Competition Act 1998

Decision of the Office of Fair Trading

No. CA98/05/2006

Exchange of information on future fees by certain independent fee-paying schools

20 November 2006

(Case CE/2890-03)

Confidential information in the original version of this Decision has been redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [...] (C).
INFRINGEMENT DECISION

Case CE/2890–03

Exchange of information on future fees by certain independent fee-paying schools

20 November 2006

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I. INTRODUCTION

A. Summary of the infringement

1. By this decision, of which Annexes 1 to 6 below form an integral part, ('this Decision'), the OFT has decided that, during the period from 1 March 2001 to June 2003, the parties listed at paragraph 11 below (each 'a Party', together 'the Parties') infringed the prohibition ('the Chapter I prohibition') imposed by section 2(1) of the Competition Act 1998 ('the Act') by participating in an agreement and/or concerted practice having as its object the prevention, restriction or distortion of competition in the relevant markets for the provision of educational services. The OFT makes no finding as to the effect of the infringement.

2. The Parties operated fifty fee–paying independent schools ('the Participant schools')1 that engaged in the exchange of specific information regarding future pricing intentions on a regular and systematic basis. The information exchanged concerned the Participant schools' intended fees and fee increases for both boarding and day pupils, which were set annually with effect from the beginning of each academic year, that is, from September.

3. The information exchange was organised by the bursar of Sevenoaks School, to whom the Participant schools submitted details of their current fee levels, proposed fee increases (expressed as a percentage) and the resulting intended fee levels. The Sevenoaks bursar subsequently circulated this information amongst the Participant schools in tabular form. This process of information exchange and the resulting tables of information are referred to in this Decision as the 'Sevenoaks Survey' or 'Survey'.

4. The preparation and circulation of the Survey took place between January and June2 each year and was timed to provide Participant Schools with information on competitor fee increases early in their budgetary cycles. Participant schools decided their fee increases for September in May or June of the same calendar year. The budgetary process would start during the Spring term, which ran from January to March, and the earliest date by which any of the Participant schools decided their fees for September was March of the same calendar year. As a result, each of the Participant Schools received at least one version of the Sevenoaks Survey before it finalised its own fee increase(s) for the new academic year starting in

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1 Details of the Participant schools are set out at paragraphs 39 to 251 below.
2 The first questionnaire was circulated to the Participant schools in late January or early February, the first version of the Survey, incorporating the information submitted by the Participant schools, being circulated in February. This was followed by the preparation and circulation of a further version of the Survey in May, and in one year, June, with a number of updates in between.
September. Equally, each Participant school submitted information regarding its own intended fee increase(s) for inclusion in the Survey before the other Participant schools had finalised their fee increase(s) for the new academic year.

5. Through their participation in the Sevenoaks Survey, the Participant schools exchanged on a regular and systematic basis highly confidential information regarding each other’s pricing intentions for the coming academic year that was not made available to parents of pupils at Participant schools or published more generally. This arrangement constitutes an obvious restriction of competition whereby the Participant schools knowingly substituted practical co-operation for the risks of competition amounting to an agreement and/or concerted practice having as its object the prevention, restriction or distortion of competition. Further, it was implicit in the way that the Sevenoaks Survey operated, and the fact that it was intended that the information exchanged should be reasonably reliable, that there was at least a ‘gentleman’s agreement’ amongst the Participant schools that the fee increase figures submitted to the Survey would accurately reflect actual future fee levels.

6. The OFT therefore finds that the Participant schools were party to an agreement and/or concerted practice having as its object the prevention, restriction or distortion of competition in breach of the Chapter I prohibition. The Participant schools have each admitted that they participated in the exchange of information through the Sevenoaks Survey, that as a matter of law this had as its object the distortion of competition in the United Kingdom and that they thereby committed an infringement of the Chapter I prohibition. With the exception of two of the Participant schools, the academic years in respect of which the Participant schools have admitted exchanging information through the Survey are 2001/2002 to 2003/2004. Sedbergh School has admitted that it participated in the Survey in respect of the academic years 2002/2003 and 2003/2004 and Truro School has admitted participation in respect of the academic years 2001/2002 and 2003/2004. No admission has been made by any of the Participant schools as to whether the infringement had any effect on fee levels and, since the OFT is not required to show any such effect to establish an infringement of the Act, this Decision makes no finding as to whether there was an effect on the fee levels of the Participant schools.

7. The OFT’s assessment of the relevant facts and the available evidence is set out in Section II of this Decision. The OFT’s legal assessment of those facts is set out in Section III of this Decision. Section IV of this Decision sets out the principles which the OFT has applied in determining the Parties which are responsible for the infringement. The OFT’s enforcement action, including the imposition of financial penalties under section 36(1) of the Act, and the reasons for it are set out in Section V of this Decision.

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3 Where in any particular year this was not the case for a Participant school, this is discussed in the paragraphs relevant to that school in Section II of this Decision.
4 Where in any particular year this was not the case for a Participant school, this is discussed in the paragraphs relevant to that school in Section II of this Decision.
B. The Parties

8. This Decision is addressed to the Parties, as set out at paragraph 11 below. They are the legal entities responsible for the conduct of the Participant schools and to which the OFT attributes liability for the infringement and for payment of the financial penalties imposed in Section V of this Decision.

9. Each Party is listed under the name by which the Participant school which it controls is known. Where more than one entity is named in respect of a particular Participant school, they are jointly responsible for the conduct of that school and are, therefore, made jointly and severally liable for the financial penalty in respect of that Participant school's conduct.

10. A detailed description of each of the Participant schools and their relationship to each of the Parties is included in Section II of this Decision at paragraphs 39 to 251. The principles which the OFT has applied in determining which entity or entities is or are responsible for each Participant school are set out in Section IV of this Decision.

11. The Parties are as follows:

Ampleforth College

- St Laurence Education Trust, a company limited by guarantee with company number 3415320 and a registered charity with charity number 1063808;

- Ampleforth Abbey Trustees, a company limited by guarantee with company number 396036 being the sole trustee of Ampleforth Abbey Trust, an unincorporated charitable trust with charity number 1026493;

- The Community of St Laurence of the English Congregation of Black Monks of the Order of St Benedict, a community of Benedictine monks established at Ampleforth Abbey;

Bedford School

- The trustees of The Bedford Charity (The Harpur Trust), an unincorporated charitable trust with charity number 204817;

Benenden School

- Benenden School (Kent) Limited, a private company limited by shares with company number 196353 and a registered charity with charity number 307854;

Bradfield College

- The Warden and Council of Saint Andrew’s College Bradfield, a company incorporated by Royal Charter and a registered charity with charity number 309089;
Bromsgrove School

- Bromsgrove School, a company limited by guarantee with company number 4808121 and a registered charity with charity number 1098740;

Bryanston School

- Bryanston School Incorporated, a company limited by guarantee with company number 226143 and a registered charity with charity number 306210;

Canford School

- Canford School Limited, a company limited by guarantee with company number 190956 and a registered charity with charity number 306315;

Charterhouse School

- The Governing Body of Charterhouse School, a body corporate incorporated by statute pursuant to the Public Schools Act 1868 and trustee of Charterhouse School, which is a registered charity with charity number 3120545;

Cheltenham College

- The President and Council of Cheltenham College, a body corporate incorporated by statute pursuant to the Cheltenham College Act 1894, in which is vested the governance of Cheltenham College, which is a registered charity with charity number 311720;

Cheltenham Ladies’ College

- The Cheltenham Ladies’ College, a body corporate incorporated by Royal Charter and a registered charity with charity number 311722;

Clifton College

- The Clifton College, a body corporate incorporated by Royal Charter and a registered charity with charity number 311735;

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5 According to the lawyers for Charterhouse School there is some doubt as to whether Charterhouse School is itself a body corporate, incorporated by a Charter of 1611, which they are unable to locate, or whether it remained part of the unincorporated trust endowed by the Will of Thomas Sutton, with the Charter merely incorporating the trustees of that trust (see Charterhouse School’s response to the OFT’s section 26 Notice which was sent on 30 August 2004 (document LXT3299). The lawyers for the school express the view that the latter is more likely to be correct and the formulation used in this Decision is consistent with that view. The OFT does not consider the distinction to be material for the purpose of applying the Chapter I prohibition, however.
Cranleigh School

• Cranleigh School, a company limited by guarantee with company number 3595824 and a registered charity with charity number 1070856;

Dauntsey’s School

• Dauntsey’s School, a company limited by guarantee with company number 5872694 and a registered charity with charity number 1115638;

• The trustees of the Dauntsey School Foundation, an unincorporated charitable trust and a registered subsidiary charity of Dauntsey’s School with charity number 1115638-1;

Downe House School

• Downe House School, a company limited by guarantee with company number 2645228 and the sole trustee of Downe House Trust, an unincorporated charitable trust and a registered charity with charity number 309091;

Eastbourne College

• Eastbourne College (Incorporated), a company limited by guarantee with company number 115408 and a registered charity with charity number 307071;

Epsom College

• Epsom College, a company limited by guarantee with company number 4009200 and a registered charity with charity number 312046–146, being a subsidiary charity of The Royal Medical Foundation of Epsom College;

• The Royal Medical Foundation of Epsom College, a charity incorporated by statute pursuant to the Royal Medical Benevolent College Act 1855 and registered with charity number 312046;

Eton College

• The Kynge’s College of Our Ladye of Eton beside Windesore, otherwise called Eton College, an exempt charity founded by Royal Charter in 1440 and confirmed by later Acts of Parliament;

Gresham’s School

• Gresham’s School, a company limited by guarantee with company number 5196298 and a registered charity with charity number 1105500;
• The trustees of Gresham’s School Trust, an unincorporated charitable trust with charity number 311268;

• The Wardens and Commonalty of the Mistery of Fishmongers of the City of London, a company incorporated by Royal Charter, also referred to as the Worshipful Company of Fishmongers;

Haileybury and Imperial Service College

• The Governors of Haileybury and Imperial Service College, a body corporate incorporated by Royal Charter for the purpose of carrying on Haileybury and Imperial Service College, commonly known as – and referred to hereafter in this Decision as – Haileybury, and a registered charity with charity number 310013;

Harrow School

• The Keepers and Governors of the Possessions, Revenues, and Goods of the Free Grammar School of John Lyon, within the town of Harrow–on–the–Hill, a body corporate incorporated by statute pursuant to the Public Schools Act 1868 and a registered charity with charity number 310033;

King’s School Canterbury

• The Governors, the Headmaster and the Lower Master of The King’s School of the Cathedral Church of Canterbury in the City of Canterbury, a body corporate incorporated by Royal Charter and a registered charity with charity number 307942;

Lancing College

• Lancing College Limited, a private company limited by shares with company number 3779985 and a registered charity with charity number 1076483;

• The Woodard Corporation, a company limited by guarantee with company number 4659710 and a registered charity with charity number 1096270;

Malvern College

• Malvern College, a body corporate incorporated by Royal Charter and a registered charity with charity number 527578;

Marlborough College

• Marlborough College, a body corporate incorporated by Royal Charter and a registered charity with charity number 309486;
Millfield School

- Millfield, a company limited by guarantee (company number 522385) and a registered charity with charity number 310283;

Mill Hill School

- The Mill Hill School Foundation, a company limited by guarantee with company number 3404450 and a registered charity with charity number 1064758;

Oakham School

- The trustees of Oakham School, an unincorporated charitable trust and a registered charity with charity number 527825;

Oundle School

- The Corporation of Oundle School, a body corporate incorporated by Royal Charter and a registered charity with charity number 309921;

Radley College

- The Council of St Peter’s College, Radley a body corporate incorporated by Royal Charter and a registered charity with charity number 309243, being the trustees of St Peter’s College, Radley;

Repton School

- Repton School, a company limited by guarantee with company number 4390219 and a registered charity with charity number 1093166;

- Sir John Port’s Charity, a company limited by guarantee with company number 4399494 and a registered charity with charity number 1092298, being the trustee of the Repton School Trust, an unincorporated charitable trust with charity number 527177;

Royal Hospital School

- The Secretary of State for Defence acting in execution of the Greenwich Hospital Acts 1865 to 1996 and the Defence (Transfer of Functions) Act 1964, being the person in whom the governance of Greenwich Hospital, a Crown charity, and the school of the Hospital is vested, together with the lands and property of the Greenwich Hospital to be held in trust for the exclusive benefit of Greenwich Hospital;

Rugby School

- The Governing Body of Rugby School, a body corporate incorporated by statute pursuant to the Public Schools Act 1868 and a registered charity with charity number 528752;
St Edward’s School, Oxford

- St Edward’s School, a company limited by guarantee with company number 116784 and a registered charity with charity number 309681;

St Leonards–Mayfield School

- St Leonards–Mayfield School, a company limited by guarantee with company number 3068144 and a registered charity with charity number 1047503;

Sedbergh School

- Sedbergh School, a company limited by guarantee with company number 3946280 and a registered charity with charity number 1080672;

Sevenoaks School

- Sevenoaks School, a company limited by guarantee with company number 4908949 and a registered charity with charity number 1101358;
- The trustees of Sevenoaks School Foundation, an unincorporated charitable trust with charity number 307923;

Sherborne School

- Sherborne School, a company limited by guarantee with company number 4002575 and a registered charity with charity number 1081228;

Shrewsbury School

- The Governing Body of Shrewsbury School, a body corporate incorporated by statute pursuant to the Public Schools Act 1868 and a registered charity with charity number 528413;

Stowe School

- Stowe School Limited, a company limited by guarantee with company number 187251 and a registered charity with charity number 310639;

Strathallan School

- Strathallan School, a company limited by guarantee with company number SC044822 and a registered charity with charity number SC008903;
Tonbridge School

- Tonbridge School, a company limited by guarantee with company number 4787097 and a registered charity with charity number 1097977;

- The Master and Wardens of the Guild or Fraternity of the Body of Christ of the Skinners of London, a body corporate incorporated by Royal Charter, also referred to as The Master, Wardens and Commonalty of the Mystery of Skinners of the City of London and more commonly known as The Worshipful Company of Skinners or The Skinners’ Company;

Truro School

- The trustees of the Methodist Independent Education Trust, formerly known as the Methodist Secondary Education Trust, an unincorporated charitable trust and a registered charity with charity number 306576;

Uppingham School

- The trustees of Uppingham School, an unincorporated charitable trust and a registered charity with charity number 527951;

Wellington College

- The Wellington College, a body corporate incorporated by Royal Charter and a registered charity with charity number 309093;

Wells Cathedral School

- Wells Cathedral School, Limited, a company limited by guarantee with company number 564883 and a registered charity with charity number 310212;

Westminster School

- The Governing Body of Saint Peter’s College Westminster, a body corporate incorporated by statute pursuant to the Public Schools Act 1868, in which is vested the conduct of Saint Peter’s College Westminster otherwise known as Westminster School, a registered charity with charity number 312728;

Winchester College

- Saint Mary College of Winchester, near Winchester, otherwise called Winchester College, an exempt charity founded by Royal Charter in 1382 and confirmed by later Acts of Parliament and by Statutes approved by HM The Queen in Council;
Woldingham School

- The trustees of the Woldingham School Trust, an unincorporated charitable trust and a registered charity with charity number 291258;
- The trustees of the Society of the Sacred Heart, an unincorporated charitable trust and a registered charity with charity number 227848;

Worth School

- Worth School, a company limited by guarantee with company number 4476558, and a registered charity with charity number 1093914;
- Worth Abbey, a company limited by guarantee with company number 4475556, and a registered charity with charity number 1093913;

Wycombe Abbey

- The Girls' Education Company Limited, a private company limited by shares with company number 47031 and a registered charity with charity number 310638.

C. Defined Terms

12. In this section the OFT sets out, for ease of reference, a number of defined terms which are used in this Decision:

- 'the academic year': the period from September until June or July;
- 'the agreed resolution': the resolution of the case agreed by the OFT and the Participant schools in the terms set out in Annex 1;
- 'the Act': the Competition Act 1998;
- 'Article 81': Article 81 of the EC Treaty;
- 'boarding services': educational services provided to boarding pupils at independent fee–paying senior schools;
- 'charity trustee': persons having the general control and management of the administration of a charity6;
- 'the CAT': the Competition Appeal Tribunal;
- 'the CFI': the Court of First Instance;
- 'the Chapter I prohibition': the prohibition imposed by section 2(1) of the Act;
- 'the Commission': the European Commission;

6 As defined in the Charities Act 1993 (section 97(1)).
• 'day services': educational services provided to day pupils at independent fee-paying senior schools;

• 'DfES': Department for Education and Skills;

• 'the ECJ': the European Court of Justice;

• 'educational services': educational services provided to boarding and/or day pupils at independent fee-paying senior schools, including related services such as services associated with non-curricular activities and catering and, in the case of boarding pupils, accommodation and care during the evenings and at weekends;

• 'the European Court': the Court of Justice of the European Communities including the Court of First Instance;

• 'the EC Treaty': the Treaty establishing the European Community, as amended by subsequent Treaties;

• 'the ISC': the Independent Schools Council;

• 'the ISCis': the Independent Schools Council information service;

• 'Participant schools': the schools that participated in the Sevenoaks Survey during the relevant period;

• 'the Parties': the legal entities to which the OFT considers that liability for the infringement should be attributed and to whom this Decision is addressed;

• 'post-16 point score per student': the average point score for 16, 17 or 18 year olds who were entered by a school for at least one 'A' level, the average score calculation being based on the cumulative achievement of pupils over two years, where the following points are awarded according to the grade achieved: 120 points for a grade 'A', 100 points for a grade 'B', 80 points for a grade 'C', 60 points for a grade 'D' and 40 points for a grade 'E';

• 'the relevant period': the period from 1 March 2001 to June 2003 being the period of the infringement;

• 'RTPA': Restrictive Trade Practices Act 1976;

• 'the Schools' Joint Factual Statement': the joint written representations dated 11 May 2006 submitted by the Participant schools in accordance with the terms of the agreed resolution and indicating material factual inaccuracies identified by the Participant schools in the Statement of Objections;

• 'the Sevenoaks bursar': Julian Patrick, the bursar of Sevenoaks School during the relevant period;
• 'the Sevenoaks Survey': the annual survey of current fee levels, intended fee increases\(^7\) for the following academic year expressed as a percentage, and the resulting intended fee levels, which was carried out by the Sevenoaks bursar during the period from 1997 to June 2003 which includes the relevant period;

• 'the Statement of Objections': the statement of objections issued by the OFT on 3 November 2005 and giving the Parties notice of its proposed decision; and

• 'the Survey': the Sevenoaks Survey.

13. A number of terms used in this Decision have a specific legal meaning that has been developed by the case law of the European Court. A number of these are listed for ease of reference below, together with the paragraphs of this Decision where the relevant case law is discussed:

• 'agreement': see paragraphs 1321 to 1332 and in particular paragraphs 1329 to 1332;

• 'concerted practice': see paragraphs 1321 to 1328 and in particular paragraphs 1333 to 1347;

• 'undertaking': see paragraphs 1311 to 1320 and 1391 to 1393.

\(^7\) The OFT notes that the the Schools’ Joint Factual Statement requested that, ‘...references... to “intended fee increases” be changed to “estimated fees” since the terminology implies that all Schools increase their fees each year, which is not always the case.’ The OFT notes that during each year in the relevant period all of the Participant schools increased their fees in respect of the following academic year. The OFT therefore considers that the term ‘intended fee increases’ is accurate in the context of the infringement that is the subject of this Decision.
II. THE FACTS

A. The investigation and administrative procedure

Background

14. The origins of this case lie in an investigation by a journalist into independent school fees for an article that was published in the Sunday Times on 27 April 2003.8

15. On 3 June 2003, the OFT decided on the basis of information supplied to it by the journalist that there were reasonable grounds for suspecting that a number of independent fee-paying schools in the UK had infringed the Chapter I prohibition by exchanging price and cost information and agreeing increases in school fees. The OFT began a formal investigation under the Act9.

Visits under section 27 of the Act

16. On 26 June 2003 the OFT visited the premises of the following schools under section 27 of the Act10:

- Eton College;
- Winchester College; and
- Westminster School.

The premises of a fourth school were also visited at the same time. The OFT has found no evidence that it participated in the Sevenoaks Survey, however, and it is not a party to these proceedings.

17. All four of the schools were given prior notice of the OFT visits under section 27(2) of the Act.

Leniency

18. On receiving notice of the section 27 visits but before the visits had taken place, two of the schools, Eton College and Winchester College,

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8 Document GCOR0085; also reproduced as Document GCOR0084.
9 Under section 25(a) of the Act, as it applied then, the OFT could conduct a formal investigation under the Act if there were reasonable grounds for suspecting that the Chapter I prohibition had been infringed. The relevant provisions following the amendment of the Act by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (SI 2004 No. 1261) are now contained in section 25(1) and (2).
10 Section 27 of the Act empowers the OFT, among other things, to enter an undertaking’s premises without a warrant, with or without notice to the undertaking.
approached the OFT to apply for leniency and were granted a conditional reduction in financial penalty under the OFT’s leniency policy$^{11}$.

19. The following schools also subsequently applied for leniency and were granted a conditional reduction in financial penalty under the OFT’s leniency policy:

- Sevenoaks School;
- Benenden School;
- Cheltenham Ladies’ College; and
- Malvern College.

20. As part of their co–operation under the OFT’s leniency policy and in addition to supplying contemporaneous documentary evidence and written replies to information requests, the leniency applicants also made a number of people available for interview by the OFT. The OFT carried out the following interviews:

- Andrew Wynn, college bursar of Eton College, 24 September 2003;
- Julian James, school bursar of Eton College, 24 September 2003;
- William Organ, former bursar of Winchester College, 8 January 2004;
- Julian Patrick, former Sevenoaks bursar, 9 January 2004;
- Darren Milne, Director of Finance and Resources of Cheltenham Ladies’ College, 3 February 2004;
- David Vass, bursar of Malvern College, 5 February 2004;
- James Sangar, Governor of Benenden School, 6 February 2004;
- Nick Allen, bursar of Benenden School, 6 February 2004; and

21. The OFT also conducted an interview with Michael Baughan, Chairman of the Executive and Finance Committee of Westminster School on 11

$^{11}$ The OFT’s leniency policy was at that time contained in Part 3 of the Director General of Fair Trading’s Guidance as to the appropriate amount of a penalty (OFT 423, Edition 03/00), which has since been replaced by the OFT’s Guidance as to the appropriate amount of a penalty (OFT 423, Edition 12/04).
October 2004 in response to an offer of voluntary co–operation\textsuperscript{12} by that school.

22. As detailed below, the OFT also forensically interrogated and imaged the hard drives of the computers of two of the leniency applicants as part of their co–operation under the leniency policy:

- Sevenoaks School; hard drives imaged on 18 December 2003 and 2 January 2004; and
- Eton College; hard drives imaged on 10 February 2004.

