".
23. The School's website provides more information about the written tests for external applicants. It states that applicants sit papers in the four subjects they want to study in the sixth form and that they are designed to ascertain whether applicants are "of a comparable standard of ability to our internal applicants". In his comments to us the headteacher stated that internal candidates were not required to take written tests because they have reached the required standard to be at the School after taking a test for entry into Year 7.
24. For Art A Level the School's website states applicants will have "a brief discussion with a member of the art department" and that they should bring with them an art portfolio that includes examples of their art work.
25. In March 2018 the School's headteacher issued a newsletter in which he stated that a recent consultation on the admission arrangements for the School had raised concerns about the impact on grades of the implementation of a new grading system for GCSEs. He said that to recognise this possible impact there was discretion permitted under the word "usual" in its published admission arrangements and this could take account of any "fluctuations" in grades achieved "...especially if students miss out on the entrance criteria by a small number of points". This newsletter specifically stated that if an applicant just missed out on the total number of points required but had performed well in subjects s/he wanted to study at A Level it may be that s/he would still perform well in the sixth form.
26. The School provides information about how to appeal a refusal to offer a place on the admissions section of its website where it states that parents have the right to appeal and can request forms for this from the School. In his comments to us the headteacher stated that it is not the School's usual practice to write to applicants who have not reached the GCSE requirements to confirm that this means their application was unsuccessful. He says this is because external applicants are aware of the offer.
27. In relation to the testing process the headteacher says that external candidates' test results are ranked in order of performance in tests in all the subjects they intend studying at A Level. He says the "academic profile" of all applicants is considered for all four subjects and candidates are then offered a conditional place if they have met the required standard in all four subjects.

How we considered this complaint

28. We produced this report after discussing the complaint with Mr B, making written enquiries of the admissions authority and carefully considering all the evidence provided.
29. We gave the complainant and the admissions authority a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

What we found

What happened

30. Mr B's son, X, applied for a place in year 12 at the School's sixth form from September 2019. X was an external applicant.
31. X took part in testing at the School in early 2019. He sat tests in the A Level subjects he wanted to pursue. One of the subjects he intended studying was Art. The process for Art A Level is slightly different to other subjects as it required him to provide a portfolio of his art work and have a discussion with the art teacher.
32. X was offered a place after performing sufficiently well in testing but it was conditional on him also performing satisfactorily in his GCSEs. The admission authority's offer letter to X said the offer was conditional on him achieving a minimum of 63 points in his GCSEs including at least grade 7 in the subjects he intended studying at A Level and achieving at least grade 6 in maths and English.
33. X achieved grades 9 and 8 for his chosen A Level subjects, above grade 6 for English and a grade 5 in maths. His total points score was 65.
34. The School effectively rejected X's application for a place in August 2019. The only confirmation it provided on this appears to have been a return phone call from the Deputy head and head of sixth form (Mr H) to Mr B after Mr B had contacted the School to discuss X's grades. Mr H's subsequent email to a school administrator about this conversation confirmed that he had told Mr B that X had failed to meet the conditions of his offer of a place and that he would not be eligible to take up his place unless a re-mark resulted in a higher maths grade being awarded. He also said he told Mr B that he was entitled to explore the appeals process but that any appeal was unlikely to be upheld as the School had simply adhered to its published admission arrangements. In response to our enquiries of the governing body on this complaint the headteacher confirmed that the decision to refuse the place in August was reached by him and Mr H.
35. Mr B telephoned the local council in early September to express a number of concerns about the way the School had handled X's application for a place. He also told the council that Mr H had told him that any appeal would be unlikely to succeed and had failed to provide any information about how he could appeal against the decision that X could not have a place in the School. He followed this up with a letter of complaint to the council's Chief Executive. Mr B says he expected the council to intervene and require the School to provide him with information on how to appeal.
36. Having consulted the School's website X wrote to the clerk to the appeal panel at the School's address shortly after requesting information about how to appeal. Mr B says the clerk to the appeal panel wrote to him in late September and told him to write to another named person to ask for the appeal paperwork. Shortly

after, the council wrote to Mr B to tell him that his concerns about the School's handling of his application and appeal were a matter for the School to address.