23. The OFT also sent a number of written requests for information to leniency applicant schools under the OFT’s leniency policy. These included the following:

- Benenden School: requests sent on 20 July 2005\textsuperscript{13}, 2 September 2005\textsuperscript{14}; replies sent on 3 August 2005\textsuperscript{15}, 13 September 2005\textsuperscript{16};
- Cheltenham Ladies’ College: requests sent on 20 July 2005\textsuperscript{17}, 25 August 2005\textsuperscript{18}; replies sent on 10 August 2005\textsuperscript{19}, 1 September 2005\textsuperscript{20};
- Eton College: request sent on 25 August 2005\textsuperscript{21}; reply sent on 5 September 2005\textsuperscript{22};
- Malvern College: request sent on 4 October 2005\textsuperscript{23}; reply sent on 11 October 2005\textsuperscript{24};
- Sevenoaks School: requests sent on 20 July 2005\textsuperscript{25}, 31 August 2005\textsuperscript{26} and 21 September 2005\textsuperscript{27}; replies sent on 12 August 2005\textsuperscript{28}, 14 September 2005\textsuperscript{29} and 29 September 2005\textsuperscript{30};

\textsuperscript{12} The OFT uses the term voluntary co–operation here to distinguish from co–operation under the OFT’s leniency policy.
\textsuperscript{13} Document MDB002A.
\textsuperscript{14} Document MDB0002.
\textsuperscript{15} Document MDB0048.
\textsuperscript{16} Document MDB0049.
\textsuperscript{17} Document MDB0007.
\textsuperscript{18} Document MDB006.
\textsuperscript{19} Document MDB0054.
\textsuperscript{20} Document MDB0053.
\textsuperscript{21} Document MDB0015.
\textsuperscript{22} Document MDB0061.
\textsuperscript{23} Document MDB0045J.
\textsuperscript{24} Document MDB0096.
\textsuperscript{25} Document MDB 0032.
\textsuperscript{26} Document MDB0030.
\textsuperscript{27} Document MDB0030.
\textsuperscript{28} Document MDB0077.
\textsuperscript{29} Document MDB0078.
\textsuperscript{30} Document MDB0094.
- Winchester College: requests sent on 25 July 2005\textsuperscript{31}, 20 September 2005\textsuperscript{32} and 5 October 2005\textsuperscript{33}; replies sent on 5 August 2005\textsuperscript{34}, 23 September 2005\textsuperscript{35} and 14 October 2005\textsuperscript{36}.

24. Two other schools that were not party to the Sevenoaks Survey were also granted a conditional reduction in financial penalty under the OFT’s leniency policy.

25. Finally, a number of other schools that were party to the Sevenoaks Survey also approached the OFT during the latter stages of the investigation to apply for leniency under the leniency policy. Given the relatively advanced stage of the investigation, however, the OFT declined to grant these schools a conditional reduction in any financial penalty imposed.

*Notices requiring information under section 26 of the Act*

26. Notices requiring information under section 26 of the Act\textsuperscript{37} were sent to 44 Participant schools on 9 February 2004\textsuperscript{38}. These did not include the schools which had been granted a conditional reduction in financial penalty under the OFT’s leniency policy. The schools responded as follows:

- Ampleforth College, response dated 8 March 2004\textsuperscript{39};
- Bedford School, response dated 26 March 2004\textsuperscript{40};
- Bradfield College, response dated 5 March 2004\textsuperscript{41};
- Bromsgrove, response dated 19 March 2004\textsuperscript{42};
- Bryanston School, response dated 9 March 2004\textsuperscript{43};
- Canford School, response dated 4 March 2004\textsuperscript{44};
- Charterhouse School, response dated 1 March 2004\textsuperscript{45};

\textsuperscript{31} Document MDB0044.
\textsuperscript{32} Document MDB0043.
\textsuperscript{33} Document MDB0044A.
\textsuperscript{34} Document MDB0090.
\textsuperscript{35} Document MDB0090A.
\textsuperscript{36} Document MDB109.
\textsuperscript{37} Section 26 of the Act empowers the OFT, for the purposes of an investigation under section 25 of the Act (now section 25(2)), to require any person to produce to it a specified document, or to provide it with specified information, which it considers relates to any matter relevant to the investigation.
\textsuperscript{38} Documents SMG001 to SMG0043 inclusive.
\textsuperscript{39} Document LXT1366R.
\textsuperscript{40} Document LXT2498R.
\textsuperscript{41} Document LXT2905AA(R).
\textsuperscript{42} Document JXS0734R.
\textsuperscript{43} Document LXT3119R.
\textsuperscript{44} Document LXT3134R
• Cheltenham College, response dated 17 February 2004\(^{46}\);
• Clifton College, response dated 10 March 2004\(^{47}\);
• Cranleigh School, response dated 12 March 2004\(^{48}\);
• Dauntsey’s School, response dated 11 March 2004\(^{49}\);
• Downe House School, response dated 5 March 2004\(^{50}\);
• Eastbourne College, responses dated 27 February and 16 March 2004\(^{51}\);
• Epsom College, response dated 8 March 2004\(^{52}\);
• Gresham’s School, response dated 18 March 2004\(^{53}\);
• Haileybury, response dated 1 March 2004\(^{54}\);
• Harrow School, response dated 8 March 2004\(^{55}\);
• King’s School Canterbury, response dated 4 March 2004\(^{56}\);
• Lancing College, response dated 25 February 2004\(^{57}\);
• Marlborough College, response dated 27 February 2004\(^{58}\);
• Millfield School, response dated 26 February 2004\(^{59}\);
• Mill Hill School, response dated 25 March 2004\(^{60}\);
• Oakham School, response dated 8 March 2004\(^{61}\);
• Oundle School, response dated 5 March 2004\(^{62}\);
• Radley College, response dated 8 March 2004\(^{63}\);

\(^{45}\) Document LXT3299.
\(^{46}\) Document LXT3429.
\(^{47}\) Document LXT3717R.
\(^{48}\) Document LXT164R.
\(^{49}\) Document LXT3850R.
\(^{50}\) Document LXT4057R.
\(^{51}\) Document JXS0308R.
\(^{52}\) Document JXS0089R.
\(^{53}\) Document LXT001R.
\(^{54}\) Document JXS0151R.
\(^{55}\) Document AXZ333.
\(^{56}\) Document AXZ602R.
\(^{57}\) Document AXZ603R.
\(^{58}\) Document TXD1507.
\(^{59}\) Document AXZ001R.
\(^{60}\) Document AXZ096R.
\(^{61}\) Document AXZ742R.
• Repton School, response dated 11 March 2004\textsuperscript{64};
• Royal Hospital School, response dated 19 March 2004\textsuperscript{66};
• Rugby School, response dated 5 March 2004\textsuperscript{66};
• Sedbergh School, response dated 18 March 2004\textsuperscript{67};
• Sherborne School, response dated 15 March 2004\textsuperscript{68};
• Shrewsbury School, response dated 10 March 2004\textsuperscript{69};
• St Edward’s School, response dated 8 March 2004\textsuperscript{70};
• St Leonards–Mayfield School, response dated 11 March 2004\textsuperscript{71};
• Stowe School, response dated 19 March 2004\textsuperscript{72};
• Strathallan School, response dated 17 March 2004\textsuperscript{73};
• Truro School, response dated 4 March 2004\textsuperscript{75};
• Uppingham School response dated 3 March 2004\textsuperscript{76};
• Wellington College, response dated 16 March 2004\textsuperscript{77};
• Wells Cathedral School, response dated 5 March 2004\textsuperscript{78};
• Westminster School, response dated 5 March 2004\textsuperscript{79};
• Woldingham School, response dated 5 March 2004\textsuperscript{80};
• Worth School, response dated 1 March 2004\textsuperscript{81}; and

\textsuperscript{63} Document SJN1111R.
\textsuperscript{64} Document LXT461R.
\textsuperscript{65} Document JXS0088A.
\textsuperscript{66} Document TXD1378R.
\textsuperscript{67} Document TXD1235.
\textsuperscript{68} Document TXD0258R.
\textsuperscript{69} Document TXD0189R.
\textsuperscript{70} Document TXD1681R.
\textsuperscript{71} Document TXD0772.
\textsuperscript{72} Document SJN0382R.
\textsuperscript{73} Document SJN0079.
\textsuperscript{74} Document LXT632R.
\textsuperscript{75} Document SJN0081R.
\textsuperscript{76} Document TXD0920R.
\textsuperscript{77} Document TXD1979R.
\textsuperscript{78} Document JXS0834R.
\textsuperscript{79} Document TXD1056R.
\textsuperscript{80} Document SJN0662R.
• Wycombe Abbey School, response dated 1 March 2004\textsuperscript{82}.

27. A notice requiring information under section 26 of the Act was also sent to a further school on 17 March 2005 and a response received on 6 April 2005. The OFT considers that it does not have sufficient evidence to show that the school participated in the Sevenoaks Survey, however, and it is not therefore a party to these proceedings.

28. Further notices requiring information under section 26 of the Act were sent in August and September 2005 to the following Participant schools. The date of each request and of the response is recorded below:

• Ampleforth College: requests sent on 1 September 2005\textsuperscript{83} and 4 October 2005\textsuperscript{84}; replies dated 13 September 2005\textsuperscript{85} and 12 October 2005\textsuperscript{86};

• Bromsgrove School: request sent on 25 August 2005\textsuperscript{87}; reply dated 6 September 2005\textsuperscript{88};

• Bryanston School: request sent on 24 August 2005\textsuperscript{89}; reply dated 6 September 2005\textsuperscript{90};

• Charterhouse School: request sent on 30 August 2005\textsuperscript{91}; reply dated 6 September 2005\textsuperscript{92};

• Cranleigh School: request sent on 2 September 2005\textsuperscript{93}; reply dated 9 September 2005\textsuperscript{94};

• Dauntsey’s School: request sent on 30 August 2005\textsuperscript{95}; reply dated 1 September 2005\textsuperscript{96};

• Downe House School: request sent on 2 September 2005\textsuperscript{97}; reply dated 13 September 2005\textsuperscript{98};

• Eastbourne College: request sent on 2 September 2005\textsuperscript{99}; reply dated 9 September 2005\textsuperscript{100};

\textsuperscript{81} Document SJN0212R.
\textsuperscript{82} Document SJN1206R.
\textsuperscript{83} Document MDB0001.
\textsuperscript{84} Document MDB0045C.
\textsuperscript{85} Document MDB0046A.
\textsuperscript{86} Document MDB0099.
\textsuperscript{87} Document MDB0003.
\textsuperscript{88} Document MDB0050.
\textsuperscript{89} Document MDB0004.
\textsuperscript{90} Document MDB0051.
\textsuperscript{91} Document MDB0005.
\textsuperscript{92} Document MDB0052.
\textsuperscript{93} Document MDB0009.
\textsuperscript{94} Document MDB0055.
\textsuperscript{95} Document MDB0010.
\textsuperscript{96} Document MDB0056.
\textsuperscript{97} Document MDB0011.
\textsuperscript{98} Document MDB0057.
• Epsom College: request sent on 2 September 2005\textsuperscript{101}; reply dated 8 September 2005\textsuperscript{102};

• Gresham's School: requests sent on 25 August 2005\textsuperscript{103} and 4 October 2005\textsuperscript{104}; replies dated 12 September 2005\textsuperscript{105} and 11 October 2005\textsuperscript{106};

• Haileybury: request sent on 25 August 2005\textsuperscript{107}; reply dated 5 September 2005\textsuperscript{108};

• King's School Canterbury: request sent on 15 September 2005\textsuperscript{109}; reply dated 23 September 2005\textsuperscript{110};

• Lancing College: requests sent on 30 August 2005\textsuperscript{111} and 4 October 2005\textsuperscript{112}; replies dated 7 September 2005\textsuperscript{113} and 12 October 2005\textsuperscript{114};

• Millfield School: request sent on 2 September 2005\textsuperscript{115}; reply dated 9 September 2005\textsuperscript{116};

• Mill Hill School Foundation: request sent on 2 September 2005\textsuperscript{117}; reply dated 7 September 2005\textsuperscript{118};

• Repton School: request sent on 26 August 2005\textsuperscript{119}; reply dated 9 September 2005\textsuperscript{120};

• Royal Hospital School: request sent on 24 August 2005\textsuperscript{121}; reply dated 16 September 2005\textsuperscript{122};

• Rugby School: request sent on 4 October 2005\textsuperscript{123}; reply dated 6 October 2005\textsuperscript{124};
• Sedbergh School: request sent on 24 August 2005\textsuperscript{125}; reply dated 8 September 2005\textsuperscript{126};

• Sherborne School: request sent on 2 September 2005\textsuperscript{127}; reply dated 6 September 2005\textsuperscript{128};

• St. Edward’s School: request sent on 2 September 2005\textsuperscript{129}; reply dated 12 September 2005\textsuperscript{130};

• St. Leonards–Mayfield School: requests sent on 2 September 2005\textsuperscript{131} and 4 October 2005\textsuperscript{132}; replies dated 6 September 2005\textsuperscript{133} and 7 October 2005\textsuperscript{134};

• Stowe School: request sent on 2 September 2005\textsuperscript{135}; reply dated 12 September 2005\textsuperscript{136};

• Strathallan School: request sent on 1 September 2005\textsuperscript{137}; reply dated 6 September 2005\textsuperscript{138};

• Tonbridge School: request sent on 30 August 2005\textsuperscript{139}; reply dated 5 September 2005\textsuperscript{140};

• Truro School: requests sent on 1 September 2005\textsuperscript{141} and 4 October 2005\textsuperscript{142}; replies dated 9 September 2005\textsuperscript{143} and 6 October 2005\textsuperscript{144};

• Uppingham School: request sent on 2 September 2005\textsuperscript{145}; reply dated 7 September 2005\textsuperscript{146};

\textsuperscript{123} Document MDB0045F.
\textsuperscript{124} Document MDB0070L.
\textsuperscript{125} Document MDB0029.
\textsuperscript{126} Document MDB0076.
\textsuperscript{127} Document MDB0033.
\textsuperscript{128} Document MDB0079.
\textsuperscript{129} Document MDB0034.
\textsuperscript{130} Document MDB0080.
\textsuperscript{131} Document MDB0035.
\textsuperscript{132} Document MDB0045D.
\textsuperscript{133} Document MDB0081.
\textsuperscript{134} Document MDB0081F.
\textsuperscript{135} Document MDB0036.
\textsuperscript{136} Document MDB0082.
\textsuperscript{137} Document MDB0038.
\textsuperscript{138} Document MDB0083.
\textsuperscript{139} Document MDB0039.
\textsuperscript{140} Document MDB0085.
\textsuperscript{141} Document MDB0040.
\textsuperscript{142} Document MDB0045H.
\textsuperscript{143} Document MDB0087.
\textsuperscript{144} Document MDB0113.
\textsuperscript{145} Document MDB0041.
\textsuperscript{146} Document MDB0088.
• Wells Cathedral School: requests sent on 2 September 2005\textsuperscript{147} and 4 October 2005\textsuperscript{148}; responses dated 8 September 2005\textsuperscript{149} and 7 October 2005\textsuperscript{150};

• Woldingham School: request sent on 5 September 2005\textsuperscript{151}; reply dated 20 September 2005\textsuperscript{152};

• Worth School: request sent on 31 August 2005\textsuperscript{153}; reply dated 8 September 2005\textsuperscript{154}.

29. A section 26 notice requiring information was also sent to The Worshipful Company of Skinners, a company related to Tonbridge School on 19 September 2005\textsuperscript{155} and a reply received on 22 September 2005\textsuperscript{156}. A similar request was sent to The Worshipful Company of Grocers, a company related to Oundle School, on 4 October 2005\textsuperscript{157} and a reply received on 13 October 2005\textsuperscript{158}.

30. Following the issue of the Statement of Objections (see paragraph 33 below), the OFT also sent the Parties a request for turnover information on 22 December 2005\textsuperscript{159}, to which the Parties responded between 10 January and 17 February 2006\textsuperscript{160}.

Commitments

31. A number of the Participant schools approached the OFT about the possibility of offering binding commitments under section 31A of the Act as an alternative to the OFT proceeding to a statement of objections and infringement decision.

32. In view of the seriousness of the case, involving as it does the horizontal sharing of pricing information amongst competitors, the OFT considered that it would not be appropriate to conclude its investigation by accepting commitments under section 31A of the Act. This was communicated to the relevant Participant schools in September 2005.

Statement of Objections, access to the file and representations of the Parties

33. On 3 November 2005 the OFT issued the Statement of Objections, giving the Parties notice under section 31(1)(a) of the Act and rules 4 and 5 of

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\textsuperscript{147} Document MDB0042.  
\textsuperscript{148} Document MDB0045E.  
\textsuperscript{149} Document MDB0089.  
\textsuperscript{150} Document MDB0089A.  
\textsuperscript{151} Document MDB0045.  
\textsuperscript{152} Document MDB0092.  
\textsuperscript{153} Document MDB0045A.  
\textsuperscript{154} Document MDB0093.  
\textsuperscript{155} Document MDB0039.  
\textsuperscript{156} Document MDB0086.  
\textsuperscript{157} Document MDB0045B.  
\textsuperscript{158} Document MDB0107.  
\textsuperscript{159} Documents TCOR127 to TCOR183.  
\textsuperscript{160} Documents TC01a to TC52a.
the OFT’s procedural rules (‘the OFT’s Rules’)\textsuperscript{161} of its proposed infringement decision. The Statement of Objections was sent to the Parties on 8 November 2005\textsuperscript{162,163}.

34. In fulfilment of the OFT’s duty to give the Parties a reasonable opportunity to inspect the documents in the OFT’s file that relate to the matters referred to in the Statement of Objections\textsuperscript{164}, the Parties were sent on 8 November 2005\textsuperscript{165} a CD–ROM containing electronic copies of the documents relied on in the Statement of Objections and on 9 February 2006\textsuperscript{166} a DVD–ROM containing electronic copies of the other documents on the OFT’s file but excluding ‘internal documents’ and documents to the extent that they contained ‘confidential information’, as these terms are defined in the OFT’s Rules\textsuperscript{167}.

35. As required by the OFT’s Rules\textsuperscript{168}, the Parties were also notified of the period within which they might make written representations on the matters referred to in the Statement of Objections and of the possibility of making oral representations on such matters\textsuperscript{169}. The need for such representations was subsequently superseded by the terms of the resolution reached between the Parties and the OFT, as described in paragraphs 36 to 38 below.

\textit{Agreed resolution}

36. Following the issue of the Statement of Objections, the OFT was approached by the Independent Schools Council (‘the ISC’) with a view to exploring whether an agreed resolution to the case might be possible, in particular with a view to reducing the legal and other costs that would

\textsuperscript{162} See covering letters to the Parties dated 8 November 2005 (documents TJ0048 to TJ0103 inclusive).
\textsuperscript{163} In the case of Dauntsey’s School the Statement of Objections was addressed and sent to the Dauntsey School Foundation. Since then, most of the school’s assets and liabilities have been transferred to Dauntsey’s School (company number 5872694), a newly incorporated company limited by guarantee, to which this Decision is also addressed (see paragraphs 90 to 93 below). In correspondence between the OFT and Dauntsey’s School (company number 5872694), the latter has confirmed: (i) that its members and directors are the same individuals as the trustees and governors of the Dauntsey School Foundation to which the Statement of Objections was addressed; (ii) that the same members and directors have at all material times been aware of the Statement of Objections; and (iii) that it will accept an infringement decision that is addressed to it, to the trustees of the Dauntsey School Foundation and/or to any of the latter’s three subsidiary companies (documents DSS14 and DSS15). The OFT set out its conclusions regarding the liability of Dauntsey’s School (company number 5872694) and the Dauntsey School Foundation in a letter to the company dated 23 October 2006 (document DSS16), to which the company’s company secretary replied by electronic mail on 24 October 2006 confirming that he had no comments to make (document DSS17).
\textsuperscript{164} Rule 5(3) of the OFT’s Rules.
\textsuperscript{165} See note 162 above.
\textsuperscript{166} See covering letters to the Parties dated 9 February 2006 (documents AC01 to AC057 inclusive).
\textsuperscript{167} Rule 1(1) of the OFT’s Rules.
\textsuperscript{168} Rules 5(2)(c) and (4) of the OFT’s Rules.
\textsuperscript{169} Paragraphs 17 to 21 of the Statement of Objections. See also letters to the Parties dated 9 February 2006 extending the period within which written representations were to be made (documents AC01 to AC057 inclusive).
otherwise be incurred by the Parties all of whom are charitable not–for–profit organisations. Following this approach, the OFT entered into discussions with an ISC steering group whose members included a number of senior governors appointed by the Participant schools and which was chaired by the General Secretary of the ISC. As a result of these discussions and having regard to the particular combination of features present in the case\(^\text{170}\), a proposed resolution was reached, the terms of which were put to the Parties in a letter from the OFT dated 15 February 2006\(^\text{171}\). The key terms of the proposed resolution were as follows:

- each school would admit that it had committed an infringement of the Chapter I prohibition by participating in the exchange of information through the Sevenoaks Survey which had had as its object the distortion of competition within the United Kingdom;


- no admission would be made by any of the Participant schools as to whether the exchange of information had had any effect on fee levels;

- each school would make an *ex gratia* payment, in the combined total sum of £3 million, into an educational charitable trust fund to benefit the pupils who had attended the Participant schools during the relevant years;

- the OFT would adopt an infringement decision, setting out what had taken place in materially the same form as set out in the Statement of Objections, noting the admissions made by the Participant schools, concluding that there had been such infringements as had been admitted but making no finding as to whether the infringement by each Participant school had had any effect on fee levels of that School; and

- the OFT would impose a financial penalty of £10,000 on each Participant school\(^\text{172}\) in respect of the infringement of the Chapter I prohibition, which would be reduced for successful leniency applicants in accordance with their leniency agreements with the OFT.

37. Following the receipt of acceptances of the proposed resolution on behalf of all the Participant schools, the OFT wrote to the Parties on 18 May

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\(^{170}\) See paragraphs 1426 to 1431 below.

\(^{171}\) Documents COR OFFER 57 to COR OFFER 112 inclusive.

\(^{172}\) As regards the Royal Hospital School, see paragraph 174 below.
2006 confirming that the proposal had been accepted\textsuperscript{173,174}. At the same time the OFT also confirmed its acceptance of a number of amendments. In particular, the OFT accepted that it could not legally impose a penalty in respect of the Royal Hospital School’s participation in the infringement\textsuperscript{175}. All the other terms of the resolution have been accepted on behalf of the Royal Hospital School, however. The full terms of the resolution, including the amendments, are set out at Annex 1.

38. In accordance with the terms of the resolution, on 11 May 2006 the Parties submitted the Schools’ Joint Factual Statement\textsuperscript{176}. The OFT has taken account of the Parties’ representations in adopting this Decision.

B. The Participant schools

\textit{Ampleforth College}

39. Ampleforth College is an independent fee–paying coeducational school for boarding and day pupils aged 13 to 18 years.

40. The college is run by St Laurence Education Trust, a company limited by guarantee (company number 3415320) and a registered charity (charity number 1063808)\textsuperscript{177}. The company also operates another independent school, St Martins Ampleforth and a private hall within the University of Oxford, St Benets Hall\textsuperscript{178}. The fixed assets in which and with which these operations take place are the property of Ampleforth Abbey Trust, an unincorporated charitable trust (charity number 1026493), of which, according to its most recent annual report and accounts\textsuperscript{179}, the St Laurence Education Trust is a part.

41. The governance of the St Laurence Education Trust is the responsibility of the Abbot of Ampleforth Abbey, who appoints the officials in charge of its

\begin{footnotes}
\item[173] COR AP 1 to COR AP 50 inclusive.
\item[174] In the case of Dauntsey’s School, the OFT’s letter setting out the terms of the proposed resolution was addressed to the Dauntsey School Foundation, which also accepted the proposed resolution on behalf of the school. Following the transfer of most of the school’s assets and liabilities to a newly incorporated company, Dauntsey’s School (company number 5872694), the latter has confirmed in correspondence with the OFT: (i) that its members and directors are the same individuals as those who were trustees and governors of the Dauntsey School Foundation at the relevant time; (ii) that its members and directors have at all material times been aware of the Statement of Objections, the OFT’s letter setting out the terms of the proposed resolution, the Foundation’s acceptance of the terms of the resolution, the OFT’s letter confirming the acceptance of the proposed resolution on behalf of the schools and the joint factual statement submitted on behalf of the schools in accordance with the terms of the resolution; and (iii) that it consented to be bound by the terms of the agreed resolution (documents DSS14 and DSS15).
\item[175] See paragraph 174 below.
\item[176] The OFT also received separate representations from the Worshipful Company of Grocers on the discrete question of whether it should be held liable for Oundle School’s participation in the infringement. Having considered these representations, the OFT has decided not to make the Grocers’ Company a Party to this Decision.
\item[177] Trustees’ report and financial statements for St Laurence Education Trust for the year ended 31 August 2004 (document PR0005).
\item[178] Ibid.
\item[179] Ibid.
\end{footnotes}
administration. Under its Articles of Association, only fully professed members of the monastic community may be members of the St Laurence Education Trust and its directors are *ex officio* the Abbot and the members of the Abbot’s Council as constituted in relation to the monastic community. The full name of the monastic community is the Community of St Laurence of the English Congregation of Black Monks of the Order of St Benedict.

42. The members of the Abbot’s Council are also the directors of Ampleforth Abbey Trustees, a company limited by guarantee (company number 396036) and the sole trustee of Ampleforth Abbey Trust (charity number 1026493). Under its Articles of Association, the business of Ampleforth Abbey Trustees (company number 396036) is managed by a Committee of Management, whose members must also be members of the company and are appointed by the Abbot of Ampleforth Abbey, who is an *ex officio* member of the Committee and its chairman. As in the case of the St Laurence Education Trust (company number 3415320), membership of Ampleforth Abbey Trustees is limited to members of the monastic community.

43. According to its annual report and accounts for 2004, Ampleforth Abbey Trust (charity number 1026493) owns 100% of the issued share capital of Ampleforth Abbey Trading Limited (company number 513517) and Ampleforth Abbey Water Limited (company number 2887798).

44. The OFT considers that the Community of St Laurence of the English Congregation of Black Monks of the Order of St Benedict exerts decisive influence over the St Laurence Education Trust (company number 3415320) and – through its trustee, Ampleforth Abbey Trustees (company number 396036) – the unincorporated trust, Ampleforth Abbey Trust (charity number 1026493) and that all of these, together with the subsidiaries of Ampleforth Abbey Trustees (company number 396036) – Ampleforth Abbey Trading Limited and Ampleforth Abbey Water Limited – form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

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180 Ibid.
181 Articles 1 and 9 of the Articles of Association of St Laurence Education Trust (documents PR0002 and PR0004).
182 Articles 3 and 9 of the Articles of Association of St Laurence Education Trust (documents PR0002 and PR0004).
183 Trustee’s report and financial statements for Ampleforth Abbey Trust for the year ended 31 August 2004 (document PR0008). See also financial statements for the Ampleforth Abbey Trustees for the year ended 31 August 2004 (document PR0012).
184 Articles 27 and 1 of the Articles of Association of Ampleforth Abbey Trustees (company number 3415320) (document PR0011).
185 Articles 3 and 1 of the Articles of Association of Ampleforth Abbey Trustees (company number 3415320) (document PR0011).
186 Trustee’s report and financial statements for Ampleforth Abbey Trust for the year ended 31 August 2004 (document PR0008).
Bedford School

45. Bedford School is an independent fee-paying boarding and day school for boys aged 7 to 18 years old, comprising a preparatory school for boys aged 7 to 13 years, an upper school for boys aged 13 to 18 years and an international study centre for up to 30 boys and girls aged 11 to 17 years.

46. The school is run by The Bedford Charity (The Harpur Trust), an unincorporated charitable trust (charity number 204817) under a Scheme dated 1 September 2000\(^\text{187}\). The trust also runs another three schools\(^\text{188}\) and a number of almshouses\(^\text{189}\). According to its most recently published annual report and accounts\(^\text{190}\), the trust has a wholly owned subsidiary company, Truesand Limited (company number 2707253) and nominates the directors of Harpur Pre-Preparatory Schools Limited (company number 3475202)\(^\text{191}\). The trustees of The Bedford Charity (The Harpur Trust) are also the trustees of a subsidiary charity, The Randall Cottage Homes Charity, an unincorporated charitable trust (charity number 204817 – 37)\(^\text{192}\).

47. The OFT considers that the unincorporated charitable trust, The Bedford Charity (Harpur Trust) (charity number 204817), together with its related companies, Truesand Limited and Harpur Pre-Preparatory Schools Limited, and its subsidiary charity, The Randall Cottage Homes Charity, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

Benenden School

48. Benenden School is an independent fee-paying boarding school for girls aged 11 to 18 years.

49. The school is run by Benenden School (Kent) Limited, a private company limited by shares (company number 196353) and a registered charity (charity number 307854)\(^\text{193}\).

50. According to its financial statements for the year 2004\(^\text{194}\), Benenden School (Kent) Limited owns the whole of the share capital of Lime Avenue Sales & Services Limited (company number 1794097).

\(^{187}\) Bedford School’s response to the OFT’s section 26 Notice which was sent on 9 February 2004 (document LXT2498R).

\(^{188}\) The other three schools are Bedford High School, Bedford Modern School and Dame Alice Harpur School.

\(^{189}\) See Annual report of trustees and accounts for The Bedford Charity for the year ended 30 June 2003 (document LXT2509).

\(^{190}\) Annual report of trustees and accounts for The Bedford Charity for the year ended 30 June 2004 (document PR0018).

\(^{191}\) See also Bedford School’s response to the OFT’s section 26 Notice which was sent on 9 February 2004 (document LXT2499).

\(^{192}\) Annual report of trustees and accounts for The Bedford Charity for the year ended 30 June 2004 (document PR0018) and Bedford School’s response to the OFT’s section 26 Notice which was sent on 9 February 2004 (document LXT2499).

\(^{193}\) Financial statements for Benenden School (Kent) Limited for the year ended 31 August 2004 (document PR0031).
51. The OFT considers that Benenden School (Kent) Limited and its subsidiary Lime Avenue Sales & Services Limited, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

**Bradfield College**

52. Bradfield College is an independent fee–paying coeducational school for pupils aged 13 to 18 years.

53. The college is carried on and maintained by The Warden and Council of Saint Andrew’s College Bradfield, a body corporate incorporated by Royal Charter dated 16 December 1863. The corporation is also a registered charity (charity number 309089).

54. The corporation has two wholly owned subsidiary companies, BC Developments Limited (company number 2647095) and Bradfield College Enterprises Limited (company number 2987264).

55. The OFT considers that The Warden and Council of Saint Andrew’s College Bradfield and its subsidiaries, BC Developments Limited and Bradfield College Enterprises Limited form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

**Bromsgrove School**

56. Bromsgrove School is an independent fee–paying coeducational boarding and day school for pupils aged 2 to 18 years, comprising a Senior School (age 13 to 18), a Preparatory School (age 7 to 13) and a Pre–Preparatory School (age 2 to 7).

57. The school has been run since 1 September 2003 by Bromsgrove School, a company limited by guarantee (company number 4808121) and registered charity (charity number 1098740), to which, with the exception of the restricted funds, the land and other assets of the school were transferred on 31 August 2003.

58. Prior to that date the school was run, and its assets were held by two unincorporated charitable trusts. According to their 2004 financial statements, neither trust has traded in the year following the transfer of the unrestricted funds. Moreover, following the Charity Commission’s approval in June 2005 of three Schemes appointing the company, Bromsgrove School (company number 4808121) as trustee of the

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194 Ibid.
195 Report and Accounts for the year ended 31 August 2004 (document PAA0006).
196 Financial Statement of Bromsgrove School for the year ended 31 August 2004 (document PAA0020).
197 See Bromsgrove School’s response to question 1 of the OFT’s section 26 Notice which was sent on 9 February 2004 (document JXS0734R) and to questions 8 and 9 of the OFT’s section 26 Notice which was sent on 25 August 2005 (document MDB0050).
198 Bromsgrove School (charity number 527424) and Bromsgrove School Additional Fund (1908) (charity number 527450).
199 In each case for the year ended 31 August 2004 (documents MDB0050L and MDB0050M).
school’s restricted funds, the only remaining assets of those trusts are the legal titles of the school’s freehold properties\(^{200}\), which the trustees are bound to transfer to the company\(^{201}\). According to the school, the trustees, who in each case are the Chairman of Governors and the Chairman of the Finance and Property Committee of the company (company number 4808121), will arrange for the trusts to be wound up and removed from the Charities Register following the completion of these transfers\(^{202}\).

59. The OFT considers that the company Bromsgrove School (company number 4808121) is the successor undertaking of the unincorporated charitable trusts, Bromsgrove School and Bromsgrove School Additional Fund (1908) (charity numbers 527424 and 527450), and that the latter entities are no longer active and may be considered for the purpose of these proceedings to have effectively ceased to exist.

**Bryanston School**

60. Bryanston School is an independent fee–paying coeducational boarding school for pupils aged 13 to 18 years.

61. The school is run by Bryanston School Incorporated, a company limited by guarantee (company number 226143) and a registered charity (charity number 306210)\(^{203}\).

62. According to its 2004 annual report and accounts\(^{204}\), Bryanston School Incorporated also carries out various commercial activities through a separate limited company, Bryanston Conference Centre Limited (company number 1111950), which is controlled by the school governors.

63. The OFT considers that Bryanston School Incorporated (company number 226143) and Bryanston Conference Centre Limited form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

**Canford School**

64. Canford School is an independent fee–paying coeducational boarding and day school for pupils aged 13 to 18 years.

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\(^{200}\) See Bromsgrove School's response to questions 8 and 9 of the OFT’s section 26 Notice which was sent on 25 August 2005 (document MDB0050).

\(^{201}\) Deed dated 29 August 2003 between the Trustees of the Bromsgrove School Additional Fund (1908) and Bromsgrove School (document MDB0050E), clauses 3 and 5; and Deed dated 29 August 2003 between the Trustees of Bromsgrove School and Bromsgrove School (document MDB0050F), clauses 3 and 5.

\(^{202}\) See Bromsgrove School’s response to questions 8 and 9 of the OFT’s section 26 Notice which was sent on 25 August 2005 (document MDB0050).

\(^{203}\) See Bryanston School's response to the OFT’s section 26 Notice which was sent on 9 February 2004 (document LXT3991R).

65. The school is run by Canford School Limited205, a company limited by
guarantee (company number 190956) and a registered charity (company
number 306315).

66. According to its 2004 annual report and accounts206, Canford School
Limited owns the whole of the issued share capital of Cheneford Limited
(company number 2694274), which lets the facilities of the school for use
by the public.

67. The OFT considers that Canford School Limited (company number
190956) and its subsidiary, Cheneford Limited (company number
2694274), form part of one and the same undertaking for the purpose of
applying the Chapter I prohibition.

**Charterhouse School**

68. Charterhouse School is an independent fee–paying day and boarding
school for boys aged 13 to 18 years and for girls aged 16 to 18 years.

69. Charterhouse School is a registered charity (charity number 312054)207
and is run by its Governing Body in accordance with Statutes and
Regulations made under the Public Schools Act 1868. The Governing
Body of Charterhouse School is a body corporate, incorporated by statute
under that Act208. The members of the Governing Body are also the
charity trustees209.

70. The school’s permanent endowment is managed by Sutton’s Hospital in
Charterhouse, an unincorporated charitable trust (charity number 207773)
which governed the school until 1872210.

71. According to its 2004 annual report and accounts211, Charterhouse has a
wholly owned subsidiary, Charterhouse Enterprises Limited (company
number 2562552).

72. The OFT considers that Charterhouse School and its subsidiary,
Charterhouse Enterprises Limited, form part of one and the same
undertaking for the purpose of applying the Chapter I prohibition.

**Cheltenham College**

73. Cheltenham College is an independent fee–paying coeducational boarding
and day school for pupils aged 13 to 18 years.

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205 See Canford School’s response to the OFT’s section 26 Notice which was sent on 9 February
2004 (document LXT3134R).

206 Financial statements together with directors’ and auditors’ reports for Canford School Limited
for the year ended 31 July 2004 (document PAA0042).

207 As to the precise legal status of Charterhouse School, see note 5 above.

208 Section 4A, Public Schools Act 1868, inserted by the Statute Law (Repeals Act) 1998.

209 Annual Report and Accounts for the Charterhouse School for the year ended 31 July 2004
(document PAA0046).

210 Ibid.

211 Ibid.
74. Cheltenham College is a registered charity (charity number 311720) and is run by The President and Council of Cheltenham College, a body corporate incorporated by statute pursuant to the Cheltenham College Act 1894, in accordance with the terms of that Act, as amended by The Charities (Cheltenham College) Order 1976\textsuperscript{212}, and the Rules and Regulations made under it.

75. According to its 2004 annual report and accounts\textsuperscript{213}, Cheltenham College has two subsidiary companies, Cheltenham College Services Limited (company number 2872804) and Cheltenham College Enterprises Limited (company number 1849118).

76. The OFT considers that Cheltenham College and its subsidiary companies, Cheltenham College Services Limited and Cheltenham College Enterprises Limited, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

\textit{Cheltenham Ladies’ College}

77. Cheltenham Ladies’ College is an independent fee-paying boarding and day school for girls aged 11 to 18 years.

78. The college is run by The Cheltenham Ladies’ College, a body corporate incorporated by Royal Charter granted in 1935 and in 1991 and a registered charity (charity number 311722)\textsuperscript{214}.

79. According to its 2004 annual report and accounts\textsuperscript{215}, The Cheltenham Ladies’ College has three wholly owned subsidiaries, CLC Services Limited (company number 2721621), CLC Properties (Cheltenham) Limited (company number 2928814) and CLC Sports Services Limited (company number 4375298).

80. The OFT considers that The Cheltenham Ladies’ College and its subsidiaries, CLC Services Limited, CLC Properties (Cheltenham) Limited and CLC Sports Services Limited, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

\textit{Clifton College}

81. Clifton College is an independent fee-paying coeducational school for pupils aged 3 to 18 years, comprising a pre-preparatory, preparatory and upper school.

\textsuperscript{212} SI 1976 No. 1809.
\textsuperscript{213} Council’s Report and Accounts for Cheltenham College for the year ended 31 August 2004 (document PAA0052).
\textsuperscript{214} Annual report for The Cheltenham Ladies’ College for the year ended 31 July 2004 (document PAA0063).
\textsuperscript{215} Ibid.
82. The college is run by The Clifton College, a body corporate incorporated by Royal Charter granted in 1862 and a registered charity (charity number 311735)\textsuperscript{216}.

83. According to its 2004 annual report and accounts\textsuperscript{217}, The Clifton College has four wholly owned subsidiaries, Clifton College Services Limited (company number 2866554), Clifton College Library Services Limited (company number 4404301), The Clifton (Bristol) Trustee Company Limited (company number 548834) and Clifton College Developments Limited (company number 4717090)\textsuperscript{218}.

84. The OFT considers that The Clifton College and its subsidiaries, Clifton College Services Limited, Clifton College Library Services Limited, The Clifton (Bristol) Trustee Company Limited and Clifton College Developments Limited, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

\textit{Cranleigh School}

85. Cranleigh School is an independent fee–paying coeducational boarding school for pupils aged 7 to 18 years, comprising a senior school (for pupils aged 13 to 18) and a preparatory school (for pupils aged 7 to 13).

86. The school is run by Cranleigh School, a company limited by guarantee (company number 3595824) and a registered charity (charity number 1070856)\textsuperscript{219}.

87. According to its 2004 annual report and accounts\textsuperscript{220}, Cranleigh School owns the whole of the share capital of Cranleigh Enterprises Limited (company number 2902113).

88. The OFT considers that Cranleigh School and its subsidiary, Cranleigh Enterprises Limited, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

\textit{Dauntsey’s School}

89. Dauntsey’s School is an independent fee–paying coeducational day and boarding school for pupils aged 11 to 18 years.

90. The school has been run since 31 August 2006 by Dauntsey’s School, a company limited by guarantee (company number 5872694) and registered charity (charity number 1115638)\textsuperscript{221}. Prior to that date the school was

\textsuperscript{216} Annual report and financial statements for The Clifton College for the year ended 31 July 2004 (document PRD0005).
\textsuperscript{217} Ibid.
\textsuperscript{218} Ibid.
\textsuperscript{219} Annual Report and Accounts for Cranleigh School for the year ended 31 July 2004 (document PRD0025).
\textsuperscript{220} Ibid.
\textsuperscript{221} Letter dated 18 October 2006 from Dauntsey’s School to the OFT (document DSS15) in reply to a letter from the OFT dated 17 October 2006 (document DSS14). See also certificate of
run by the Dauntsey School Foundation, an unincorporated charitable trust (charity number 309480) under a Scheme of the Charity Commissioners dated 17 January 1978, as varied or affected by Schemes of the Commissioners dated 20 January 1989, 24 September 1996 and 6 February 2002 and by a Resolution of the trustees dated 18 March 2002 (‘the 1978 Scheme’). The 1978 Scheme was replaced by a new Scheme with effect from 29 August 2006 (‘the 2006 Scheme’) and on 9 October 2006 the Foundation was reregistered as a subsidiary charity of Dauntsey’s School (company number 5872694) with charity number 1115638-1.

91. Under the 2006 Scheme, the object of the Dauntsey School Foundation remains the advancement of the education of boys and girls at the school. The Foundation also continues to hold the assets forming school’s permanent endowment. Under the 2006 Scheme, the sole trustee of the Foundation is Dauntsey’s School (company number 5872694), the members and directors of which are the former trustees of the Foundation.

92. According to its 2004 annual report and accounts, the Dauntsey School Foundation has three wholly owned subsidiaries, Dauntsey’s School Enterprises Limited (company number 2956098), Jolie Brise Limited (company number 3234906) and Dauntsey’s School Library Services Limited (company number 3960151), the shares in which are held by the Chairman of the Governors and the headmaster as nominees. According to the information most recently supplied to the OFT by the school, these subsidiary companies were unaffected by the school’s reorganisation in August 2006.

93. The OFT considers that the company, Dauntsey’s School (company number 5872694) and the unincorporated charitable trust, the Dauntsey School Foundation (a subsidiary charity of Dauntsey’s School with charity number 1115638-1), together with its subsidiary companies, Dauntsey’s

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223 Document DSS10.

224 Extracts from the Charity Commission register as at 16 October 2006 for Dauntsey’s School (charity number 1115638) and the Dauntsey School Foundation (charity number 1115638-1) (document DSS6). See also extract from the Charity Commission register as at 16 November 2006 for the Dauntsey School Foundation (charity number 309480) (document number DSS18).

225 Letter dated 18 October 2006 from Dauntsey’s School to the OFT (document DSS15) in reply to a letter from the OFT dated 17 October 2006 (document DSS14). See also deed of transfer dated 31 August 2006 between the trustees of the Dauntsey School Foundation and Dauntsey’s School (document DSS11).

226 Letter dated 18 October 2006 from Dauntsey’s School to the OFT (document DSS15) in reply to a letter from the OFT dated 17 October 2006 (document DSS14).


228 Letter dated 18 October 2006 from Dauntsey’s School to the OFT (document DSS15) in reply to a letter from the OFT dated 17 October 2006 (document DSS14).
School Enterprises Limited, Jolie Brise Limited and Dauntsey’s School Library Services Limited, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition and that together they comprise the successor undertaking of the unincorporated charitable trust previously registered with charity number 309480.

**Downe House School**

94. Downe House School is an independent fee–paying boarding and day school for girls aged between 11 and 18 years.

95. The school is run by Downe House School, a company limited by guarantee (company number 2645228) and a registered charity (charity number 1015059). Downe House School (company number 2645228) is also the sole trustee of Downe House Trust, an unincorporated charitable trust (charity number 309091) under a Trust Deed dated 1 January 1944 as affected by a Scheme of the Charity Commissioners dated 2 August 1993, which holds the land and buildings occupied by the school.

96. According to its 2004 annual report and accounts, Downe House School (company number 2645228) owns the entire share capital of Downe House School Services Limited (company number 2664010).

97. The OFT considers that Downe House School (company number 2645228) and the unincorporated charitable trust, Downe House Trust (charity number 309091), of which it is the sole trustee, together with Downe House School Services Limited form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

**Eastbourne College**

98. Eastbourne College is an independent fee–paying coeducational day and boarding school for pupils aged between 13 and 18 years.

99. The school is run by Eastbourne College (Incorporated), a company limited by guarantee (company number 115408) and a registered charity (charity number 307071).


230 Ibid.


232 Annual Report and Accounts for Eastbourne College (Incorporated) for the year ended 31 August 2004 (document PRD0061).

233 Ibid.
number 3061136), in which it holds 99.99 per cent of the issued share capital\textsuperscript{234}.

101. The OFT considers that Eastbourne College (Incorporated) and its subsidiary, Eastbourne College Enterprises Limited, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

\textbf{Epsom College}

102. Epsom College is an independent fee–paying coeducational school for boarding and day pupils aged 13 to 18 years.

103. The school is run by Epsom College, a company limited by guarantee (company number 4009200) and a registered subsidiary charity (charity number 312046–146) of The Royal Medical Foundation of Epsom College (charity number 312046)\textsuperscript{235}.

104. The Royal Medical Foundation of Epsom College (‘the Foundation’) is a charity incorporated by statute pursuant to the Royal Medical Benevolent College Act 1855 and is now governed by a Scheme of Administration given effect by The Charities (Royal Medical Foundation of Epsom College) Order 2000\textsuperscript{236}. The Foundation is run by a Council, the members of which are also its charity trustees\textsuperscript{237}.

105. The Foundation is the sole member of Epsom College (company number 4009200)\textsuperscript{238} and continues to hold the real property and other assets representing the permanent endowment of the charity\textsuperscript{239}. Under its Articles of Association, the directors of Epsom College (company number 4009200), who are also its charity trustees, are elected by the Foundation and a majority of the directors must be members of the Council of the Foundation\textsuperscript{240}. The Council of the Foundation also has the power to appoint and dismiss the Head or bursar of any school administered by it or its subsidiary company\textsuperscript{241}.