37. In early October X wrote, as advised, to the person named by the clerk to the appeal panel and again requested paperwork to submit an appeal. X and Mr B then submitted letters of complaint to the School. The School's head teacher replied to X in mid-October to say that the matters he had complained about were not for the complaints procedure but for an appeal panel to consider. The clerk to the appeal panel then wrote to Mr B with an appeal form and told him the appeal was arranged for late November. As the clerk had not written to X with this information X wrote to him/her again in late October. In response the clerk provided the relevant form and information to X at the end of October and asked him to provide his completed appeal form by early November and any supporting evidence by two days before the hearing date.
38. The broad grounds of X's written appeal were:
- the admission arrangements were not properly applied to his case and it had unfairly and wrongly applied the policy more leniently to its internal applicants than to the external ones;
 - the policy allowed for "fluctuations" from the grade requirements and that this was evident from the use of the word "usual" in its policy and the information provided in the head teacher's 2018 newsletter. But that it failed to then apply this discretion in his case offering him only the option of asking for his maths paper to be re-marked. He said it failed to take account of health problems he experienced during his GCSE exams;
 - it failed to properly inform him that his application for a place was unsuccessful because of his exam results;
 - Mr H reached a decision that his application was unsuccessful by himself and wrongly told X that any appeal he submitted would be unsuccessful;
 - the School interviewed him in relation to a place to study Art which is prohibited under the School Admissions Code;
 - the School operates a practice whereby white children are considered for certain subjects and children of other ethnicities and backgrounds for different subjects;
 - the School had withdrawn his place contrary to the Code;
 - he had achieved the highest grades in the subjects he intended studying at A Level and maths had no relevance to these subjects; and
 - the offer letter he received from the School in March 2019 effectively told him he had a place in the sixth form for September.
39. The admissions authority provided its written case to the panel. Its case was broadly that X had not met the qualifying criteria to be offered a place as he had not achieved a grade 6 in maths. It argued that the grade 6 in maths was not a part of the admission arrangements where it exercises discretion and said it does not offer a place to any child who does not meet the criteria of a grade 6 in maths and English. It rejected X's allegations about children from particular racial backgrounds being connected to particular school subject courses. It also argued that X had not put forward any extenuating reasons he did not achieve a grade 6 in maths either at the time the results were published or at the time of the exams.

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40. The clerk to the panel wrote to X in October and November providing him with details of the appeal hearing and the names of the appeal panel members. She also gave him the names of two people who would be attending to present the admission authority's case: Mr H and a staff governor.
41. In November 2019 X made a Freedom of Information request to the School. Having received the School's response, X submitted further information in support of his appeal case. He told the panel that the information confirmed that three internal and six external applicants were allowed entry having not met the 63 total points requirement. He also said that 10 external applicants who were not offered conditional places following testing were given places after A Level results were issued. He alleged these exceptions were only made for applicants to particular subjects and that the School considered certain subjects suitable for white applicants and others for Black, Asian and Minority Ethnic (BAME) applicants. He alleged that the subjects he had applied for were considered subjects for white applicants and this was the reason discretion had not been applied to his application when he did not obtain a grade 6 in maths. He essentially argued that discretion was exercised in some cases and not in others but that the grounds for this was unclear and, he alleged, discriminatory.
42. Five days before the appeal hearing the clerk to the panel emailed X to confirm it had received his further written submissions and that these had been forwarded to the panel members and "to Counsel for the school".
43. The day before the hearing Mr S (a barrister who specialises in education matters including school admissions) emailed X directly to say the School had asked him to attend the hearing due to the "serious" allegations X had made about "racial discrimination and other malpractice". He stated he was advising X of this as a matter of courtesy and that he understood X had indicated he would also be taking a barrister to represent him at the hearing. X had emailed the clerk about a week before the hearing to say he intended bringing either a barrister or one of his parents with him to the hearing. Mr S offered to meet X with his barrister or parents before the hearing if he thought that may be "appropriate or beneficial". He said he intended bringing a trainee solicitor with him to observe the hearing and asked X to let him know if he was not agreeable to this. Mr B replied on X's behalf stating he considered the barrister's direct approach to his son was inappropriate and intimidatory, that he was unclear what to infer from the offer of a meeting before the hearing and that he was not happy for the trainee solicitor to attend.