106. In addition to Epsom College (company number 4009200), the Foundation has another charitable subsidiary, The Royal Medical Foundation, also a...
company limited by guarantee (company number 4010652), which provides financial assistance to present and former registered UK medical practitioners, their children, widows or widowers. The trustees of the Royal Medical Foundation (company number 4010652) are appointed by the authorised representative of the Foundation.

107. According to its most recent annual report and accounts, Epsom College (company number 4009200) has a wholly owned subsidiary company, Epsom College Enterprises Limited (company number 1066747).

108. The OFT considers that The Royal Medical Foundation of Epsom College (charity number 312046) exerts decisive influence over Epsom College (company number 4009200) and that, together with their respective subsidiaries, The Royal Medical Foundation (company number 4010652) and Epsom College Enterprises Limited (company number 1066747), they form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

Eton College

109. Eton College is an independent fee-paying boarding school for boys aged 13 to 18 years.

110. The college, whose full name is 'The Kynge's College of Our Ladys of Eton beside Windsore' is an exempt charity under Schedule 2 to the Charities Act 1993, and is run by its Governing Body, in accordance with Statutes and Orders made under the Public Schools Act 1868. The Governing Body, whose full name is 'The Provost and Fellows of Eton College', is a body corporate, incorporated by statute under that Act.

111. According to its 2004 annual report and accounts, Eton College has three subsidiary companies, Eton College Services Limited (company number 1213991), Rownsmoss Limited (company number 1185176) and Eton College Housing Society Limited, a charitable company limited by share capital and registered under the Friendly and Industrial Provident Societies Act 1968 (company number IP11802R). According to the same annual report and accounts, Eton College also controls Dorney Lake.

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242 Annual Report and Financial Statements for The Royal Medical Foundation of Epsom College for the year ended 30 June 2004 (document PRD00077). See also extract from the Charity Commission register for The Royal Medical Foundation as at September 2005 (document PRD0078).


245 See Eton College’s reply to the OFT’s request for information which was sent on 5 September 2005 (document MDB0061). See also Annual report for Eton College for the year ended 31 December 2004 (document MDB0061B).

246 Section 4A, Public Schools Act 1868, inserted by the Statute Law (Repeals Act) 1998.


248 See Annual report for Eton College Housing Society Limited for the year ended 31 December 2004 (document PRD0097).
Trust Company (company number 3273795) and its subsidiary, Dorney Lake Services Limited (company number 3578296).  

112. The OFT considers that The Kynge’s College of Our Ladye of Eton beside Windesore, together with its Governing Body, The Provost and Fellows of Eton College and its subsidiaries, Eton College Services Limited, Rownsmoss Limited, Eton College Housing Society Limited, Dorney Lake Trust Company and Dorney Lake Services Limited, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

Gresham’s School

113. Gresham’s School is an independent fee-paying coeducational day and boarding school for pupils aged 3 to 18 years. The School comprises three schools: a Senior School (aged 13 to 18 years), a Preparatory School (aged 8 to 13 years) and a Pre–Preparatory school (aged 3 to 8 years).

114. The school has been run since 1 September 2004 by Gresham’s School, a company limited by guarantee (company number 5196298) and a registered charity (charity number 1105500). Prior to that date the school was run by an unincorporated charitable trust (charity number 311268) under a Scheme of Administration dated 5 December 1975 (the ‘1975 Scheme’). The 1975 Scheme was replaced by a new Scheme with effect from 7 September 2004 (the ‘2004 Scheme’) and the trust renamed ‘Gresham’s School Trust’. The Gresham’s School Trust continues to hold land on behalf of the school but, according to the school, does not trade and does not have a trading subsidiary. Under article 5 of the 2004 Scheme, the trustee of the Gresham’s School Trust is the company, Gresham’s School (company number 5196298).

115. According to the school’s annual reports and accounts for the years ended 31 August 2001 to 2004, the school is ‘under the care of the Worshipful Company of Fishmongers of London’ and ... that company continues to fulfill the role of Estate Trustee ... as well as providing the majority of the School’s Governors’. According to the school, since 31 August 2004:

‘members of the Fishmongers’ Company make up 50% (11) of the total number of Trustees (22). In addition, the Chairman is normally a Fishmonger,

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249 Annual report for Eton College for the year ended 31 December 2004 (documentMDB0061B).
250 Gresham’s School Annual Reports for the years ended 31 August 2003 (document JXS0094) and 31 August 2004 (document PRD0108).
251 See Gresham’s School’s response to question 2 of the OFT’s section 26 Notice which was sent on 25 August 2005 (document MDB0062A). See also Gresham’s School Annual Report for the year ended 31 August 2004 (document MDB0062H).
252 See Gresham’s School’s response to question 3 of the OFT’s section 26 Notice which was sent on 25 August 2005 (document MDB0062A).
253 Scheme of the Charity Commissioners dated 7 September 2004 (document MDB0062D).
254 Documents JXS0092, JXS0093, JXS0094 and MDB0062H.
255 A company incorporated by Royal Charter with the full name ‘the Wardens and Commonalty of the Mistery of Fishmongers of the City of London’; see Gresham’s School’s response to question 1 of the OFT’s section 26 Notice which was sent on 25 August 2005 (document MDB0062A).
although this is not enshrined in the Memorandum and Articles of Association.\footnote{256}

The OFT notes, however, that in addition to the eleven governors that may be nominated by the Fishmongers' Company, under article 4(b) of the company's Articles of Association\footnote{257}, the Prime Warden for the time being of the Fishmongers' Company is also an ex-officio governor of the company. It thus remains the case that a majority of the governors of the school (twelve out of a total of twenty three) are nominated by the Fishmongers' Company.

116. According to the school:

> 'members of the Fishmongers' Company sit on the Trustee body of the "Gresham’s School Trust" in the same way (and same numbers) as set out in [relation to the company, Gresham’s School]\footnote{258}.

The OFT also notes that the charity trustees of the Gresham’s School Trust\footnote{259} are, with only one exception, also members and governors of the company, Gresham’s School (company number 5196298)\footnote{260}.

117. The OFT considers that Gresham’s School (company number 5196298) and the Gresham’s School Trust (charity number 311268) together comprise the successor undertaking of the unincorporated charitable trust with charity number 311268, previously known as Gresham’s School. The OFT also considers that The Fishmongers’ Company exerts decisive influence over both the company, Gresham’s School (company number 5196298) and the unincorporated charitable trust, Gresham’s School Trust (charity number 311268) and that all three entities form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

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**Haileybury**

118. Haileybury is an independent fee-paying coeducational boarding and day school for pupils aged between 11 and 18 years.

119. The college is run by The Governors of Haileybury, a body corporate incorporated by Royal Charter dated 30 August 1864, which has subsequently been amended, most recently on 14 June 2000\footnote{261}. The corporation is also a registered charity (charity number 310013).

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\footnote{256} See Gresham’s School’s response to question 4 of the OFT’s section 26 Notice which was sent on 25 August 2005 (document MDB0062A). See also article 4 of the Articles of Association of Gresham’s School (document MDB0062B).
\footnote{257} Document MDB0062B.
\footnote{258} See Gresham’s School’s response to question 4 of the OFT’s section 26 Notice which was sent on 25 August 2005 (document MDB0062A).
\footnote{259} Extract from the Charity Commission register for the Gresham’s School Trust as at 17 August 2005 (document PRD0107).
\footnote{260} Register of members (document PRD0100) and Articles of Association (document PRD0105) of Gresham’s School.
\footnote{261} Report and accounts for Haileybury for the year ended 31 July 2003 (document PRD0114).
120. According to its 2003 annual report and accounts\(^{262}\), affairs and property of the corporation are under the conduct, management and control of its Council, whose members are also the charity trustees. With the exception of the President, who is the Bishop for the time being of the Diocese within which the college is situated, the members of the Council are elected by the Governors, either directly or by virtue of their being elected to a post by virtue of which they become members of the Council \textit{ex officio}.

121. According to its 2003 annual report and accounts\(^{263}\), the corporation has a wholly owned subsidiary company, Haileybury Enterprises Limited (company number 2880179). Haileybury, acting by its Council, are also the trustees of the Imperial Service Endowment, an unincorporated subsidiary charitable trust, which controls Lambrook Haileybury School Trust Limited, a company limited by guarantee (company number 898539) and a registered charity (charity number 309098)\(^{264}\). Lambrook Haileybury School Trust Limited also has a subsidiary, Lambrook Sports and Leisure Club Limited (company number 2900023)\(^{265}\).

122. The OFT considers that Haileybury Imperial Service College, and its subsidiary, Haileybury Enterprises Limited, together with its subsidiary charity, Imperial Service Endowment and the companies Lambrook Haileybury School Trust Limited and Lambrook Sports and Leisure Club Limited, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

\textit{Harrow School}

123. Harrow School is an independent fee–paying boarding school for boys aged 11 to 18 years.

124. The school is run by The Keepers and Governors of the Possessions, Revenues, and Goods of the Free Grammar School of John Lyon, within the town of Harrow–on–the–Hill, a body corporate originally incorporated by Royal Charter in 1572 but now a body corporate pursuant to section 4A(2) of the Public Schools Act 1868\(^{266}\). The corporation is also a registered charity (charity number 310033). The corporation is also

\(^{262}\)Ibid.
\(^{263}\)Ibid.
\(^{264}\)Ibid. See also Report and Financial Statements for Lambrook Haileybury School Trust Limited for the year ended 31 July 2004 (document PRD0121), according to which, 'The Directors [of that company] consider Haileybury and Imperial Service College to be the ultimate parent entity'.
\(^{266}\)Inserted by the Statute Law (Repeals) Act 1998 and effectively replacing the provisions of section 5 of the Public Schools (Shrewsbury and Harrow Schools Property) Act 1973, which the 1998 Act repealed.
responsible for The John Lyon School, which was established under the powers conferred by the Public Schools Act 1868.\(^{267}\)

125. According to its 2004 annual report and accounts\(^{268}\), the corporation owns 100 per cent of the issued ordinary share capital of Harrow School Enterprises Limited (company number 01617359). The corporation is connected to another unincorporated charitable trust, The Harrow Development Trust (charity number 296097), a majority of whose trustees are also Keepers and Governors of the Free Grammar School of John Lyon.\(^{269}\)

126. The OFT considers that The Keepers and Governors of the Possessions, Revenues, and Goods of the Free Grammar School of John Lyon, within the town of Harrow–on–the–Hill and its subsidiary, Harrow School Enterprises Limited, together with The Harrow Development Trust, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

**King’s School Canterbury**

127. King’s School Canterbury is an independent fee–paying coeducational boarding and day school for pupils aged between 4 and 18 years old comprising the King’s School and the King’s Junior School.

128. The school is run by The Governors, the Head Master and the Lower Master of The King’s School of the Cathedral Church of Canterbury in the City of Canterbury, a body corporate incorporated by Royal Charter dated 8 July 1946 and amended by a supplemental Charter dated 4 February 1992.\(^{270}\) The corporation is also a registered charity (charity number 307942).

129. According to its 2004 annual report and accounts\(^{271}\), the corporation has a subsidiary company, King’s School Enterprises Limited (company number 2552953), and a subsidiary charity, Cleary Blackfriars Trust, an unincorporated charitable trust (charity number 297249).


\(^{268}\) Report and Financial Statements for Harrow School for the year ended 31 August 2004 (document PRD0127).

\(^{269}\) Ibid. See also Report and Financial Statement for The Harrow Development Trust for the year ended 31 August 2004 (document PRD0134) and extracts from the Charity Commission register for The Harrow Development Trust and for The Keepers and Governors of the Free Grammar School of John Lyon as at 28 September 2005 and 17 August 2005 respectively (documents PRD0133 and PRD0126). The Corporation is also the trustee of John Lyon’s Charity, a separately run unincorporated charitable trust (charity number 237725); see the statement of Harrow School relating to John Lyon’s Charity in the Schools’ Joint Factual Statement (document JM 01–a).

\(^{270}\) Audited Accounts for the year ended 31 July 2004 for The Governors, the Head Master and the Lower Master of The King’s School of the Cathedral Church of Canterbury in the City of Canterbury (document PAA0078).

\(^{271}\) Ibid.
130. The OFT considers that The Governors, the Head Master and the Lower Master of The King’s School of the Cathedral Church of Canterbury in the City of Canterbury and its subsidiary company, King’s School Enterprises Limited, together with its subsidiary charity, Cleary Blackfriars Trust, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

**Lancing College**

131. Lancing College is an independent fee–paying coeducational boarding and day school for pupils aged between 13 and 18 years.

132. The school is run by Lancing College Limited (company number 3779985) a private company limited by shares and a registered charity (charity number 1076483). According to its 2004 annual report and financial statements, Lancing College Limited controls two subsidiary companies, Buxbrass Limited (company number 1570797) and LCJS Limited (company number 4273852), of which it is the sole shareholder. LCJS Limited is also a registered charity (charity number 1093023). According to Lancing College Limited’s annual report and financial statements it also has another subsidiary, The Lancing College Development Fund, an unincorporated charitable trust (charity number 310896).

133. Until 28 May 2005, Lancing College Limited was a wholly owned subsidiary of the Woodard Schools (Southern Division) Limited, a private company limited by shares (company number 1182632) and registered charity (charity number 269673), which in turn was until 31 August 2004 controlled by The Corporation of SS Mary and Nicolas, an unincorporated charitable trust (charity number 314291) and thereafter by The Woodard Corporation, a company limited by guarantee (company number 4659710) and a registered charity (charity number 1096270). According to the school, Woodard Schools (Southern Division) Limited is now a dormant company and will be removed from the register.

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272 Directors’ report and financial statements for the year ended 31 August 2004 (document PAA0094).
273 Annual Returns dated 9 November 2004 (Buxbrass Limited) and 9 April 2004 (LCJS Limited) and filed at Companies House (documents PAA0122 and PAA0120).
274 The shares in Woodard Schools (Southern Division) Limited were held as to 94 per cent by The Woodard Corporation Trustee Company, a private unlimited company with share capital (company number 380961), which held them as nominees of The Corporation of SS Mary and Nicolas; see Annual returns dated 28 February 2002, 6 January 2003, 11 February 2004 and 12 January 2005 filed at Companies House by the Woodard Schools (Southern Division) Limited (documents PAA0098, PAA0099, PAA0100 and PAA0101) and Lancing College’s response to the OFT’s section 26 Notice which was sent on 30 August 2005 (document MDB0064). The shares in Woodard Schools (Southern Division) Limited were transferred to The Woodard Corporation (company number 4659710) on 31 August 2004 and The Woodard Corporation Trustee Company was dissolved on 16 August 2005 (see company details as registered at Companies House on 17 August 2005 (document PAA0111)).
275 Lancing College’s response to the OFT’s section 26 Notice which was sent on 30 August 2005 (document MDB0064).
134. Since 28 May 2005, Lancing College Limited has been a wholly owned subsidiary of The Woodard Corporation (company number 4659710)\(^{276}\), which also appoints the school’s governors who are also the directors of Lancing College Limited\(^{277}\).

135. The Woodard Corporation (company number 4659710) is the successor of the unincorporated charitable trust, The Corporation of SS Mary and Nicolas (charity number 314291), whose assets and functions were taken over by the Woodard Corporation (company number 4659710) with effect from 1 September 2004 with the President, Provosts and Fellows of The Corporation of SS Mary and Nicolas becoming Fellows of The Woodard Corporation\(^{278}\). The unincorporated charitable trust, The Corporation of SS Mary and Nicolas (charity number 314291) has been removed from the Register of Charities and no longer exists\(^{279}\).

136. The OFT considers that The Woodard Corporation (company number 4659710) is the successor undertaking of the unincorporated charitable trust, The Corporation of SS Mary and Nicolas (charity number 314291), which no longer exists and that Woodard Schools (Southern Division) Limited is no longer active and may also be considered for the purpose of these proceedings to have effectively ceased to exist. The OFT also considers that the Woodard Corporation (company number 46598710) exerts decisive influence over the policy of Lancing College Limited (company number 3779985), which, together with their subsidiaries\(^{280}\), form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

**Malvern College**

137. Malvern College is an independent fee-paying coeducational boarding and day school for pupils aged between 13 and 18 years.

138. The college is run by Malvern College, a body corporate incorporated by Royal Charter dated 23 January 1929 as varied by a Scheme of the

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276 See Annual Return filed electronically at Companies House on 21 June 2005 by Lancing College Limited (document PAA0093).

277 Under the Articles of Association of Lancing College Limited, adopted on 6 July 2005 the governors consist of the Provost, who is assigned to the school by the Woodard Corporation, and between four and sixteen other individuals, appointed by the Woodard Corporation and of whom not less than half must also be Fellows of the Woodard Corporation; see articles 1 and 5 (document PAA0088). The Fellows of the Woodard Corporation are the members of that company; see the Memorandum and Articles of Association of the Woodard Corporation (document PAA0108).

278 See Lancing College’s response to the OFT’s section 26 Notice which was sent on 30 August 2005 (document MDB0064).

279 See extract from the Charities Register for The Corporation of SS Mary and Nicolas (charity number 314291) (document PAA0117) and Lancing College’s response to the OFT’s section 26 Notice which was sent on 30 August 2005 (document MDB0064). See also the Report and Accounts of The Woodard Corporation for the year ended 31 August 2004 (document PAA0109).

280 Details of the subsidiaries of Lancing College Limited are set out in paragraph 132 above. Details of the subsidiaries of The Woodard Corporation as at 31 August 2004 are included in its Report and Accounts for that year (document PAA0109).
Charity Commissioners dated 3 August 1992 and a Supplemental Charter dated 13 October 1992\textsuperscript{281}. The corporation is also a registered charity (charity number 527578).

139. According to its 2004 annual report and accounts\textsuperscript{282}, Malvern College has a wholly owned subsidiary company, Malvern College Enterprises Limited (company number 2706656)\textsuperscript{283}.

140. The OFT considers that Malvern College and its subsidiary, Malvern College Enterprises Limited, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

**Marlborough College**

141. Marlborough College is an independent fee–paying coeducational school for boarding and a small number of day pupils aged 13 to 18 years.

142. The college is run by Marlborough College, a body corporate incorporated by Royal Charter dated 11 July 1958 as amended by Supplemental Charter dated 18 March 1975 and an Order in Council dated 11 April 1995\textsuperscript{284}. The corporation is also a registered charity (charity number 309486).

143. Marlborough College also has a wholly owned subsidiary trading company, Marlborough College Enterprises Limited (company number 2967713)\textsuperscript{285}. Marlborough College also administers the Marlborough College Trust, an unincorporated trust and connected charity (charity number 1061798)\textsuperscript{286}.

144. The OFT considers that Marlborough College and its subsidiary, Marlborough College Enterprises Limited, together with Marlborough College Trust, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

\textsuperscript{281} Seventy–sixth Annual Report with Statement of Accounts for Malvern College for the year ended 31 August 2004 (document TXD4005). See also extract from the Charity Commission register for The Elizabethan Trust as at 17 August 2005 (document TXD4000).

\textsuperscript{282} Seventy–sixth Annual Report with Statement of Accounts for Malvern College for the year ended 31 August 2004 (document TXD4015).

\textsuperscript{283} Ibid.

\textsuperscript{284} Report of Council and Financial Statements for Marlborough College for the year ended 30 June 2004 (document TXD4015). See also extract from the Charity Commission register for Marlborough College as at 17 August 2005 (document TXD4012).

\textsuperscript{285} Report of Council and Financial Statements for Marlborough College for the year ended 30 June 2004 (document TXD4015). See also Annual Return for Marlborough College Enterprises Limited dated 15 September 2004 and filed at Companies House (document TXD4017). Marlborough College also has two wholly owned subsidiary companies that are dormant, Marlborough College Summer School Limited (company number 1217628) and Crosby & Lawrence Limited (company number 383203).

\textsuperscript{286} Accounts for Marlborough College Trust for the year ended 30 June 2004 (document TXD4022). See also Report of Council and Financial Statements for Marlborough College for the year ended 30 June 2004 (document TXD4015); and extracts from the Charity Commission register for Marlborough College as at 17 August 2005 (document TXD4012) and for Marlborough College Trust as at 27 September 2005 (document TXD4021), according to which a majority of the charity trustees of Marlborough College Trust are also charity trustees of Marlborough College.
**Millfield School**

145. Millfield School is an independent fee-paying coeducational school for both day and boarding pupils aged 2 to 18 years. It has a preparatory school and pre-preparatory school.

146. The school is run by Millfield, a company limited by guarantee (company number 522385) and a registered charity (charity number 310283)\(^\text{287}\).

147. According to its 2004 report and accounts\(^\text{288}\), Millfield owns the whole of the share capital of Millfield School Enterprises Limited (company number 1553104).

148. The OFT considers that Millfield (company number 522385) and its subsidiary Millfield School Enterprises Limited, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

**Mill Hill School**

149. Mill Hill School is an independent fee-paying coeducational school for boarding and day pupils aged 13 to 18 years.

150. The school is run by The Mill Hill School Foundation, a company limited by guarantee (company number 3404450) and a registered charity (charity number 1064758)\(^\text{289}\). Mill Hill School is one of three schools vested in the Mill Hill School Foundation\(^\text{290}\).

151. According to its 2004 report and accounts\(^\text{291}\), The Mill Hill Foundation has a wholly owned subsidiary, Mill Hill School Enterprises Limited (company number 1690525).

152. The OFT considers that The Mill Hill Foundation (company number 3404450) and its subsidiary, Mill Hill School Enterprises Limited, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

**Oakham School**

153. Oakham School is an independent fee-paying coeducational boarding and day school for pupils aged between 10 and 18 years.

154. The school is run by Oakham School, an unincorporated charitable trust under a Scheme dated 22 November 1973 of the Secretary of State for

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\(^{287}\) Report and Financial Statements for Millfield for the year ended 31 August 2004 (document TXD4030).

\(^{288}\) Ibid.


\(^{290}\) Other schools are Belmont School and Grimsdell School.

Education and Science and a registered charity with charity number 527825292.

155. According to its 2004 published annual report and accounts293, the trust has a wholly owned subsidiary company, Oakham School Enterprise Limited (company number 1280055) and a subsidiary charity, Oakham School Foundation, an unincorporated charitable trust (charity number 527825–15). The trust also has a related charity, The Elizabethan Trust, an unincorporated charitable trust (charity number 507950) whose trustees are also trustees of Oakham School294.

156. The OFT considers that the unincorporated charitable trust, Oakham School (charity number 527825), its subsidiary company, Oakham School Enterprise Limited, and subsidiary charity, The Oakham School Foundation, together with The Elizabethan Trust, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

Oundle School

157. Oundle School is an independent fee-paying coeducational school for both day and boarding pupils aged 11 to 18 years.

158. The school is run by the Corporation of Oundle School (‘the Corporation’), through the Governing Body of Oundle School (‘the Governing Body’). The Corporation was incorporated by Royal Charter granted in 1930 and a supplemental Charter granted on 31 July 1978 and amended by Orders of the Privy Council dated 22 June 1999295. The corporation is also a registered charity (charity number 309921).