The appeal hearing

44. The appeal hearing took place as planned in late November 2019. Mr B and X both attended the hearing. X did not take a barrister with him as he indicated he might. There were three independent panel members considering the appeal, a clerk who took notes of the hearing and three representatives from the admissions authority who were there to present the School's case: Mr H; Mr S and the School's admissions officer. The staff governor referred to in the letter to X before the appeal hearing did not attend.
45. The clerk's notes of the hearing state the chair of the panel introduced the panel members. The clerk's notes do not confirm that the three people who appear to have been there to present the admission authority's case were introduced to Mr B or X. The chair of the panel, however, confirms that he introduced all three people sent by the admissions authority. His introductory notes show that he

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- introduced Mr H and the admissions officer as the people who were representing the admissions authority and said that they were being accompanied by Mr S.
46. The initial phase of the appeal hearing seems to have been conducted by Mr S and took the form of him outlining the role of the panel and questioning Mr H. He stated, for example, “Panel is asked to consider if X has been treated impartially” to which Mr H replied that he had. After which the legal representative asked whether X had been treated differently due to his race to which Mr H replied not. He went on to ask Mr H whether places were offered on the basis of racial profiling to which Mr H replied they were not adding that this information was not known until after the offer of conditional places was made and that applicants were free to not provide this information at that point. The panel members then asked some questions about whether the admissions arrangements had been properly applied to X’s application which Mr H confirmed they had. Then a point was raised about an earlier decision to reduce the points total requirement in the admission arrangements from 64 to 63. Mr H said that the word “usual” in the admission arrangements is there to allow for “fluctuations” in the overall points score arising from the change in GCSE grading schemes that took place in 2018. He stated there had never been any discretion on the English or maths grade requirements.
47. The clerk’s notes show that the hearing included discussion about the admission requirements in relation to GCSE attainment. Mr H confirmed there was no discretion around the grade 6 in maths and English requirement and said that the School never agreed admission where these two grades were not achieved. Mr H confirmed that the word “usual” in the admission arrangements referred to the points total and not the maths and English grades. The discussion confirmed that neither Mr B nor X asked for the maths paper to be re-marked. Mr B said the reason for this was the short timeframe between the results being published and the school term starting and consequently there being not enough time to do this. He also told the panel that he wanted the School to accept X with the 5 grade. Later in the appeal Mr B told the panel that X’s predicted maths grade was an 8. He also said that X was undergoing medical investigations currently but the family was not aware of symptoms at the time of the GCSE exams so no medical issues were raised at that time. In addition, he said the other ground for the appeal was that the School had acted unreasonably in not offering a place following the GCSE results; that its actions were unlawful and biased and that he had heard that other children had been offered places having not met the GCSE requirements when studying science subjects (X had not applied to study science subjects).
48. The clerk’s notes record that Mr S stated “‘Usual’ applies to whole of conditions. Not legally bound by terms of policy not to exercise discretion. Decision was made not to vary the policy” and later in the hearing “Policy doesn’t prevent exercise of discretion. ‘Usual’ allows it. Acted lawfully and impartially. Treated same as everybody else.”
49. The admission authority’s summing up at the end of the appeal was undertaken by Mr S who stated it was for the panel to consider that the School acted impartially, reasonably, there was nothing that states that they cannot use their discretion, that a series of assertions have been made but there was no concrete evidence to support these and it was not a case of offer being withdrawn, but a case of a conditional offer requirement not being met.

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50. X summed up his appeal case stating the admissions authority had not consistently applied its admissions policy, that it had discriminated against him and that other applicants had not been required to have exam papers re-marked in four days when they failed to achieve the grades in their offer.
51. The clerk's notes show that the panel considered the appeal after Mr B, X and the admission authority's representatives had left the room. The notes show that the panel considered the School's admissions policy which they accepted stated that the criteria must be met and that there was "Discretion on other subjects, except Maths and English. Achieving minimum 63 points in best 9 GCSEs. At least a grade 6 in Maths and English". The notes show that the panel considered the policy had been properly applied regarding maths and English and that X had not met the criteria in relation to his maths grade. The panel therefore accepted that the published admission arrangements had been properly and impartially applied. The panel acknowledge that the policy had been consistently applied for the previous five years and that this supported the admission authority's position. The panel concluded that X had not met the admissions criteria and so dismissed the appeal.
52. The clerk to the panel wrote to X with the outcome as required shortly after. This addressed the main issues that X had raised and the reasons the panel had reached its decisions on these. The letter confirmed:
- the panel had started by accepting the admissions authority had properly applied the admissions criteria under stage 1 of the appeals process;
 - the panel had said it therefore moved on to stage 2 of the appeals process by considering whether the prejudice to the School of offering a place to X would be outweighed by the prejudice to X of not offering him a place;
 - the panel's stage 2 consideration concluded that the admissions criteria had been properly applied, the place had not been withdrawn, there was no evidence of racial discrimination, it recognised that maths was not a subject that X intended studying at A Level but that the published criteria stated a grade 6 was required regardless of this; and
 - the panel decided the prejudice to the School was not outweighed by the grounds of X's appeal case.
53. The clerk's letter advised X that the Education Funding Agency could investigate complaints about the appeal and provided a link in the letter where he could find more information about this.