159. Under the supplemental Charter and Bye-laws, as amended in June 1999, the management of Oundle School is vested in the Governing Body, which is made up of between 12 and 17 Governors, at least 60% of whom are appointed by the Court of the Worshipful Company of Grocers (a company incorporated by Royal Charter in 1428 and most recently in 1722, also known as the Grocers’ Company)296. The other Governors are appointed by the Governing Body for their expertise297.

292 Trustees’ Report and Financial Statements for Oakham School for the year ended 31 August 2004 (document TXD4044). See also extract from the Charity Commission register for Oakham School as at 17 August 2005 (document TXD4042).
293 Trustees’ Report and Financial Statements for Oakham School for the year ended 31 August 2004 (document TXD4044).
294 Ibid. See also extract from the Charity Commission register for The Elizabethan Trust as at 27 September 2005 (document TXD4049) and extract from the Charity Commission register for Oakham School as at 17 August 2005 (document TXD4042).
295 Oundle School’s response to the OFT’s section 26 Notice which was sent on 9 February 2004 (document AXZ742R).
297 Ibid. See also Annual Report and Financial Statements for Oundle School for the year ended 31 August 2004 (document TXD4054).
160. According to its 2004 annual report and accounts298, the Corporation of Oundle School has two wholly owned subsidiary companies, Oundle School Building Company Limited (company number 1093289 and Oundle School Services Company Limited (company number 2329428)299. It is also the sole trustee of the Free Grammar School of Sir William Laxton, an unincorporated charitable trust (charity number 309918), which runs Laxton School, an independent coeducational school for ages 11 to 18300. The Corporation of Oundle School also controls The Oundle Schools Charitable Trust, an unincorporated charitable trust (charity number 1075698)301.

161. The OFT considers that the Corporation of Oundle School together with its subsidiaries, including Oundle School Building Company Limited, Oundle School Services Company Limited, the Free Grammar School of Sir William Laxton, and the Oundle Schools Charitable Trust, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition. The OFT makes no finding as to whether the Grocers’ Company is also part of the same undertaking and this Decision is not addressed to it302.

Radley College

162. Radley College is an independent fee-paying boarding school for boys aged between 13 and 18 years.

163. The college is run by The Council of St Peter’s College, Radley, a body corporate incorporated by Royal Charter, being the trustees of St Peter’s College, Radley, a body corporate incorporated by Royal Charter dated 14 November 1890303. The corporation is also a registered charity (charity number 309243).

164. According to its 2003 annual report and accounts304, The Council of St Peter’s College has a wholly owned subsidiary company, Glencopy Limited (company number 2909412). The corporation also controls The Radley Foundation, an unincorporated charitable trust (charity number 272671)305.

165. The OFT considers that The Council of St Peter’s College and its subsidiary company, Glencopy Limited, together with The Radley

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298 Annual Report and Financial Statements for Oundle School for the year ended 31 August 2004 (document TXD4054).
299 Ibid.
301 Annual Report and Financial Statements for Oundle School for the year ended 31 August 2004 (document TXD4054). See also Annual Report and Financial Statements for Oundle Schools Charitable Trust for the year ended 31 August 2004 (document TXD4062).
302 See note 176 above.
303 Annual report and accounts for Radley College for the year ended 31 July 2003 (document SJI1119).
304 Ibid.
305 Ibid. See also Trustees’ report and accounts for The Radley Foundation for the year ended 31 July 2004.
Foundation, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

Repton School

166. Repton School is an independent fee-paying coeducational day and boarding school for pupils aged 13 to 18 years.\textsuperscript{306}

167. The day to day operating activities of the school have been run since 1 September 2002 by Repton School, a company limited by guarantee (company number 4390219) and a registered charity (charity number 1093166). Prior to that date the school was run by an unincorporated charitable trust (charity number 527177) under a Scheme of Administration dated 24 July 1996 (the '1996 Scheme'). The 1996 Scheme was replaced by a new Scheme with effect from 25 June 2002 ('the 2002 Scheme') and the trust renamed the Repton School Trust. The trust continues to hold the land and buildings from which the school operates.\textsuperscript{307} Under article 6 of the 2002 Scheme, the trustee of the Repton School Trust is Sir John Port’s Charity, a company limited by guarantee (company number 4399494) and a registered charity (charity number 1092298).\textsuperscript{308}

168. Throughout the period since its incorporation in March 2002 Sir John Port’s Charity (company number 4399494) has had the same members as Repton School (company number 439029).\textsuperscript{309} The governors of the two companies, who are also the companies' directors have also been the same, at least during the periods covered by the companies' respective annual reports and accounts for the years ended 31 August 2003 and 2004.\textsuperscript{310} The charity trustees of Repton School (charity number 1093166) and Sir John Port’s Charity (charity number 1092298) are all also charity trustees of the Repton School Trust (charity number 527177).\textsuperscript{311}

169. As well as holding land and buildings used by Repton School, the Repton School Trust also holds land and buildings used by Repton Preparatory School.\textsuperscript{312} Repton Preparatory School is an independent coeducational school for 3 to 13 year olds and was also formerly run by the trust, but is now run by Repton Preparatory School, a company limited by guarantee.

\textsuperscript{307} Repton School's response to question 1 of the OFT’s section 26 Notice which was sent on 26 August 2005 (document MDB0070B). See also Report of the Corporate Trustee and Financial Statements for Repton School Trust for the year ended 31 August 2004 (document PR0045).
\textsuperscript{308} Document PR0046 and PR0049.
\textsuperscript{309} See Register of members for Repton School (document MDB0070J) and for Sir John Port’s Charity (document MDB0070K).
\textsuperscript{310} Extracts from the Annual reports and accounts for Sir John Port Charity for year ended 31 August 2004 and Repton School for the years ended 31 August 2003 and 2004 (documents PR0049, LXT472 and PR0042).
\textsuperscript{311} Extracts from the Charity Commission register as at 18 August 2005 for Sir John Port’s Charity, Repton School and Repton School Trust (documents PR0046, PR0039 and PR0043).
\textsuperscript{312} Report of the Corporate Trustee and Financial Statements for Repton School Trust for the year ended 31 August 2004 (document PR0045).
(company number 4390208) and a registered charity (charity number 1093165). The charity trustees of Repton Preparatory School are also charity trustees of Repton School (charity number 1093166), Repton School Trust (charity number 527177) and Sir John Port’s Charity (charity number 1092298). The governors of Repton Preparatory School, at least during the period covered by its annual report and accounts for the year ended 31 August 2004 were also the same as the governors and directors of Sir John Port’s Charity (company number 4399494) and of Repton School (company number 439029).

Repton School Trust has a wholly owned subsidiary, Repton School Enterprises Limited (company number 264487). Repton School also has a wholly owned subsidiary company, The Repton School Shop Limited (company number 905547). According to the 2004 annual report and financial statements for Repton School, the company also has another related entity, The Repton Foundation, an unincorporated charitable trust (charity number 1067418), the majority of whose charity trustees are also charity trustees of Repton School, the Repton Trust and Sir John Port’s Charity. According to the 2004 annual report and financial statements of The Repton Foundation, the ultimate parent undertaking of the foundation is Sir John Port’s Charity, which is:

‘the corporate trustee of Repton School Trust, an unincorporated charity which has the power to appoint and remove a majority of the trustees of the Repton Foundation. The Repton School Trust is therefore considered to be the immediate parent undertaking of the Repton Foundation.

‘Repton School and Repton Preparatory school are considered to be related parties of The Repton Foundation, by virtue of the fact that the trustees of Sir John Port’s Charity are also the trustees of Repton School and Repton Preparatory School’.

The OFT considers that Repton School (company number 4390219) and Repton School Trust (charity number 527177) together comprise the

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313 See also Reports of the Governors and Financial Statements for Repton School for the years ended 31 August 2001 and 2002 (documents LXT470 and LXT471) and Report of the Governors and Financial Statements for Repton Preparatory School for the year ended 31 August 2004 (document PR0053).
314 Extracts from the Charity Commission register as at 20 September 2005 for Repton Preparatory School (document PR0052) and as at 18 August 2005 for Sir John Port’s Charity, Repton School and Repton School Trust (documents PR0046, PR0039 and PR0043).
315 Report of the Governors and Financial Statements for Repton Preparatory School for the year ended 31 August 2004 (document PR0053) and extracts from the Annual reports and accounts for Sir John Port Charity and Repton School for the year ended 31 August 2004 (documents PR0049 and PR0045).
316 Annual Returns dated 24 August 2004 (Repton School Enterprises Limited document PR0058) and 1 December 2004 (The Repton School Shop Limited) filed at Companies House (document PR0063).
318 Extracts from the Charity Commission register as at 20 September 2005 for The Repton Foundation (document PR0064) and as at 18 August 2005 for Sir John Port’s Charity, Repton School and Repton School Trust (documents PR0046, PR0039 and PR0043).
successor undertaking of the unincorporated charitable trust with charity number 527177, previously known as Repton School and that, together with the trustee of Repton School Trust, Sir John Port’s Charity (company number 4399494) and their subsidiaries, including Repton Preparatory School, Repton School Enterprises Limited, The Repton School Shop Limited and the Repton Foundation, they form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

**Royal Hospital School**

172. Royal Hospital School is an independent fee–paying coeducational boarding school, for pupils aged 11 to 18 years primarily drawn from the children and grandchildren of Royal Navy, Royal Marines, and Merchant Navy personnel.\(^\text{320}\)

173. The school forms part of Greenwich Hospital, a Crown charity, whose governance is vested in the Secretary of State for Defence under the Greenwich Hospital Acts 1865 to 1996 and the Defence (Transfer of Functions) Act 1964. Under the Acts the Secretary of State also holds Greenwich Hospital’s land and properties on trust for Her Majesty for the exclusive benefit of Greenwich Hospital.\(^\text{321}\) Neither the Royal Hospital School nor the Greenwich Hospital has independent legal personality. The relevant Party is the Secretary of State for Defence.

174. The OFT considers that when acting in his capacity as the person in whom governance of the Royal Hospital School, as part of Greenwich Hospital, is vested, the Secretary of State for Defence is an undertaking for the purpose of applying the Chapter I prohibition. The OFT also accepts, however, that the Secretary of State for Defence constitutes the Crown for the purpose of the exercise of his statutory functions as trustee of Greenwich Hospital and that section 73 of the Act therefore applies. Under that section, any provision made by or under the Act binds the Crown. This is subject to a number of exceptions, however. In particular, under section 73(1)(b) the Crown is not liable for any penalty under any provision made under or by the Act. In the absence of any non–Crown entity that may be held legally responsible for the Royal Hospital School, no penalty is therefore imposed in Section V of this Decision in respect of that school’s participation in the infringement.

**Rugby School**

175. Rugby School is an independent fee–paying coeducational boarding and day school for pupils aged 11 to 18 years.

176. The school is run by the Governing Body of Rugby School, a body corporate incorporated by statute pursuant to section 4A(2) of the Public

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\(^{\text{320}}\) See Royal Hospital School’s response to the OFT’s section 26 Notice which was sent on 9 February 2004 (document JXS0001).

\(^{\text{321}}\) See Royal Hospital School’s response to the OFT’s section 26 Notice dated 23 August 2004 (document MDB0074).
Schools Act 1868\textsuperscript{322}, in accordance with Statutes made under that Act\textsuperscript{323}. Rugby School is also a registered charity (charity number 528752).

177. According to its 2004 annual report and accounts\textsuperscript{324}, the Governing Body of Rugby School has a wholly owned subsidiary, Rugby School Enterprises Limited (company number 2264068), and is also the ultimate controlling party of The Arnold Foundation for Rugby, a company limited by guarantee (company number 4516482) and a registered charity (charity number 1095856)\textsuperscript{325}.

178. The OFT considers that the Governing Body of Rugby School and its subsidiary companies, Rugby School Enterprises Limited and The Arnold Foundation for Rugby, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

\textit{St Edward’s School}

179. St Edward’s School is an independent fee–paying coeducational school for both day and boarding pupils aged 13 to 18 years.

180. The school is run by St Edward’s School, a company limited by guarantee (company number 116784) and a registered charity (charity number 309681)\textsuperscript{326}.

\textit{St Leonards–Mayfield School}

181. St Leonards–Mayfield School is an independent fee–paying day and boarding school for girls aged 11 to 18 years.

182. The school is run by St Leonards–Mayfield School, a company limited by guarantee (company number 3068144) and a registered charity (charity number 1047503)\textsuperscript{327}.

183. According to its 2004 report and accounts\textsuperscript{328}, St Leonards–Mayfield School owns Mayfield Services Limited (company number 2770019).

184. The OFT considers that St Leonards–Mayfield School (company number 3068144) and its subsidiary, Mayfield Services Limited, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

\textsuperscript{322} Inserted by the Statute Law (Repeals) Act 1998.
\textsuperscript{323} Annual Report and Financial Statements for the Governing Body of Rugby School for the year ended 31 July 2004 (document PR0069).
\textsuperscript{324} Ibid.
\textsuperscript{325} See also Annual Report and Financial Statements for The Arnold Foundation for Rugby School for the year ended 31 July 2004 (document PR0074).
\textsuperscript{326} Governors’ report for St Edward’s School, Oxford for the year ended 31 July 2004 (document PAA0153).
\textsuperscript{327} Financial statements for St Leonards–Mayfield School for the year ended 31 August 2004 (document PAA0160).
\textsuperscript{328} Ibid.
Sedbergh School

185. Sedbergh School is an independent fee-paying coeducational boarding and day school for pupils aged between 5 and 18 years, comprising Sedbergh School and Sedbergh Junior School.

186. The school is run by Sedbergh School, a company limited by guarantee (company number 3946280) and a registered charity (charity number 1080672)\(^{329}\).

187. According to its 2004 report and accounts\(^{330}\), Sedbergh School controls 100% of Sedbergh School Developments Limited (company number 3184583).

188. The OFT considers that Sedbergh School (company number 3946280) and its subsidiary, Sedbergh School Developments Limited, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

Sevenoaks School

189. Sevenoaks School is an independent fee-paying coeducational day and boarding school for pupils aged 11 to 18 years.

190. The school has been run since 1 February 2004 by Sevenoaks School, a company limited by guarantee (company number 4908949) and a registered charity (charity number 1101358)\(^{331}\). Prior to that date the school was run by an unincorporated charitable trust (charity number 307923) under a Scheme dated 15 July 1988 (‘the 1988 Scheme’). The 1988 Scheme was replaced by a new Scheme with effect from 26 January 2004 (‘the 2004 Scheme’) and the trust renamed ‘Sevenoaks School Foundation’. The Sevenoaks School Foundation continues to hold the land and buildings that are used by the school, which are leased to Sevenoaks School (company number 4908949) on commercial terms\(^{332}\). The Sevenoaks Foundation also retains the other permanent endowments of the trust which are used to benefit Sevenoaks School and raises money for and undertakes new construction projects\(^{333}\). Under article 5 of the 2004 Scheme, the trustees of the Sevenoaks School Foundation are

\(^{329}\) Report and Accounts for Sedbergh School for the year ended 31 July 2004 (document PR0078).

\(^{330}\) Ibid.


\(^{332}\) Sevenoaks School’s response dated 14 September 2005 (document MDB0078) to the OFT’s request for information dated 31 August 2005 (document MDB0031).

appointed on an annual basis by Sevenoaks School (company number
4908949).334

191. According to the 2004 annual report and accounts of the Sevenoaks
School Foundation335, the trustees of the Foundation control the whole of
the share capital of a trading company Sennocke Services Limited
(company number 1980362).

192. The OFT considers that the company, Sevenoaks School (company
number 4908949) and the unincorporated charitable trust, the Sevenoaks
School Foundation (charity number 307923), together with the subsidiary
Sennocke Services Limited, constitute one and the same undertaking for
the purpose of applying the Chapter I prohibition and that together they
comprise the successor undertaking of the unincorporated charitable trust
with charity number 307923, previously known as Sevenoaks School.

Sherborne School

193. Sherborne School is an independent fee–paying boarding and day school
for boys aged 13 to 18 years.

194. The school is run by Sherborne School, a company limited by guarantee
(company number 4002575) and a registered charity (charity number
1081228)336. The company also operates a coeducational boarding–only
international college that caters for overseas pupils aged 11 to 17 years
(Sherborne International College).

195. According to its 2004 report and accounts337, Sherborne School owns the
whole of the share capital of Sherborne School (Trading) Limited
(company number 2747901) and Sherborne School (Leisure) Limited
(company number 4332724).

196. The OFT considers that Sherborne School (company number 4002575)
and its subsidiaries Sherborne School (Trading) Limited and Sherborne
School (Leisure) Limited, form part of one and the same undertaking for
the purpose of applying the Chapter I prohibition.

Shrewsbury School

197. Shrewsbury School is an independent fee–paying boarding and day school
for boys aged between 13 and 18 years.

198. The school is run by the Governing Body of Shrewsbury School, a body
 corporate incorporated by statute pursuant to section 4A(2) of the Public

334 Document PR0086.
335 Trustees' Report and Financial Statements for Sevenoaks School Foundation for the year ended
31 July 2004 (document PR0087).
336 Annual report and financial statements for Sherborne School for the year ended 30 June 2004
(document PAA0132).
337 Ibid.
Schools Act 1868338, in accordance with Statutes made under that Act339. Shrewsbury School is also a registered charity (charity number 528413).

199. According to its 2004 annual report and accounts340, the Governing Body of Shrewsbury School has a wholly owned subsidiary, Shrewsbury School Enterprises Limited (company number 4535585) and also controls Shrewsbury School Musical Activities (company number 2185270).

200. The OFT considers that the Governing Body of Shrewsbury School and its wholly owned subsidiary, Shrewsbury School Enterprises Limited, together with Shrewsbury School Musical Activities, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

**Stowe School**

201. Stowe School is an independent fee–paying school for boys aged 13 to 18 years and, in the Sixth Form, for girls aged 16 to 18 years.

202. The school is run by Stowe School Limited, a company limited by guarantee (company number 187251) and a registered charity (charity number 310639)341.

203. According to its 2004 report and accounts342, Stowe School Limited owns the whole of the issued share capital of Stowe School Educational Services Limited (company number 1378711).

204. The OFT considers that Stowe School Limited (company number 187251) and its subsidiary, Stowe School Educational Services Limited, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

**Strathallan School**

205. Strathallan School is an independent fee–paying coeducational school for boarding and day pupils aged 10 to 18 years.

206. The school is run by Strathallan School, a company limited by guarantee (company number SC044822) and a registered charity (charity number SC008903).

207. According to its 2004 annual report and accounts343, Strathallan School has a 100 per cent interest in Freeland Services Limited, a private company limited by shares (company number SC082675), the surplus of

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340 Ibid.
342 Ibid.
whose activities are covenanted to the Ochil Trust, a registered charity (SC026991) which provides bursaries to worthy pupils. As in the case of Freeland Services Limited, The Ochil Trust is described in Strathallan School’s accounts as a ‘subsidiary undertaking’ and its results are consolidated with those of Strathallan School.

208. The OFT considers that Strathallan School (company number SC044822), and its wholly owned subsidiary, Freeland Services Limited, together with The Ochil Trust, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

**Tonbridge School**

209. Tonbridge School is an independent fee-paying school for boys aged 13 to 18 years.

210. The school has been run since 1 July 2003 by Tonbridge School, a company limited by guarantee (company number 4787097) and a registered charity (charity number 1097977) 344. Prior to that date the school was run by The Free Grammar School of Sir Andrew Judd, Knight, an unincorporated charitable trust (charity number 307099) under a Scheme of the Minister of Education dated 11 December 1946, as varied or amended (the ‘1946 Scheme’) 345. The 1946 Scheme was replaced by a new Scheme with effect from 30 June 2003 (the ‘2003 Scheme’) and the trust renamed ‘The Sir Andrew Judd Foundation’. The Sir Andrew Judd Foundation continues to hold the school’s investment assets and virtually all the school’s buildings 346. The objects of the 2003 Scheme are:

- The provision of items, services and facilities for Tonbridge School:

- The advancement of education of the boys at Tonbridge School by the provision of scholarships and prizes and such other means as the trustee shall determine;

- The advancement of education by educational activities ancillary and incidental to the running of Tonbridge School and such associated activities for the benefit of the community. 347

211. Under article 7 of the 2003 Scheme, the sole trustee of The Sir Andrew Judd Foundation is The Worshipful Company of Skinners 348, a body corporate incorporated by Royal Charter in 1327, also known as The Skinners’ Company. The full name of the Company, as set out in its

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344 See Tonbridge School’s response to the OFT’s section 26 Notice which was sent on 9 February 2004 (document LXT632R). See also Directors’ and Governors’ Annual Report for Tonbridge School for the year ended 30 June 2004 (document PRD0145).
347 Ibid.; see also The Worshipful Company of Skinners’ response to the OFT’s section 26 Notice which was sent on 22 September 2005 (document MDB0086).
348 Scheme of the Charity Commissioners dated 30 June 2003 (document PRD0147).
Charter is 'The Master and Wardens of the Guild or Fraternity of the Body of Christ of the Skinners of London'\textsuperscript{349}. Under article 4 of the 1946 Scheme, which the 2003 Scheme replaced, the estates and property of the trust were also vested in The Skinners' Company and were administered by the Master, Wardens and Court of that company. The full name given to the Skinners' Company in that document is the 'Master, Wardens and Commonalty of the Mystery of Skinners of the City of London'\textsuperscript{350}.

212. The Skinners' Company is also the sole member of Tonbridge School (company number 4787097)\textsuperscript{351}. Under the latter's Articles of Association the majority of its Governors, who are also the directors of the company, are appointed by The Skinners' Company\textsuperscript{352}. The other governors are co-opted by resolution of the Governors\textsuperscript{353}.

213. According to its 2004 annual report and accounts\textsuperscript{354}, Tonbridge School (company number 4787097) has a wholly owned subsidiary, Tonbridge Services Limited (company number 1774458) and also acts as sole trustee of Tonbridge School Foundation, an unincorporated charitable trust (charity number 1099162)\textsuperscript{355}.

214. The OFT considers that Tonbridge School (company number 1097977) and The Sir Andrew Judd Foundation (charity number 307099) together comprise the successor undertaking of the unincorporated charitable trust with charity number 307099, previously known as The Free Grammar School of Sir Andrew Judd, Knight. The OFT also considers that The Worshipful Company of Skinners exerts decisive influence over both Tonbridge School (company number 1097977) and The Sir Andrew Judd Foundation (charity number 307099), and that all three entities, together with their subsidiaries, Tonbridge Services Limited and Tonbridge School Foundation, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

\textbf{Truro School}

215. Truro School is an independent fee–paying coeducational school for both day and boarding pupils aged 3 to 18 years, comprising a Senior School (entry at 11 and 13 upwards) and a Preparatory School, Treliske (for pupils aged 3 to 11 years).

\textsuperscript{349} The Worshipful Company of Skinners' response to the OFT's section 26 Notice which was sent on 22 September 2005 (document MDB 0086).
\textsuperscript{350} Scheme of the Minister of Education dated 11 December 1946 (document MDB0085C). See also The Worshipful Company of Skinners' response to the OFT's section 26 Notice which was sent on 22 September 2005 (document MDB 0086).
\textsuperscript{351} Tonbridge School's responses to the OFT's section 26 Notices which were sent on 9 February 2004 and 30 August 2005 (documents LXT632R and MDB0085, respectively).
\textsuperscript{352} Articles 3 and 12 of the Articles of Association of Tonbridge School (document PRD0144). See also Directors’ and Governors’ Annual Report for Tonbridge School for the year ended 30 June 2004 (document PRD0145).
\textsuperscript{353} Ibid.
\textsuperscript{354} Directors’ and Governors’ Annual Report for Tonbridge School for the year ended 30 June 2004 (document PRD0145).
\textsuperscript{355} Ibid.
216. Ownership of the school, together with eight other schools, is vested in the trustees of the Methodist Independent Education Trust, formerly known as the Methodist Secondary Education Trust, an unincorporated charitable trust constituted under the Methodist Secondary Education Trust Deed dated 11 December 1903, as amended (‘the 1903 Deed’). The trust is also a registered charity (charity number 306576).

217. Under the terms of the 1903 Deed, the management and administration of the schools, including Truro School, is vested in a Board of Management appointed by the Methodist Conference, to which is also reserved the power to modify the trusts. Under clause 2(c) of the 1903 Deed, the Board of Management may delegate all or any of its functions to local governing bodies for each school.

218. According to Truro School’s response to the OFT’s section 26 Notice dated 1 September 2005, which was also submitted on behalf of the Board of Management for Methodist Independent Schools, Truro School and the other eight schools founded by the 1903 Deed may be regarded as separate foundations but are not distinct legal entities. Nor does the Board of Management have a legal personality distinct from that of the Methodist Independent Education Trust. The OFT therefore considers that the Methodist Independent Education Trust is the legal entity responsible for Truro School.

219. According to its 2004 annual report and accounts, the Methodist Independent Education Trust, in addition to holding the assets of the nine schools, including Truro School, operated by the Board of Management also has the same trustees as a number of connected charitable trusts. According to the 2004 annual report and accounts for Truro School, Truro School also wholly owns the share capital of Truro School Enterprises Limited (company number 2728988).

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356 Culford School (Suffolk), Edgehill College (Bideford), Farringtons School (Chislehurst), Hunmanby Hall School (North Yorkshire), Kent College (Canterbury), Queen’s College (Taunton), Shebbear College (Devon) and Woodhouse Grove School (Bradford).
357 Truro School’s response to the OFT’s section 26 Notice which was sent on 1 September 2005 (document MDB0087).
358 Methodist Secondary Education Trust Deed dated 11 December 1903 (document MDB0087C), clause 2(b).
359 Ibid., clause 17 (formerly clause 14).
360 Document MDB0087.
361 Since 1 September 2005, the Methodist Secondary Education Trust has been known as the Methodist Independent Education Trust: see document MDB0087.
362 Accounts and Reports for Methodist Secondary Education Trust for the year ended 31 August 2004 (document PRD0159). As stated at note 361 above, since 1 September 2005 the Methodist Secondary Education Trust has been known as the Methodist Independent Education Trust.
363 The Kent College (Woottonley House) Trust (charity number 1076756), the Thomas Robinson Ferens Scholarship Bequest for Methodist Schools (charity number 313642), the Thompson Education Trust (Charity number 230422) and the Farringtons & Stratford House General Charitable Trust.
364 Accounts and Reports for Truro School for the year ended 31 August 2004 (document PRD0157).
220. The OFT considers that Methodist Independent Education Trust and its connected charitable trusts, together with Truro School Enterprises Limited form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

**Uppingham School**

221. Uppingham School is an independent fee–paying boarding and day school for boys and girls aged between 13 and 18 years.

222. The school is run by the trustees of Uppingham School, an unincorporated charitable trust, under a Scheme of the Minister of Education dated 8 December 1961 as varied by Schemes of the Charity Commissioners dated 15 September 1975, 13 May 1987 and 13 May 2004, and a registered charity with charity number 527951. According to its 2004 published annual report and accounts, the trust has a wholly owned subsidiary company, Uppingham School Enterprises Limited (company number 1130851).

223. The OFT considers that the unincorporated charitable trust, Uppingham School (charity number 527951) and its subsidiary company Uppingham School Enterprises Limited form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

**Wellington College**

225. Wellington College is an independent fee–paying boys school for pupils aged 13 to 18 years. Girls are accepted in the Sixth Form.

226. The college is run by The Wellington College, a body corporate incorporated by Royal Charter granted in 1853, as amended. The corporation is also a registered charity (charity number 309093).


228. The OFT considers that The Wellington College and its subsidiary, Wellington College Enterprises Limited, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

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365 Financial Statements for Uppingham School for the year ended 31 August 2004 (document PRD0168). See also extract from the Charity Commission register for the Uppingham School as at 19 August 2005 (document PRD0166).

366 Financial Statements for Uppingham School for the year ended 31 August 2004 (document PRD0168).

367 The OFT is aware of the following supplemental charters: 24 December 1855, 4 February 1861, 20 March 1952, 22 July 1960 and 27 January 2006: see extract from the Charity Commission register for The Wellington College as at 19 August 2005 (document PRD0171) and Wellington College’s statement in the Schools’ Joint Factual Statement (document JM 01–a).

368 Accounts and Reports for The Wellington College for the period ended 31 July 2004 (document PRD0173).
Wells Cathedral School

229. Wells Cathedral School is an independent fee–paying day and boarding school for boys and girls aged between 3 and 18 years.

230. The school is run by Wells Cathedral School, Limited, a company limited by guarantee (company number 564883) and a registered charity (charity number 310212)\(^369\).

Westminster School

231. Westminster School is an independent fee–paying day and boarding school, comprising the Great School for boys aged 13 to 18, with girls in the Sixth Form, and the Under School for boys aged 7 to 12.

232. The school, whose full name is St Peter’s College Westminster, is a registered charity (charity number 312728) and is run by its Governing Body in accordance with Statutes and Regulations made under the Public Schools Act 1868\(^370\). The Governing Body of St Peter’s Westminster is a body corporate, incorporated by statute under that Act\(^371\).

Winchester College

233. Winchester College is an independent fee–paying boarding school for boys aged 13 to 18 years. However, Winchester College does have a small number of day pupils\(^372\).

234. Winchester College, whose full title is Saint Mary College of Winchester, near Winchester, is an exempt charity under Schedule 2 to the Charities Act 1993 founded by Royal Charter in 1382 and is run by its Governing Body in accordance with Statutes made under the Public Schools Act 1868\(^373\). The Governing Body of Winchester College is a body corporate, incorporated by statute under that Act\(^374\).

235. According to its 2004 annual report and accounts\(^375\), Winchester College has two wholly owned subsidiaries, Winchester College Trading Company Limited (company number 2673873) and Beam Design Limited (company number 2902175).

\(^{369}\) Governors’ report and financial statements for Wells Cathedral School, Limited for the year ended 31 July 2004 (document PRD0180).
\(^{370}\) Financial Statements for Westminster School for the year ended 31 July 2003 (document TXD1057)
\(^{371}\) Section 4A, Public Schools Act 1868, inserted by the Statute Law (Repeals Act) 1998.
\(^{372}\) The table in the letter from Winchester College’s solicitors to the OFT dated 20 October 2004 (document TXD0459) shows that Winchester College had 38 day pupils in the academic year 2001/2002, 23 day pupils in the academic year 2002/2003 and 21 day pupils in the academic year 2003/2004. See also the letter from Winchester College’s solicitors to the OFT dated 14 October 2005 (document MDB0109).
\(^{373}\) Report and Financial Statements for Winchester College for the year ended 31 August 2004 (document MDB0090B).
\(^{374}\) Section 4A, Public Schools Act 1868, inserted by the Statute Law (Repeals Act) 1998.
\(^{375}\) Report and Financial Statements for Winchester College for the year ended 31 August 2004 (document MDB0090B).
236. The OFT considers that Saint Mary College of Winchester, near Winchester and its subsidiaries, Winchester College Trading Company Limited and Beam Design Limited, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

**Woldingham School**

237. Woldingham School is an independent fee–paying boarding and day school for girls between the ages of 11 and 18 years.

238. The school is run by the Woldingham School Trust, an unincorporated charitable trust (charity number 291258), under a Declaration of Trust dated 1 February 1985 ('the 1985 Declaration'). The Woldingham School Trust is a subsidiary of the Society of the Sacred Heart, also an unincorporated charitable trust (charity number 227848), under a Declaration of Trust dated 27 March 1931 ('the Society Trust Deed') and a Scheme of the Charity Commissioners dated 7 May 1998.

239. As explained by the school in its response to the OFT’s section 26 Notice dated 5 September 2005, the 1985 Declaration is supplementary to the Society Trust Deed. Under the 1931 Declaration, the trustees of the Society of the Sacred Heart are the custodian trustees of the Woldingham School Trust and the property of the school vests in them. The managing trustees of the Woldingham School Trust are appointed from amongst the members of the Society of the Sacred Heart and must have been nominated by the Mother Provincial for the time being of the English Province of the Sacred Heart who is herself an ex officio managing trustee of the Woldingham School Trust. Certain of the powers of the management trustees under clause 6 of the 1985 Declaration may only be exercised with the consent of the Mother Provincial.

240. The governance of the school is conducted in accordance with an Instrument of Government which provides for a board of governors to whom day to day management of the school is delegated. The Mother Provincial and the Provincial Bursar, appointed by the Mother Provincial, are ex officio members of the board of governors.

241. According to the school's response to the OFT's section 26 Notice dated 5 September 2005, Woldingham School Trust has a subsidiary trading body, Marden Enterprises Limited (company number 2873104), the directors of which are two governors, the headmistress and the school bursar.

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376 Woldingham School’s reply to the OFT’s section 26 Notice which was sent on 9 February 2004 (document SJN0662R).
377 Document MDB0091A.
378 Woldingham School's response to the OFT’s section 26 Notice dated 5 September 2005 (document MDB0091A); see also clause 11 of the 1985 Declaration (document SJN0662).
379 Clauses 9 and 8(b) of the 1985 Declaration (document SJN0662).
380 Document SJN0662.
381 Woldingham School’s response to the OFT’s section 26 Notice dated 5 September 2005 (document MDB0091A).
242. The OFT considers that the Society of the Sacred Heart exerts decisive influence over the Woldingham School Trust, which together with their subsidiaries, including Marden Enterprises Limited, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

Worth School

243. Worth School is an independent fee-paying boys boarding school for pupils aged 11 to 18 years. Entry is at age 11 and 13 years.

244. The school has been run since 1 September 2002 by Worth School, a company limited by guarantee (company number 4476558) and a registered charity (charity number 1093914), to which the assets, activities and liabilities relating to the school were transferred from Worth Abbey (charity number 1093913) with effect from that date. Prior to that date the school was run, and its assets were held by an unincorporated charitable trust, Worth Abbey (charity number 233572)\(^{382}\). With effect from 31 August 2002 all of the assets and activities of the trust were transferred to a company limited by guarantee (company number 447556), also named ‘Worth Abbey’, and a registered charity (charity number 1093913)\(^{383}\). According to the school, the unincorporated trust (charity number 233572) is still in existence but is essentially dormant and has been retained only so as to receive any legacies which may have been left to it\(^{384}\). The charity trustees of both the unincorporated trust (charity number 233572) and the company, Worth Abbey (company number 4475556) are the same, being the Abbot and Council of the monastic community\(^{385}\).

245. The company, Worth Abbey (company number 447556) is the sole member of Worth School (company number 4476558)\(^{386}\). In addition to the Abbot of the monastic community and the Chair of the Finance and General Purposes Committee of Worth Abbey (company number 447556), who are ex-officio governors and directors of Worth School (company number 4476558), the governors and directors of Worth School (company number 4476558) are all appointed by the Abbot, who is also President of the Board of Governors\(^{387}\).

246. Worth Abbey (company number 447556) also has a wholly owned subsidiary trading company, Worth Abbey Projects Limited (company

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\(^{382}\) Worth School’s response to the OFT’s section 26 Notices which were sent on 9 February 2004 (document SJN0212R) and 8 September 2005 (document MDB0093).

\(^{383}\) Ibid.

\(^{384}\) Worth School’s response to the OFT’s section 26 Notice which was sent on 8 September 2005 (document MDB0093). See also extracts from the Charity Commission register as at 19 August 2005 for the unincorporated trust (charity number 233572) and for the company, Worth Abbey (charity number 1093913).

\(^{385}\) Worth School’s response to the OFT’s section 26 Notice which was sent on 8 September 2005 (document MDB0093). See also articles 2 and 3 of the Articles of Association of Worth School (company number 4476558); Document AKL018.

\(^{386}\) Articles 1 and 22 of the Articles of Association of Worth School (company number 4476558); Document AKL018.
number 4523776), to which all of the non-charitable and non-school related assets, activities and liabilities of Worth Abbey were transferred with effect from 3 September 2002\textsuperscript{388}.

247. The OFT considers that the company, Worth Abbey (company number 447556) is the successor of the unincorporated charitable trust, Worth Abbey (charity number 233572) and that the latter may be considered for the purposes of these proceedings to have effectively ceased to exist. The OFT also considers that, for the purpose of applying the Chapter I prohibition, Worth Abbey (company number 447556) exerts decisive influence over Worth School (company number 4476558) and that these two companies, together with Worth Abbey Projects Limited (company number 4523776), form part of one and the same undertaking.

\textit{Wycombe Abbey School}

248. Wycombe Abbey School is an independent fee-paying boarding and day school for girls aged 11 to 18 years.

249. The school is run by The Girls' Education Company Limited, a private company limited by shares (company number 47031) and a registered charity (charity number 310638)\textsuperscript{389}.

250. According to its 2004 annual report and accounts\textsuperscript{390}, The Girls' Education Company Limited has a wholly owned subsidiary company, Wycombe Abbey Services Limited (company number 2510811) and a related subsidiary charity, The Wycombe Abbey School Foundation, an unincorporated charitable trust\textsuperscript{391}.

251. The OFT considers that The Girls' Education Company Limited (company number 47031), together with its wholly owned subsidiary, Wycombe Abbey Services Limited (company number 2510811) and related subsidiary charity, The Wycombe Abbey School Foundation, form part of one and the same undertaking for the purpose of applying the Chapter I prohibition.

\textsuperscript{388} Worth School's response to the OFT's section 26 Notice which was sent on 8 September 2005 (document MDB0093). See also Annual Return for Worth Abbey Projects Limited dated 19 October 2004 and filed at Companies House (document AKL032).

\textsuperscript{389} See Wycombe Abbey School's response to the OFT's section 26 Notice which was sent on 9 February 2004 (document SJN1206R).

\textsuperscript{390} Accounts for The Girls' Education Company Limited for the year ended 31 August 2004 (document AKL042).

\textsuperscript{391} Extract from the Charity Commission register as at 21 September 2005 for The Wycombe Abbey School Foundation, a subsidiary charity of The Girls' Education Company Limited (charity number 310638).
C. The relevant market

Introduction

252. The OFT is obliged to define the market when applying the Chapter I prohibition only where it is impossible, without such a definition, to determine whether the agreement or concerted practice in question is liable to affect trade in the UK and has as its object or effect the prevention, restriction or distortion of competition. No such obligation arises in this case since, as is explained in paragraphs 1359 to 1373 below, it involves an agreement and/or concerted practice that had as its object the prevention, restriction or distortion of competition. In the absence of an agreed resolution (see paragraphs 36 to 38 above), defining the relevant market would, however, normally be relevant to determining the amount of the penalty imposed under section 36(1) of the Act. However, given the nature and profile of the OFT’s investigation in this case, the OFT considers that it is helpful to include in this Decision its thinking on the relevant markets. The OFT also considers that the market definition shows the competitive environment in which the Sevenoaks Survey took place. The OFT notes that the schools did not raise any substantial objections to the market definition in their joint representations on the Statement of Objections.

253. A relevant market will normally comprise two dimensions: a product and a geographic market. The term ‘product’ is used for convenience and may include, as in this instance, a service.

254. Market definition establishes the closest substitutes to the product that is the focus of the investigation. Such products are usually the most immediate competitive constraints on the behaviour of the undertaking controlling the product in question. This is referred to as ‘the focal product’. In this case the OFT considers that there are two focal products provided by the Participant schools, all of which are in the independent senior school sector and all of which provide boarding facilities, namely:

- the provision of educational services to boarding pupils at independent fee-paying senior schools ('boarding services'); and
- the provision of educational services to day pupils at independent fee-paying senior schools ('day services').

393 OFT’s Guidance as to the appropriate amount of a penalty (OFT 423, Edition 12/04).
394 The Schools’ Joint Factual Statement (document JM 01–a) identified a small number of errors in figures contained in the market definition and related annexes. Also, Sevenoaks School argued that the use of DfES statistics to underpin academic attainment significantly understates and misrepresents the school’s academic standing (see note 111 in Annex 5 below).
395 See OFT Competition guideline on Market definition (OFT 403, Edition 12/04), paragraph 2.15.
396 See OFT Competition guideline on Market definition (OFT 403, Edition 12/04).
The term 'educational services' is used here to include related services, such as services related to non–curricular activities and catering. In the case of boarding pupils these will extend to accommodation and the care of pupils during the evenings and at weekends.

255. Starting with these two focal products, the OFT has considered whether there are other substitute products which impose a competitive constraint on the behaviour of the undertakings supplying the product in question and which should therefore be included in the relevant market\(^\text{397}\). In addition to considering whether there is such 'demand side substitution', it is also necessary to consider whether suppliers of an alternative product could easily and quickly start producing the product in question, giving rise to 'supply side substitution'\(^\text{398}\). A similar process is used to define the relevant geographic market\(^\text{399}\).

256. The analysis that follows shows that at least two relevant product markets can be identified. In the case of day services, the OFT has not been able to delineate the precise extent of the relevant geographic market.

(a) The first relevant product market is for boarding services. In this market pupils tend to be drawn from a wide geographic area and the OFT considers that the relevant geographic market is national (UK wide).

(b) There is also a relevant product market, or markets, for day services. By their nature, geographic markets for day services are likely to be local. This may affect the analysis of the relevant product market because educational services are differentiated, in particular in terms of academic attainment. Thus, within a narrow local market, two schools may both provide day services but be sufficiently differentiated in terms of academic attainment that they do not compete strongly with one another. As a result, when examining the market for day services on the basis of a particular local geographic area, the OFT has focused on competition between schools in that locality which offer services that are relatively close in terms of academic attainment and other features – that is, between schools that offer 'comparable' day services\(^\text{400}\). Annex 4 sets out the methodology used by the OFT in analysing the relevant market for day services while Annex 5 sets out the analysis itself on a school by school basis. The OFT notes that four of the Participant schools do not provide day services at all\(^\text{401}\).

\(^{397}\) See OFT Competition guideline on Market definition (OFT 403, Edition 12/04), paragraph 2.5.
\(^{398}\) See OFT Competition guideline on Market definition (OFT 403, Edition 12/04), section 3.
\(^{399}\) See OFT Competition guideline on Market definition (OFT 403, Edition 12/04), section 4.
\(^{400}\) The term is also used to reflect two other facts. First, the fact that a number of the Participant schools are single–sex schools. Whilst the OFT considers that there may be competition between single–sex and coeducational schools, a single–sex school will not compete with another single–sex school offering educational services exclusively to the opposite sex. Second, it is also used to recognise the fact that specialist schools, for example specialist drama, arts or music schools or schools for pupils with special needs, have been excluded on the grounds of non–'comparability'.
\(^{401}\) Benenden School, Eton College, Harrow School and Radley College.
In general, the OFT may use the framework of the hypothetical monopolist test to examine whether potential substitutes should be included in the relevant market. This test seeks to establish the smallest product group (and geographical area) such that a hypothetical monopolist controlling that product group (in that area) could profitably sustain prices that are at least a small but significant amount above competitive levels. The approach to market definition adopted by the OFT in this case, however, recognises that in certain markets a strict adoption of the hypothetical monopolist test may not be possible. In this case the Participant schools, which represent a significant proportion of UK independent boarding schools, have disclosed prospective fee increases to each other over a number of years thereby facilitating price co-ordination, with the result that fees may well already have been raised above competitive levels. If so, the undertakings may not be able profitably to sustain prices above the current levels. Prices may already have been raised to such a level that, with any further increase in price, consumers would switch to purchasing other products which under normal circumstances would not be considered to be part of the relevant market. This is known as 'the cellophane fallacy' after a US case involving cellophane products.

Another relevant consideration in this market is that the ability of customers to respond to price changes is likely to be constrained by other factors. Where pupils are already enrolled in a school it would be disruptive to their education to switch them to another school in response to a change in relative fee levels. It is, therefore, likely in this market that competition between different schools takes place principally at the point of entry, which in the case of senior schools is mainly at ages 11, 13 or 16 years. Furthermore, whilst there may on occasions be switching in response to changes in fee levels, switching is also likely to occur for a number of other reasons. Responses to the OFT's enquiries suggest reasons given for switching to a different school include changes in family circumstances due to a domestic move (perhaps connected to a divorce or separation), death of a parent or change in financial circumstances, medical reasons or a request to leave by the school. Given these factors a market definition based solely on observed switching behaviour might provide misleading results due to difficulties in determining causation.

Secondary education is a significantly differentiated product. Hence in defining the market careful consideration has been given to the characteristics of the products offered by the Participant schools. In its judgment in Aberdeen Journals the CAT stated that 'there is no set "hierarchy" of evidence in Community law' and that in deciding whether the evidence is sufficient, the Tribunal will look at evidence 'in the round'. In determining the relevant market, evidence has, therefore, been examined not only from surveys that show the attitude of consumers.

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402 See OFT Competition guideline on Market definition (OFT 403, Edition 12/04), paragraphs 2.5 to 2.13.
405 Ibid., at paragraph 128.
in the market but also from responses provided by the Participant schools to the OFT’s enquiries which shed light on the competitive process within the market.

**Principal characteristics of independent fee–paying senior schools**

260. The focal products in this investigation both involve the provision of educational services by secondary schools within the independent sector. The key factors that differentiate independent secondary schools from state secondary schools are identified below.

261. **Independence**: Whilst the schools are required to follow the National Curriculum they are inspected by the Independent Standards Institute and are not within the control of a Local Education Authority.

262. **Selectivity**: A selective entry procedure is adopted by most independent fee–paying senior schools. This occurs primarily at the point of entry at 11 and/or 13 and 16 years. At ages 11 and 13 years careful consideration is given by parents, with advice from the primary school, as to which entry exams a child should sit according to their academic ability. The extent of selectivity varies greatly amongst independent fee–paying schools from those who accept pupils with a wide range of academic abilities to those that are highly selective. For example, the pass mark for Common Entrance, a test taken for entry at age 13, can vary from 50% to 70% and in certain cases there are pre–tests that must be passed to become eligible to take Common Entrance.