Conclusions

Was the admissions authority at fault?

The admissions process

54. The published admission arrangements clearly state that testing is undertaken only for external candidates. They are tested in the subjects they intend studying at A Level. The internal candidates are not specifically tested in the subjects they want to study at A Level. So, the academic entry requirements at this stage of the admissions process are not the same for internal and external applicants: this does not appear to comply with the requirements of the Code. The headteacher says the reason for testing only the external applicants is that the internal candidates have already been tested when they entered the School. This would usually have been when they entered year 7 when they were around 11 or 12

years of age. His comments therefore confirm the internal applicants are not tested in the subjects they intend studying in sixth form. We recognise that in relation to the GCSE requirements these are the same for both internal and external applicants but by that stage a number of external applicants have been sifted out on grounds not applied to the internal candidates. We are concerned that the different methods of assessing suitability for a place for internal and external students does not accord with the requirements of the Code. However, we have decided the Office of the School's Adjudicator is better placed to consider this matter and determine whether or not the admissions arrangements comply with the Code.

55. The admissions authority did not write to X when it refused him a place following its decision that he had failed to meet the conditional entry requirements in August. The admissions authority must do so and advise the applicant of their right of appeal. It is not sufficient to simply refer to a right of appeal on the School's website or to refer to it in a telephone conversation initiated by the parent and advise that any appeal would be unlikely to be successful. We are concerned that the School says it does not routinely write to any parents when the application is effectively unsuccessful at this point. These parents are being denied essential information about their right of appeal contrary to the Code. This amounts to fault.
56. The failure to properly inform X about its decision to refuse him a place, and the right of appeal and how to exercise this, also meant the admissions authority failed to arrange and hear an appeal within 30 days of confirmation of X's GCSE results as the Appeals Code requires. Mr H's comments that an appeal would be unlikely to succeed added further to the poor practice in respect of an appeal during August. The consequent delay in arranging an appeal therefore also amounts to fault. The back and forth in communications about an appeal between the School, the clerk, the local council, X and Mr B during September and October could have been avoided had the proper notification of the decision and appeal rights been made.
57. Mr B was unhappy that the School did not deal with his complaint, instead directing him to submit an appeal. We do not consider there was any fault in the School doing this as the appeals process is the correct procedure for challenging a refusal of a place.
58. Mr B alleges that the School wrongly withdrew X's place and that this is prohibited by the Code. It is correct that there are only very specific circumstances where an admission authority may withdraw a place after it has been offered. This does not apply in this case however, as it was made clear in the admission authority's letter in March that the offer made was conditional on X achieving the required grades and points score in his GCSEs. So, the decision in August amounted to a refusal of the application rather than a withdrawal of the place.
59. The Code states the admission decision must be made by the whole governing body or a committee the governing body sets up to deal with admissions, not just by one individual in the admissions authority. The decision on X's application was taken by the headteacher, who was a member of the governing body, and Mr H who was not. This arrangement does not therefore satisfy the Code's requirements and amounts to fault.
60. The use of a "brief discussion" with a member of the art department as part of the testing process in relation to Art A Level is not transparent. Without a record of the discussion, its purpose is not clear which could lead to an impression that it

contributes to the decision to offer a place. On balance, this amounts to fault, as the Code prohibits meetings with applicants to determine whether to offer a place. If the discussion is not used as part of the sifting process, the question has to be why it is used at all?