263. This is very different from the state maintained sector where there exists only a residual element of selective education in the form of some 160 grammar schools across the country. Entry to the higher achieving, selective, state maintained schools can be difficult not only due to high standards set but also in terms of strict eligibility criteria such as the distance pupils live from the school and the fact that they are often over–subscribed. For example, Cranbrook School, which is over–subscribed by 100%, has its own closed exam (no past papers available) and most pupils who take or would have taken Common Entrance achieve over 75% – this limits the extent to which this represents an alternative for parents.

264. **Low Pupil/teacher ratios**: Official statistics for 2004 show that the average pupil/teacher ratio in independent senior schools was 9.4:1 compared with an average pupil/teacher ratio of 17.0:1 in maintained secondary schools. The MORI report states that 'low class sizes' has

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406 Annex 2 sets out fuller details of the services and characteristics of the Participant schools.
407 Millfield School, one of the Participant schools, has an all ability intake and uses Common Entrance to determine sets for core subjects. See extract relating to Millfield from the Good Schools Guide, 9th Ed. (document ECON0001)
408 See Ofsted inspection for Cranbrook School, March 2003 (document ECON0002) and admissions policy from Cranbrook School website (document ECON0002A)
dramatically increased in importance to become the most salient factor in choice of education in the independent sector as against the state sector. Compared with the maintained state schools, independent fee-paying schools have much lower pupil/teacher ratios.

265. **Fee Payment**: In the independent sector fees are charged in relation to the provision of educational services as well as other related services, such as services related to non-curricular activities and catering. In the case of boarding, this will extend to accommodation and services related to the care of pupils in the evenings and at weekends. For this reason independent school boarding fees are considerably higher than independent school day fees. The average basic boarding fee at independent senior schools was £5,400 per term while the average basic day fee was £2,400 in 2003\(^{411}\). Some state–maintained boarding schools, which do charge fees but only for the boarding element, do exist. State schools do not charge fees for the provision of the core educational services, however.

266. **Academic Performance**: The academic performance of independent fee-paying schools is typically (although not uniformly) high. For example, official statistics show that the average capped point score for GCSEs or equivalent was 45.5 for pupils in independent fee-paying senior schools and 34.1 for those in maintained secondary schools in 2004\(^{412}\). The number of areas with state schools that have a comparably high academic performance is limited. As such, there will be only a limited number of areas in which local state schools represent an academically comparable alternative to independent fee-paying schools.

267. Even where such state schools do exist, however, the OFT does not consider that they would be likely to exert a substantial competitive constraint on the fee setting behaviour of local independent fee-paying schools. Such a competitive constraint is far more likely to be exerted by alternative local independent fee-paying schools. The MORI report\(^{413}\) concludes that:

> "Parents are becoming increasingly discriminating when selecting an independent school. They are more concerned about specific advantages that they perceive independent education to offer, such as smaller class sizes, high quality teachers, discipline and an environment which enables children to take a responsible attitude to their work."

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\(^{411}\) These are OFT estimates based on the ISCis census in January 2004. ISCis state that they account for more than 80 per cent of the total number of pupils in independent schools in the UK. Note that the data includes a small number of specialist schools (e.g. music schools, those for non–UK nationals or for pupils with learning difficulties) where fees are generally towards the higher end of the range.

\(^{412}\) Points are awarded on a scale of eight points for a grade A* down to one point for a grade G. Capped scores are those from the best 8 GCSEs. DfES: GCSE and Equivalent Results for Young People in England, 2003/4 (document ECON0005).

Hence at the outset a parent is likely to consider whether or not to educate their child in the independent sector. If they choose to do so then at that point they will compare what is on offer across the independent fee–paying schools, including their relative fee levels. Whilst the availability of good quality state schools may affect the initial choice (state versus independent fee–paying school), it does not impact on the subsequent decision as to which independent fee–paying school to select. For this reason the OFT considers that it is those schools within the independent fee–paying sector that are most likely to exert a competitive constraint on the fees of other independent fee–paying schools rather than the existence of good state schools.

**The relevant product market (1) – boarding services**

**Introduction**

268. The Participant schools all offer boarding places\(^{414}\) for senior school pupils. This necessitates not only that they have appropriate accommodation facilities but also a full range of recreational facilities and the staff needed to care for pupils both overnight and at weekends.

269. Boarding pupils account for a relatively small proportion of total pupil numbers at senior independent fee–paying schools\(^{415}\). Data provided by ISC\(^{416}\) shows 14 independent senior schools in the UK that are exclusively boarding (with a further 7 with 95% or more boarding). Of the 14 exclusively boarding schools, 6 are coeducational, 6 are boys–only schools and 2 girls–only schools. Since the early 1980s the British boarding sector has seen a steady long–term decline in pupil numbers and the number of boarders as a proportion of all pupils in independent fee–paying schools has fallen. In 2002 and 2003 the number of pupils in boarding schools rose for the first time since ISC\(^{417}\) statistics were first compiled, by 1.0% and 1.1% respectively. In 2003 the number of boys boarding also increased for the first time with an increase of 0.6%, while girls boarding rose, for the third consecutive year, by 1.8%\(^{418}\). The ISC\(^{417}\) figures for 2004 show a small decline in boarding (1.4%), however, which the Boarding Schools Association (BSA) attributed to the impact of a major rise in costs within the sector forcing schools to increase their fees by an average 9.1%\(^{418}\). The Howarth Benchmarking Financial Performance 2005 survey\(^{419}\), on the other hand, suggested that, based on figures in September 2004, boarding numbers were still growing albeit

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\(^{414}\) See Table 1 in Annex 3.

\(^{415}\) According to data provided by the Independent Schools Council (ISC), which represents 80% of independent schools, 16.6% of pupils were boarders in January 2004 with a 56/44 split between boys and girls.

\(^{416}\) See document ECON0014.


\(^{419}\) Howarth Clark Whitehall, Benchmarking Financial Performance in Independent Schools 2005.
very slowly, whereas pupil numbers were static in 'day boarding' schools\textsuperscript{420}.

Potential for demand side substitution

270. On the demand side there is substantial evidence from marketing reports commissioned by independent fee–paying schools\textsuperscript{421} and publicly available studies to suggest that boarding education is in a different market from day education. For example, a report prepared by MORI\textsuperscript{422} shows that when parents place their children in boarding schools they are in fact choosing a very different lifestyle and educational experience for their child. Parental work commitments have become the single most likely reason for sending a child to boarding school, cited by a quarter of parents in the MORI survey. A belief that boarding schools will teach children independence and help them to live with others their own age has also become an increasingly important factor in the decision, however. The following quotations from the MORI report illustrate the importance of these factors:

'We have heavy work commitments so weekly boarding is very good. But it also provides our son with an excellent social, leisure, work environment after formal classes end';

'My employment requires me to move often. Boarding school ensures continuity of education';

'The boarding school system offers children more activities than day school. It teaches a child to be more self–reliant and to get on with others. Respect for others';

'Believe it to be a broader and better introduction to the realities of life';

'Because the type of school we were looking for does not exist locally and, even if it did, we consider boarding an important part of our child's development';

'The features associated with boarding schools include supervised homework, more pastoral care organised under a house system, generally a weekend activities programme and in many cases attendance at a religious service during weekends and greater opportunities to use extensive sporting facilities'.

271. Conversely, parents who reject boarding school for their children are usually rejecting it because its lifestyle would be unsuitable, or is one with which they disagree. The MORI report lists the main reason given by parents for not sending their child to a boarding school as the desire to maintain a family life. Boarding schools have responded by trying to

\textsuperscript{420} The Howarth survey draws a distinction between 'boarding schools', whose pupils are 85 to 100\% boarding, and 'day boarding' schools whose pupils are 30 to 85\% boarding.

\textsuperscript{421} For example a survey undertaken by RSA Academic Ltd for Haileybury (document LXT154)and local market analysis prepared by Roose & Partners for Eastbourne College (document JXS0312).

\textsuperscript{422} MORI report 2001, pages 46 to 47 (document ECON0003A).
provide more flexible arrangements which impinge less on family life. Hence many boarding schools introduced ‘weekly’ and flexible boarding arrangements. Others have responded by providing coeducational, as opposed to single sex, boarding either throughout the school or in the Sixth Form only. Whatever the arrangements offered, boarding schools have been careful to retain their boarding ethos, however.

272. Weekly boarding can take different forms, the main variations being when the week finishes and the weekend begins. Weekly boarding means that children stay overnight at school from Monday to Friday or Saturday, spending the weekend at home, and returning to school on Sunday evening or Monday morning. A survey undertaken by RSA Academics Ltd\textsuperscript{423} indicated that weekly boarding could provide parents with added convenience as parents had long busy days and did not want endless travelling and having to act as a taxi service at the beginning and end of each day. In this way children and parents were able to lead busy purposeful lives whilst weekends could be spent together.

273. Such changes, combined with a desire on the part of parents to have easier access to schools so as to allow them to attend school sporting, musical and drama events, have meant that some boarding schools are becoming more focused on meeting the needs of parents within the local region, bringing them into greater competition with local day schools. Nevertheless, the OFT considers that the specific costs involved in providing boarding places, combined with the specific demand that continues to exist for such places, means that boarding places at independent fee–paying schools constitute a distinct relevant market, separate from day places in independent fee–paying schools.

Potential for supply side substitution

274. On the supply side, it can be seen that the scope for supply side substitution is extremely limited. The OFT considers it highly unlikely that a day school could at short notice and without incurring substantial sunk costs become a boarding school in response to an increase in boarding fees. Day schools may not have the land or financial resources needed to establish the accommodation and associated facilities required by boarders. Moreover, all boarding schools must meet national minimum standards laid down by the Department of Health under the Education Act 1996. These standards are intended to safeguard and promote the welfare of children for whom accommodation is provided by a boarding school and cover all aspects of the boarding experience from the school’s policy on boarding, bullying, discipline, welfare, supervision and premises. Monitoring compliance with these standards is now undertaken by the Commission for Social Care Inspection.

275. Even if it were possible to acquire the land and buildings needed to offer boarding services, it would also be necessary to recruit experienced staff

\textsuperscript{423} Survey by RSA Academics, Perceptions of Haileybury among Feeder School Heads, 20 August 2002 (document LXT154).
to run the school. In addition, it would take time for a school to establish its ethos and reputation which can only be gained through achievements. On the academic side, league tables have made it much easier for prospective parents to gauge a school’s level of academic attainment, but prospective boarding school parents will also wish to confirm that the school has a track record of success in other areas such as sports, arts and music. All these factors make a short term supply side response highly unlikely.

276. In addition, the way that boarding schools supply services to boarders and day pupils differentiates them from day–only schools in a number of ways, each of which would be hard for a day only school to replicate quickly and easily.

277. **Boarding house system:** nearly all the boarding schools operate a house system. Boarders are allocated to a house which will have study and leisure space, changing rooms and lockers. In the early years pupils sometimes share dormitories/rooms but in some schools they will have their own room throughout their time at the school. Boarding houses are usually run by a resident housemaster or houseparent, who is supported by other members of staff. In many schools each boarding house has its own character and atmosphere, its own conventions and customs. These help to develop a sense of identity and community for pupils. Day pupils may have their own house or be integrated into one of the boarding houses.

278. **Pastoral care:** there is a strong emphasis on pastoral care, given that a boarding school is responsible for pupils for long periods of time. This is partly linked to the boarding house system, as the housemaster will often be responsible for the overall academic and pastoral development of each boarder in the house. The division of the school into smaller units makes possible a high level of personal and pastoral care.

279. **Broad approach to education:** increasing emphasis is placed on the provision of a broad approach to education, where academic success is not the only factor by which achievement is determined. This is evidenced by the importance placed on personal development through the provision of sporting, music, drama and other non–curricular activities. A significant amount of time is set aside during the day for these activities as well as after lessons have finished. This reflects the demands of parents which are often less about academic results and more about developing their children’s overall potential. It is also consistent with the need to ensure that boarding pupils are fully occupied and have interests to pursue during the whole time that they are at school.

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424 For example, Cranleigh School’s weekday routine includes two afternoon sessions of games and two afternoon sessions of activities (see document ECON0008).
State provision of boarding places

280. There are a small number of state maintained boarding schools. These tend to be associated with state schools that have a designated specialism, however. In total there are only 4,573 boarding places in the state maintained sector compared with 59,500 boarding places in the independent fee-paying school sector in the UK. Fees are charged only for the boarding element whilst education at the school is free. Thus, fees at state boarding schools are much lower than in the independent sector and can be as low as £1,240 or as high as £2,440 a term.

281. Many of the boarding schools listed in the Parents’ Guide to Maintained Boarding schools have only a very small proportion of boarders. For example, Ashby Grammar School, which is a Technology College in Leicestershire, only has 35 boarders out of a total of 1,357 pupils and charges boarding fees of up to £6,621 per year. Burford School, which is a comprehensive school, has 90 boarders out of 1,040 pupils.

282. While there may be some state maintained boarding schools that provide comparable services to some independent fee-paying boarding schools, the overall scale and scope of state maintained boarding provision is unlikely to represent a competitive constraint on the independent fee-paying boarding market, and as such it has not been included within the relevant market.

Conclusion

283. The OFT therefore concludes that, in the case of boarding places, the relevant product market for the purposes of this Decision is the market for the provision of educational services to boarding pupils at independent fee-paying senior schools (‘boarding services’).

284. Within this market there may be further segmentation by gender and religious affiliation. However with the increasing trend towards coeducation the former delineations are less marked. The evidence presented by the Participant schools in response to the OFT’s enquiries indicates that single-sex schools consider that they compete not only with other comparable single-sex schools but also comparable coeducational schools. In addition, whilst many of the schools within

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425 In 2003 there were 32 state boarding schools, only two of which offered boarding at primary level. Most are coeducational but there are also some single-sex schools. The list includes schools that are community technology colleges, specialist sports colleges, specialist language colleges and Beacon schools.
428 Annex 2 sets out detailed information on these and other features in the case of the Participant schools.
429 For example, Cheltenham Ladies’ College in a ‘Fee Strategy Report’ make comparisons with day fees in other girls-only boarding schools (Downe House School, Sherborne Girls School and Wycombe Abbey School) as well as some coeducational day/boarding schools such as Marlborough College and King’s School Canterbury (document LXT1028).
the market for boarding services have strong links with Christian traditions, this does not prevent non-Christian children from attending such schools.

**The relevant geographic market (1) – boarding services**

285. In the case of boarding services, pupils can come from a wide geographic area, and may even have parents that are resident abroad\(^{430}\).

286. Table 4 in Annex 3 of this Decision sets out an analysis of data provided by the Participant schools relating to the domicile of pupils. This shows that for many of the Participant schools the main catchment area is regional (where a region is defined with reference to the county where the school resides and adjacent counties). This reflects the fact that distance from home has become an increasingly important factor, especially for weekly boarders where pupils are allowed to go home for at least one night every weekend. It also reflects the fact that the figures in this table include both day pupils and boarding pupils, and day pupils will almost always come from the local area (as discussed further below).

287. For 10 of the 50 Participant schools\(^{431}\), however, pupils from the local region account for less than half of total pupil numbers. Moreover, if one makes the reasonable assumption that all day pupils come from the local area, and re-calculates for each Participant school the proportion of boarding pupils that comes from the local region, the number of Participant schools that take less than half of their boarding pupils from the local region becomes substantially higher\(^{432}\).

288. Combined with the fact that the regional catchment areas observed in Table 4 in Annex 3 overlap to a substantial extent, this analysis leads the OFT to conclude for the purposes of this Decision that the geographic market for the provision of educational services to boarding pupils at independent fee-paying senior schools is national. Although other independent fee-paying boarding schools in the same region may be considered the most direct competitors, the fact that significant proportions of boarding pupils travel from further afield means that boarding schools that are substantially more distant can still provide a competitive constraint, and should be included within the relevant market.

289. Finally, whilst a substantial proportion\(^{433}\) of boarding pupils at the Participant schools come from outside the UK, the OFT does not consider it appropriate to widen the market still further on this basis to include boarding schools from outside the UK since many of the parents who send

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\(^{430}\) Most schools require that a pupil has a guardian that resides in the UK, see extract on notes for foreign parents, Good Schools Guide, 9th Ed. (document ECON0011).

\(^{431}\) Ampleforth College, Uppingham School, Royal Hospital School, Millfield School, Oundle School, Malvern College, Rugby School, Radley College, Cheltenham Ladies’ College, and Winchester College.

\(^{432}\) In fact, if the figures are re-calculated under this assumption, then almost half (twenty-three) of the fifty Participant schools are found to take less than half of their boarding pupils from the local region.

\(^{433}\) Just over 20 per cent.
their children to the Participant schools, while residing abroad, will specifically have chosen to educate their children within the UK.

The relevant product market (2) – day services

Provision of day services by independent fee–paying schools

290. As set out above, all of the Participant schools provide boarding services and have a strong boarding school ethos. Of the 50 Participant schools, 45 also have day pupils in attendance. The second focal product is therefore the provision of services to day pupils by independent fee–paying senior schools.

291. Given that there is only a certain distance that pupils can travel on a daily basis the market for day places is by its nature likely to be local. In considering the nature of competition for day pupils within these local markets, and to determine whether it is limited to other independent fee–paying schools or also includes state schools it is necessary in the case of each school to look at the range of schools in the local area that are likely to be sufficiently close substitutes that are comparable both in terms of their academic attainment and in terms of any other special features and facilities\textsuperscript{434} that the school offers.

292. Boarding schools that offer day places will typically differ from day–only schools in a number of ways.

293. The school day: boarding schools that offer day places typically operate an extended day for day pupils as well as boarding pupils. As indicated above\textsuperscript{435}, much greater time is dedicated to sports, musical, drama and other non–curricular activities than at a day–only school. In addition pupils are offered an extended day, sometimes well into the evenings, and can also often choose to board on an occasional basis\textsuperscript{436}. In addition, most boarding schools have lessons on a Saturday morning and sporting or other recreational activities on a Saturday afternoon.

294. System of day houses: as a means of integrating day pupils into the boarding school the majority of boarding schools that offer day places extend the boarding house system to day pupils. These schools either have separate houses for day pupils or spread their day pupils amongst the existing boarding houses\textsuperscript{437}. A day pupil will be allocated to a house where they will have a study, leisure space, changing rooms and lockers. In certain cases schools operate quite flexible arrangements for day pupils which allow them on occasions to stay overnight at the school.

\textsuperscript{434} See also paragraph 256 above.
\textsuperscript{435} See paragraph 279.
\textsuperscript{436} The BSA reported that in 2003, 15,226 pupils occasionally boarded representing 146,366 nights per year (see document ECON0006).
\textsuperscript{437} This is not the same as a ‘house system’ which merely divides pupils into houses for say sporting purposes, as at boarding schools it is associated with the provision of accommodation and recreational facilities solely for the use of pupils in the house and these often form the centre of the pupil’s day at the school.
295. **Provision of pastoral care:** Through the extension of the boarding house system to day pupils, boarding schools are able to provide a distinctive and genuine sense of family within the wider school community. The house system is also important as it is the principal means by which pastoral care is provided. Housemasters/mistresses look after pupils and tutors visit the house regularly to assist with supervision and to offer support and guidance on academic and pastoral matters outside the formal tutorial periods. The housemaster or housemistress can get to know the pupil well and become a strong mentor and guide, and source of help during the time that the pupil is with them.

296. As shown in Annex 2 to this Decision, day pupils can benefit from the fact that many of the senior boarding schools are richly endowed with facilities and offer wide ranging recreational and sporting activities. The school itself will often be located in extensive grounds, a point made in a number of prospectuses. (It is also likely to have impressive old buildings including, frequently, a chapel. These traditional features have now also been added to with substantial assets that extend and deepen the curricula, such as multi–media equipment and language laboratories. There is also, frequently, a very wide range of non–curricular activities).

297. Despite these special characteristics of the services provided to day pupils by boarding schools, responses to the OFT’s enquiries suggest that there are a number of independent fee–paying day schools and in certain cases state schools that can compete both academically and non academically with the Participant schools. The market for day pupils is therefore likely to be wider than the provision of comparable educational services to day pupils by senior independent fee–paying boarding schools.

298. On the other hand, whilst certain state schools are on occasions identified by Participant schools as being competitors for day pupils, this does not necessarily imply that they significantly constrain fee setting. Rather, the OFT considers that such constraints are far more likely to come from other comparable independent fee–paying schools. The OFT has not therefore included state provision within the relevant market.

299. The nature of the day market has meant that competitive constraints must be considered at a local level. Annex 4 provides an explanation of the methodology used to assess the extent to which the 45 Participant schools that offer day places compete with each other for day pupils. Table 5 in Annex 4 contains a summary of the day market analysis and Annex 5 sets out the OFT’s analysis at the level of each of the Participant schools.

**Conclusion**

300. Although boarding schools with day pupils are run along boarding lines, they would nevertheless appear to compete with comparable local independent fee–paying day schools. The OFT therefore considers that for the purposes of this Decision there is a relevant market or markets for day services. To the extent that the relevant geographic markets are local, the OFT considers it appropriate to focus on markets for the provision of
comparable educational services to day pupils at independent fee–paying senior schools (‘comparable day services’).

**The relevant geographic market (2) – day services**

301. Unlike the geographic market for boarding services, which the OFT considers to be national, the geographic market for comparable day services is likely to be much more localised. This is in part determined by the distance that pupils are prepared to travel to and from school on a daily basis. The OFT considers that this is likely to be in the region of a 20 to 30 minute drive time, which will in turn depend on the school’s location, the available transport links and the level of congestion at different times of the day. For example, Cheltenham College in its response to the OFT’s section 26 Notice\(^\text{438}\) states that:

> 'For day pupils, parents may consider schools within a radius of up to 20 miles from home. This therefore places any school within a radius of approximately 40 miles as open to consideration'.

The fact that catchment areas of competing schools overlap at the margins means that, on this basis schools as far away from each other as a 60 minute drive time may consider that they compete with each other for day pupils\(^\text{439}\).

302. Those schools with a better reputation and/or higher academic standards are likely to be able to attract pupils from a wider catchment area, however. In addition, areas with well developed transport systems, such as Greater London, may also have wider geographic catchment areas. Thus, some Participant schools regard schools which are 40 miles away as being local competitors whilst others identify their competitors for day pupils much more narrowly. This may in part result from historical factors which have determined the areas in which a school has developed as well as regional factors relating to the distribution of income and population densities.

303. The OFT considers that the extent of competition that a Participant school encounters in its relevant market for day services can only be determined by a detailed analysis of the available evidence on a case by case basis. Details of the OFT’s analysis for each Participant school are set out in Annex 5 to this Decision. The OFT’s approach is explained in Annex 4, which also contains a summary of the OFT’s findings. Whilst the OFT’s analysis does give an indication of the extent to which the Participant schools are in direct competition with each other for day pupils, it does

\(^{438}\) Cheltenham College’s response (document LXT3429) to the OFT’s section 26 Notice which was sent on 9 February 2004 (document SMG007).

\(^{439}\) It is possible that in some instances Participant schools that are separated by more than a 60 minute drive time may still exert some competitive constraint on each other as a result of being linked by ‘chains of substitution’. The OFT has not reached any firm conclusions on this, however. For an explanation of the term ‘chains of substitution’ see OFT competition guideline on Market Definition (OFT 403, Edition 12/04), paragraph 3.11.
not allow the OFT to reach definitive conclusions as to the precise scope of the geographic market or markets for day services.