The appeal hearing

61. It was unnecessarily intimidating for X to have to deal with three representatives for the admission authority. This is particularly the case when these included the head of the sixth form and a specialist barrister. The Appeals Code states that a representative of the admission authority should attend. It does not specifically prohibit more than one but in this case the appeal was submitted by a child who was representing himself. The admissions authority says that it was partly in response to X advising that he may take his own barrister to the appeal hearing that it then instructed its own barrister to attend. In the event X did not bring a barrister with him. X did bring his father for support but the panel should have been particularly alert to the imbalance given it is relatively unusual for a child to submit their own appeal. The hearing must be fair and act in accordance with the principles of natural justice. The chair of the panel says that neither Mr B nor X expressed any objection to the three admission authority representatives but we consider it was for him to reach a decision on the appropriateness of this, particularly after he established that X did not have a barrister with him on the day. We consider the failure to consider this amounts to fault.
62. Mr S made a direct approach to X the day before the hearing by email to his personal email address. We consider this was inappropriate and the tone and the content of that email was intimidating. Mr S says that he told Mr B by email that his approach was to put X at ease before the hearing but it did not have this effect. It is our view that it would have been more appropriate for the chair of the panel or the clerk to have made such an approach. The lack of clarity about the reason for the offer of a discussion added to the intimidating tone of the approach, even if this was not Mr S's intention. Mr S says he obtained X's email address from the appeal documents and says the School was not involved in this approach though he was, of course, representing the School. Given Mr S understood that X was to be legally represented at the appeal hearing it would have been reasonable to assume that X's own barrister could have put X at ease about the process. If Mr X had wanted to discuss any aspect of the appeal case he could have asked for details of X's barrister to approach him or her to have such a discussion. Whilst we acknowledge Mr S's explanation about his approach, on balance, we remain concerned by this and consider it was, at best, ill advised and unnecessary.
63. The clerk's notes give the impression that rather than the independent panel, it was Mr S that took control of the hearing and directed the panel on its role and on what to base its decision. It was not the role of the admissions authority's representative to do this and this should not have been permitted by either the panel chair or the clerk. This amounts to fault.
64. There is no evidence the panel considered whether the admission arrangements comply with the law. There is reference in the panel's decision-making to the Code being correctly and impartially applied regarding maths and English. This sentence appears to wrongly refer to the Code, which makes no mention of maths and English, and in fact appears to refer to the School's admission arrangements. The notes of the panel hearing do not demonstrate that the panel's deliberations considered those parts of X's appeal that referred to difference in the application

of the criteria to external and internal applicants, that he was interviewed for a place, that children were considered more or less suitable to study particular courses on the basis of race, its withdrawal of his place, his results in the subjects he wanted to study, or the content of his original offer letter.

65. The clerk's notes refer to these issues being raised by Mr B in the hearing and they were certainly raised by X in his written appeal case but there is no reference in the clerk's notes of the panel's decision-making to any consideration of these points. The chair of the panel has advised us that he recalls the panel did consider the points X made in his appeal. However, there is no evidence of this in the clerk's meeting notes and the clerk is required to keep notes of the reasons for the panel's decisions. We are minded to afford greater weight to written evidence from the hearing than to recollection at least a year after the hearing took place. We do recognise that additional issues were addressed in the clerk's letter following the appeal despite there being no written evidence of the panel's consideration of these in the appeal hearing. The clerk's decision letter should reflect what was discussed in the hearing but does not in this instance. Without any contemporaneous notes of the panel's deliberations to confirm what the panel took into account we cannot confidently say that the panel properly addressed the issues that X made in his appeal case. We therefore consider this omission amounts to fault.
66. The Appeals Code makes it clear that a failure by an admissions authority to meet their obligations under the Equality Act is a matter that an appeal can consider. X's appeal raised issues of racial discrimination and questioned whether the admissions authority had proper regard to its duties under the Equality Act. There is no evidence the panel considered this as part of its deliberations and we therefore consider this omission amounts to fault. We have not made any findings about the substantive issues X has raised about racism.
67. The panel did consider whether the published admission arrangements were properly applied to X's application. X did not make any case as to why he did not achieve the required maths grade in August so the panel could not look at the way the School considered this at the time they refused the place. Instead, it considered whether the School's approach to his not achieving the grade was reasonable and decided that it was because it had consistently denied admittance to any child who had not achieved the required grades in maths and English since 2016.
68. We recognise that the Panel accepted the consistency of the application of the admission arrangements and therefore that it did consider whether the admission arrangements had been properly applied in that respect. There is however no evidence the deliberations included a discussion about the clarity of the published admissions arrangements in relation to the use of the word "usual" or the application of the information in the headteacher's newsletter in 2018. It seems the panel simply accepted that the wording of the arrangements was clear and that the word "usual" did not apply to the grade 6 achievement in maths and English. The panel concluded the admission criteria had not been met. The absence of any discussion on the interpretation of this point suggests the panel failed to consider a key element of X's case and therefore amounts to fault.
69. The panel should have gone on to consider X's case and whether the School's decision that X was not of the required academic standard was reasonable considering the information available to it. In his case X provided the panel with details of his scores in the subjects he wanted to study and his overall points

score and that he had been predicted an 8 in maths. But there is no evidence the panel considered whether this was sufficient to demonstrate the School's decision was reasonable. It simply accepted that the School had applied its published procedure. The panel's failure to consider this point amounts to fault.

70. The decision letter following the hearing did not include details of how X could complain to us if he was dissatisfied with the conduct of the appeal, nor is this information provided on its website. The decision letter in fact advised that a complaint about the appeal could be investigated by the Education Funding Agency. This information is incorrect. The failure to provide the correct information is fault.
71. The clerk's letter to X following the hearing states that having accepted the admissions authority's admission arrangements had been properly applied, it moved on to consider "whether the grounds for X to be admitted to the school outweighed any prejudice to the school". Again, such a discussion is not reflected in the clerk's notes of the panel's deliberations. In any case, considering prejudice was not relevant to this appeal as the admissions authority had not made a case that the sixth form was unable to offer a place because there were more eligible children than places available. Failure to record such a discussion and then refer to it in the letter to X is fault. Considering prejudice in this appeal would also amount to fault.

Did the fault cause injustice?

72. The individual discussion between X and a teacher in relation to Art A Level did not cause X injustice as he was made a conditional offer. There is no way of knowing whether this discussion resulted in other external applicants not receiving a conditional offer, but the lack of transparency is in itself an injustice to any rejected candidates, as it creates uncertainty about the fairness of the admissions process.
73. The failure to tell X of the decision on his application and of his right of appeal almost certainly delayed the appeal being heard. It is reasonable to believe, given Mr B had already made reference to an appeal in August, that either X or Mr B would have pursued this immediately had they been given timely and sufficient information.
74. The fault identified in respect of the decision on X's application having been taken by only one member of the admissions authority may have caused X injustice. We cannot definitely know this was the case as we do not know if another member of the governing body would have taken a different view.
75. We cannot know what the outcome of an appeal heard without the faults identified may have been. There are no grounds for us to say that it would definitely have been successful, but X was caused avoidable uncertainty and frustration as a result of the identified faults. Mr B was also caused time and trouble in having to complain to us for the matter to be resolved.
76. The intimidatory nature of the admission authority's approach to the appeal, particularly in relation to instructing Mr S to act on its behalf and to endorse his approach and behaviour towards X before and during the appeal, caused X significant injustice in the form of avoidable distress.

Recommendations

77. To remedy the personal injustice caused to X we recommend that within one month of the date of this report the governing body:
- apologises to X and pays him £400 to recognise the injustice he has been caused in the form of avoidable frustration and distress;
 - pays Mr B £100 to recognise the avoidable time and trouble he was caused in having to pursue his complaint to us for the matter to be resolved; and
 - arranges a fresh appeal hearing with a different panel and clerk to consider X's appeal properly. Mr B confirms that X is still interested in a place in year 13 of the School's sixth form.
78. To ensure the faults identified in the admission arrangements and the conduct of the appeal do not continue and affect future applicants and appellants, the governing body should take the following action within three months of the date of this report:
- ensure that it writes to all applicants who have been made a conditional offer if the final decision on their application is refused later on, and that it informs applicants of their right to appeal against this decision;
 - ensure that private discussions with external applicants, that could be construed as an interview, for a place to study art or any other subject do not form any part of the selection process;
 - ensure that the governing body is involved in decisions reached in the admissions process as it is the admissions authority for the School;
 - consider re-writing its admission arrangements to make clear that the grade 6 requirement in maths and English is not one that the admissions authority will routinely consider its discretion over, if this is what it means;
 - ensure that it provides appellants with details of how to complain to us if they are dissatisfied with the administration of their appeal;
 - consider how and who it decides to use as a presenting officer at future appeal hearings and ensure its approach contributes to the appellant having a fair hearing and adheres to the principles of natural justice; and
 - provide additional training for its appeals panel members to address the identified faults and ensure that they receive regular updates as required and detailed in the Appeals Code, including training on their duties under the Equality Act 2010.
79. The governing body must consider the report and confirm within three months the action it has taken or proposes to take. We will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)
80. We will refer our concerns about the different methods used to assess suitability for a place for internal and external students and whether this complies with the Code to the Office of the Schools Adjudicator.

Decision

81. For the reasons detailed we uphold this complaint finding fault by the governing body of St Olave's and St Saviour's Grammar School causing injustice.