304. In the case of all but nine of the 45 Participant schools that provide day services, there is at least one other Participant school that offers comparable day services within a drive time of 60 minutes, the drive time chosen by the OFT for the purposes of this Decision as representing a reasonable upper boundary of the distance between Participant schools that might be considered to be direct competitors for day pupils.

305. Of the nine remaining Participant schools that the OFT’s analysis does not identify as having a comparable Participant school within a 60 minute drive time, eight were excluded from the analysis on the basis of their geographic remoteness from other Participant schools\(^\text{440}\). In the case of the ninth school, Westminster School, this has another two Participant schools, Mill Hill School and Epsom College, that are within a 60 minute drive time but Westminster School has a significantly higher level of academic attainment than either of these schools. It should be noted, however, that whilst these two schools may not represent a significant competitive constraint for Westminster School, both schools may themselves be constrained by Westminster School, at least in respect of those pupils that meet Westminster School’s selection requirements. A level of competition between these schools and Westminster cannot, therefore, be excluded.

306. Finally, the OFT notes that all 45 Participant schools that offer day services, including the nine schools mentioned in paragraph 305 above, submitted day fee, as well as boarding fee information to the Sevenoaks Survey. All 45 schools also received information through the Survey concerning each other’s intended day fee increases. Moreover, as described in Section II of this Decision, the internal documents of two\(^\text{441}\) of the nine schools which, on the basis of the OFT’s analysis, would appear not to have close competitors for day pupils amongst the other Participant schools, indicate that the results of the Sevenoaks Survey were nevertheless capable of being used to benchmark their day fees with those of other Participant schools\(^\text{442}\).

**Market shares**

307. Table 1 in Annex 2 to this Notice sets out the number of pupils attending Participant schools as a proportion of the total number of pupils at independent fee-paying senior schools in the UK\(^\text{443}\). This reveals that the Participant schools' share of the UK market for boarding services is 41%; 48% in the case of boys and 31% in the case of girls.

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\(^{440}\) These are Ampleforth College, Gresham’s School, Repton School, Royal Hospital School, Sedbergh School, Shrewsbury School, Strathallan School and Truro School.

\(^{441}\) See paragraphs 364 and 1067 below.

\(^{442}\) Ampleforth College and Strathallan School.

\(^{443}\) Source: ISCis, January 2004.
308. Without having been able to reach definitive conclusions as to the relevant geographic market(s) for day services, the OFT has not been able to calculate market share figures for day services. As a proportion of all day places at independent fee–paying senior schools in the UK, the Participants have a share of supply of 3% (see Table 1 in Annex 2). When calculated on the basis of narrowly defined local markets, on the other hand, the combined shares of supply of comparable Participant schools within an area can be considerably higher 444 than 3%, although in some cases it will be lower. Table 6 in Annex 4 gives an indication, for each Participant school, of the possible combined market shares of comparable Participant schools within each of a 60 minute, 55 minute, 50 minute, 45 minute and 40 minute drive time 445.

D. Operation of the Sevenoaks Survey (based on an explanation by the bursar of Sevenoaks School during the relevant period)

309. The purpose of this section is to explain the background to the Sevenoaks Survey, including a description of its origins and an overview of how it operated each year. In providing this information the OFT has relied upon the witness statement provided by Julian Patrick, the Sevenoaks bursar from 1980 to August 2003 (hereafter referred to as ‘Julian Patrick’s Witness Statement’) 446 in which he explained how the Survey operated during his time as the Sevenoaks bursar, and evidence obtained from the Parties.

Introduction

310. Each year from 1997 until June 2003, the Sevenoaks bursar requested and received fee increase information from up to 49 other independent fee–paying schools. This information comprised both the previous year’s fee levels and the prospective fee increases and fee levels for the coming academic year.

Format of the Sevenoaks Survey

311. The Sevenoaks bursar collated the information he received from the other Participant schools, into the format of a spreadsheet, which, as explained in the previous paragraph, included the previous year’s fee levels and the

444 Table 6 in Annex 4 shows that the average market share of Participant schools within a 60 minute drivetime from a given Participant school as a proportion of all the senior independent school day places within the same drive time is 9%. The highest share held by Participant schools within a 60 minute drivetime measured from any given school is 44.6% measured from Sherborne School.

445 It should be noted, however, that in calculating the total number of day places for the purposes of the table only schools that are non–comparable in the limited sense defined in paragraph 256 above have been excluded. It is likely that amongst the schools included for the purpose of the table there will be a number that compete less directly with the Participant school in question, such that the table will understate the Participant schools’ market share if only those schools that are most closely comparable were included. Relevant factors that are not reflected in the figures in Table 6 might include such things as the size of the school, the range of facilities and activities offered, its ethos, etc.

446 Document GCOR1034C.
prospective fee levels for the Participant schools. This spreadsheet identified individual schools’ predicted fee increases and fee levels.

312. In his witness statement Mr Patrick explained the format of the Sevenoaks Survey. Paragraph 18 of Julian Patrick’s Witness Statement\(^{447}\) records,

> 'Two of the columns of the survey are headed 'E or Fixed'. Each of these columns appears on the right hand side of each of the columns headed 'fee increases', one for boarding fees and one for day fees. 'E or Fixed' relates to whether the fee increase submitted by a school is an estimated 'E' or whether it is 'Fixed', that is a fee increase that has already been approved by the board of governors and fixed by the school for the forthcoming year.'

313. The Sevenoaks Survey was circulated to the other 49 Participant schools on at least two occasions (February and May) in each year of the relevant period.

**Origins of the Survey**

314. In his witness statement Mr Patrick explained the way in which the Sevenoaks Survey operated during his time at the school. His explanation gave a description of the origins of the Survey, including the reasons why he took the initiative in re-starting it. Paragraph 5 of Julian Patrick’s Witness Statement\(^{448}\) records,

> 'I was aware that this survey had been carried out in the past, but it stopped until I resurrected it in 1997 because it seemed to be a helpful piece of information for bursars.'

**Operation of the Sevenoaks Survey**

315. Paragraph 6 of Julian Patrick’s Witness Statement\(^{449}\) provides an overview of how he compiled and distributed the Sevenoaks Survey with the assistance of his secretary [...][C] each year,

 '>...When, [sic] Sevenoaks took over the practice, I sent a mail shot to the bursars of the 49 other schools with a questionnaire requesting their predicted fee increases for the coming academic year. Once I had received the replies from the schools, I collated the information, including Sevenoaks’ predicted fee increase and sent a spreadsheet (the survey) which identified individual schools' prospective fees and levels of increase to the 49 schools. In the past, the spreadsheet was circulated by post but in recent years it was done by e–mail. The annual exchange of prospective fee increases through the survey continued up to and including proposed school fees for 2003/04.'

316. In January of each year of the relevant period, the Sevenoaks bursar circulated a covering letter with attached questionnaires requesting the first estimates of fee increases for the coming academic year, starting in

\(^{447}\) Ibid.
\(^{448}\) Ibid.
\(^{449}\) Ibid.
September, for a survey to be circulated in February, and for more considered estimates for a survey to be circulated in May. There were also a number of other circulations of the Sevenoaks Survey between the main February and May circulations of the Survey. These additional circulations took account of revised or new submissions from the Participant schools as their proposed fee calculations evolved during each of their respective budgetary processes.

**Schools in receipt of the Sevenoaks Survey**

317. Paragraph 9 of Julian Patrick’s Witness Statement records that,

> 'If a school did not respond to the survey when it was first circulated in February, it would be circulated to that school again in May in the hope that it would respond. Similarly, if a school did not respond one year, it would be kept on the list for the next year. The number of schools that participated each year varied slightly from year to year'.

The OFT considers that this explanation applies to each of the academic years from 2001/2002 to 2003/2004. In the light of this statement, the OFT considers that the list of schools which appear on the Sevenoaks Survey for the years 2001, 2002 and 2003 represents all the schools which received the Survey in those respective years, that is, the Participant schools.

**Increased intensity of circulation of the Sevenoaks Survey**

318. Paragraph 4 of Julian Patrick’s Witness Statement\(^{450}\) records that,

> 'Sevenoaks starts its budgetary process in January of each year for a fee increase that will be applicable from the following September. This is the first time that we start working on the budget seriously. The first exchanges between bursars of other schools in relation to the survey take place in February. The dates of the two circulations of the survey, February and May, tied in with when I would start considering my fee increase recommendation to the Board of Governors and when the school takes the decision to set the fees.'

319. The use of electronic mail to circulate the Survey led to an increased number of updates between the Sevenoaks Survey circulations in February and May, to take account of revised submissions by the Participant schools during their budgetary process.

320. Julian Patrick’s Witness Statement goes on to note, at paragraph 7, that,

> 'In the days that the spreadsheet was sent by post, there were two circulations per year but when we began circulating the survey by e-mail the process became easier, as it was easier to update the surveys and then circulate them. When a batch of replies came in after the date when the survey would have been circulated, another survey would be circulated incorporating the new replies. It is still basically a twice a year process.'

\(^{450}\) Ibid.
operation, although the ease of electronic mail made it easier to incorporate late responses and re-circulate the survey.

Other than in the last two years, there were usually two circulations per academic year, one in February and one in May. In respect of the academic years 2002/03 and 2003/4 there were at least 2 and 5 circulations respectively. Records of all of the surveys have not been retained by Sevenoaks.  

321. Documents provided as part of the responses from the Participant schools which were sent section 26 notices on 9 February 2004 include copies of the Sevenoaks Surveys circulated in each of the years during the relevant period. In 2001 there were seven different circulations of the Sevenoaks Survey dated: 13 February 451, 1452, 8453, 14454, 17455 and 29456 May and 25 June457. In 2002 there were four circulations of the Sevenoaks Survey dated 11458 and 15459 February, 22 April460 and 11 June461. In 2003, there were six circulations of the Sevenoaks Survey dated 12462, 14463 and 26464 February, 14 March465, 17 March466 and 17 April467. The OFT takes the view that all of these circulations were sent to the Participant schools.

322. The paragraphs below set out for each year in the relevant period: (i) the request by the Sevenoaks bursar for estimates in January for the main circulations of the Sevenoaks Survey in February and May; (ii) the covering letters and electronic mails sent to the Participant schools attaching the Sevenoaks Survey; and (iii) the additional circulations of the Sevenoaks Survey.

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451 Document LXT3404.
452 Document JXS0260.
453 Document LXT3408.
454 Document LXT3409.
455 Document AXZ056. See also document HXB006.
456 Document HXB 006.
457 Document TXD0594.
458 Document LXT3412.
459 Document LXT3413.
460 Document LXT3414.
461 Document TXD0582.
462 Document LXT3416.
463 Document LXT3417.
464 Document LXT3418.
465 Document LXT1263A.
466 Document SJN0275.
467 Document LXT3424.
2001/2002 academic year

Letter from Julian Patrick dated 30 January 2001 to bursars of Participant schools with questionnaires attached

323. This letter states,

'Dear Bursar

SCHOOL FEES 2001/02

Please find attached two questionnaires and if you would like your School to be included in the annual surveys, would you kindly complete and return the forms as follows:

Questionnaire 1  First guestimates of the annual fees to apply from September 2001. Please complete and return to me by 9 February. I will circulate the summary of replies during the week commencing 12 February.

Questionnaire 2  Considered estimates or actual fees to apply from September 2001. Please complete and return to me by 11 May. I will circulate the summary of replies during the week commencing 14 May.

I hope you find the summaries helpful and the aforementioned dates fit well with your Governor’s meetings at which budgets and fee proposals are presented.

Yours sincerely

JP Patrick'

324. The attached questionnaires state as follows:

'Questionnaire 1

SCHOOL FEES SURVEY 2001/02

SENIOR SCHOOL FEES INCLUSIVE OF ALL COMPULSORY EXTRAS

Name of School……………………

<table>
<thead>
<tr>
<th></th>
<th>2000/01</th>
<th>2001/02</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increase</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Boarding</td>
<td>.........</td>
<td>.........</td>
<td>.........</td>
</tr>
<tr>
<td>Day</td>
<td>.........</td>
<td>.........</td>
<td>.........</td>
</tr>
</tbody>
</table>

Please complete and return to by Friday 9th February to The Bursar, Sevenoaks School, Kent TN13 1HU marked Private & Confidential with a stamped addressed envelope minimum size 22cm x 11cm.'

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[468 Document AXZ434C, provided by King’s School Canterbury. The same document was also provided by Bromsgrove School, Royal Hospital School, Harrow School, Malvern College, Oakham School and St. Edward’s School in their respective responses to the OFT’s section 26 Notices dated 9 February 2004.]
Questionnaire 2

SCHOOL FEE SURVEY 2001/02

SENIOR SCHOOL FEES INCLUSIVE OF ALL COMPULSORY EXTRAS

Name of School..............................

<table>
<thead>
<tr>
<th></th>
<th>2000/01</th>
<th>2001/02</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Boarding</strong></td>
<td>..........</td>
<td>..........</td>
<td>......</td>
</tr>
<tr>
<td><strong>Day</strong></td>
<td>..........</td>
<td>..........</td>
<td>......</td>
</tr>
</tbody>
</table>

Please indicate if the fees from September 2001 are estimated or fixed.

Please complete and return by Friday 11 May to The Bursar, Sevenoaks School, Sevenoaks, Kent TN13 1HU marked Private & Confidential with a stamped addressed envelope minimum size 22cm x 11cm.'

325. The Sevenoaks bursar then circulated the results of the Survey and a covering letter by electronic mail, in February and then later in May. More up to date submissions were requested from the Participant schools for the May survey.

Letter from Julian Patrick dated 12 February 2001 to bursars of Participant schools with attached Sevenoaks Survey dated 13 February 2001

326. This letter states,

<table>
<thead>
<tr>
<th></th>
<th>2000/01</th>
<th>2001/02</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Boarding</strong></td>
<td>..........</td>
<td>..........</td>
<td>......</td>
</tr>
<tr>
<td><strong>Day</strong></td>
<td>..........</td>
<td>..........</td>
<td>......</td>
</tr>
</tbody>
</table>

Thank you to all Bursars who completed and returned to me the first questionnaire. I have pleasure in enclosing a summary of replies.

The average percentage increase (based on replies received as at 10.2.01.) is 5.80% for boarders and 6.04% for day.

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469 Document JXS0759, provided by Bromsgrove School. The same document was also provided by Charterhouse School (document LXT3404), Royal Hospital School (document JXS0045), Gresham’s School (document JXS0145), King’s School Canterbury (document AXZ434D), Marlborough College (document AXZ631), Oakham School (document AXZ273), Sherborne School (document TXD0387), St. Edward’s School (document TXD1806), Stowe School (document SJN0908) and Wycombe Abbey School (document SJN1235) in their respective responses to the OFT’s section 26 Notices dated 9 February 2004. Also provided by Cheltenham Ladies’ College and Winchester College as part of their Leniency applications.
I have received a number of requests to bring forward by one week the circulation of the second summary. I am happy to do this if this is what the majority would like but it does mean that the second questionnaire must be completed and returned to me by no later than Friday 4 May. Bearing in mind the dates of the ISBA Conference it might not be the ideal time to ask for replies.

[...][C], my secretary, (who does all the hard work) has suggested that I really should move out of my cave and stone age habits and organise the questionnaires and circulation of the summary by e-mail. I have to agree with her that this makes sense.

Please would you e-mail [...][C] at the address shown at the foot of this letter with your views on the circulation date of the second summary and she will pick up your e-mail address from your message in order that this can be recorded and used in future.

With best wishes and looking forward to seeing you at the Conference.

Yours sincerely

JP Patrick'

Electronic mail from [...][C]470 to the bursars of 27 of the Participant schools and to Julian Patrick dated 4 May 2001

327. This electronic mail states,

‘Dear Bursar

Just a reminder that if you wish to receive a copy of the latest fees survey, please let me have your estimated or fixed fees for 2001/02 by e-mail (if you have not already completed the yellow 2nd questionnaire).

I will be sending you an up to date version by close of business today and again on 11 May when I expect to have received everyone’s reply.

[...][C]

Secretary to JP Patrick’

470 This electronic mail was provided by Charterhouse School (document LXT3405). The same document was also provided by Lancing College (document AXZ522), Marlborough College (document AXZ629) and Worth School (document SJN0255) in their respective responses to the OFT’s section 26 notices sent on 9 February 2004. The following Participant schools were not addressees of the electronic mail: Ampleforth College, Bradfield School, Bryanston School, Charterhouse School, Clifton College, Royal Hospital School, Gresham’s School, Harrow School, Malvern College, Millfield School, Mill Hill School, Oundle School, Sedbergh School, St. Edward’s School, St.Leonards – Mayfield, Strathallan School, Tonbridge School, Truro School, Uppingham School, Wellington College, Wells Cathedral School, Westminster School and Wycombe Abbey School.
Electronic mail from [...] to the bursars of 27 of the Participant schools dated 8 May 2001 with Sevenoaks Survey dated 8 May 2001 attached

328. This electronic mail states,

'Dear Bursar

Thank you for the replies received on Friday. Please find attached the latest version of Estimated or Fixed Fees for 2001/02.

[...]'

Secretary to JP Patrick.'

Electronic mail from [...] to the bursars of 27 of the Participant schools dated 14 May 2001 with Sevenoaks Survey dated 14 May 2001 attached

329. This electronic mail states,

'Dear Bursar

Please find attached the latest updated version of the Fees Survey Table which I hope you will find helpful

[...]'

Secretary to JP Patrick'

330. The OFT also notes that there were three additional circulations of the Sevenoaks Surveys dated 17 and 29 May and 25 June 2001. Although the OFT is not in possession of a covering electronic mail or letter which would have accompanied these surveys the OFT takes the view that these three additional Sevenoaks Surveys were circulated to the Participant schools.

471 This electronic mail was provided by Charterhouse School (document LXT3408). The same document was also provided by Canford School (document LXT3272), Lancing College (document AXZ522), Oakham School (document AXZ282), Worth School (document SJN0257) in their respective responses to the OFT's section 26 notices sent on 9 February 2004. The following Participant schools do not appear as addressees of the electronic mail: Ampleforth College, Bradfield College, Bryanston School, Charterhouse School, Clifton College, Royal Hospital School, Gresham's School, Harrow School, Malvern School, Millfield School, Mill Hill School, Oundle School, Sedbergh School, St. Edward's School, St. Leonards – Mayfield School, Strathallan School, Tonbridge School, Truro School, Uppingham School, Wellington College, Wells Cathedral School, Westminster School, Wycombe Abbey School.

472 Provided by Charterhouse School (document LXT3409). The same document was provided by Oakham School (document AXZ283), Woldingham School (document SJN0734) and Worth School (document SJN0258) in their respective responses to the OFT’s section 26 Notices dated 9 February 2004. The following Participant schools do not appear as addressees of the electronic mail: Ampleforth College, Bradfield College, Bryanston School, Charterhouse School, Clifton College, Royal Hospital School, Gresham’s School, Harrow School, Malvern School, Millfield School, Mill Hill School, Oundle School, Sedbergh School, St. Edward’s School, St. Leonards – Mayfield School, Strathallan School, Tonbridge School, Truro School, Uppingham School, Wellington College, Wells Cathedral School, Westminster School, Wycombe Abbey School.

473 Document LXT2749, provided by Benenden School and also provided by Eton College (document LXT1209) as part of their Leniency applications.
2002/2003 academic year

Letter from Julian Patrick dated 2 February 2004\textsuperscript{474} to School bursars with questionnaire attached\textsuperscript{475} (the questionnaire records Sevenoaks’ own prospective fee increases for 2002/2003)

331. The letter states,

'Dear Bursar

SCHOOL FEES 2002/03

Please find attached the first of two questionnaires which, if you would like your School to be included in the annual survey, you should complete and return the forms as follows:

\begin{itemize}
  \item \textbf{Questionnaire 1} First guestimates of the annual fee to apply from September 2002. Please complete and return to me by 8 February.
  \item \textbf{Questionnaire 2} Considered estimates or actual fee to apply from September 2002. I will send out this form at the beginning of May.
\end{itemize}

I would be grateful if you would complete the first questionnaire and e-mail it back to my secretary, […][C], at jb@admin.soaks.org

Yours sincerely

JP Patrick'

Electronic mail from Julian Patrick to the bursars of 48\textsuperscript{476} of the Participant schools dated 11 February 2002 with Sevenoaks Survey attached\textsuperscript{477}

332. This electronic mail states,

'Dear Bursar

Thank you to all the Bursars who have replied with their first guestimate or estimate of the fees they will be charging for the next academic year. I have pleasure in attaching a summary.

If you have yet to give me your figures, please do so by the end of this week and I will send out a second complete summary. Alternatively if you do not want to be included in the first round of the fee survey, please let me know and I will delete you from the circulation list.

Best wishes

Julian Patrick'

\textsuperscript{474} The OFT notes that the year that appears on the letter is 2004, although the letter refers to 2002 in the text. Therefore the OFT takes the view that the date ‘2004’ is an error and should in fact read ‘2002’.

\textsuperscript{475} Document TXD0596, provided by Sevenoaks School as part of its Leniency application.

\textsuperscript{476} Charterhouse School and Sedbergh School do not appear as addressees of the electronic mail.

\textsuperscript{477} Document JXS0235, provided by Harrow School as part of its response (document JXS0151R) to the OFT’s section 26 Notice dated 9 February 2004 (document SMG017).
This electronic mail states,

‘Please find attached the latest summary of Estimated fees for 2002/03 as at 15 February 2002.

[...]C
Sevenoaks School’

Electronic mail from [...]C to the bursars of 43 of the Participant schools dated 22 April 2002 with updated Sevenoaks Survey attached

This electronic mail states,

‘Thank you to all who responded to the latest round. Please find the summary attached as at 22.4.02. Any changes are in italics.

[...]C
Secretary to JP Patrick
Sevenoaks School’

The OFT also notes that there is an additional Sevenoaks Survey dated 11 June 2002. Although the OFT is not in possession of a covering electronic mail or letter which would have accompanied this survey when it would have been circulated, the OFT takes the view that this additional Sevenoaks Survey was also circulated to the Participant schools.

2003/2004 academic year

Electronic mail from Julian Patrick to the bursars of the other 49 Participant schools dated 28 January 2003 with first questionnaire attached

This electronic mail states,

‘Dear Bursar

 Bradfield College, Bryanston School, Charterhouse School, Cheltenham Ladies’ College, Rugby School, Sedbergh School and Truro School do not appear as addressees of the e-mail.

Bradfield College, Bryanston School, Charterhouse School, Cheltenham Ladies’ College, Rugby School, Sedbergh School and Truro School do not appear as addressees of the electronic mail.

Document LXT3414, provided by Charterhouse School as part of its response (document LXT3299) of 8 March to the OFT’s section 26 Notice dated 9 February 2004 (document SMG008).

Provided by Charterhouse School (document LXT3415). Also provided by Dauntsey’s school (document LXT4011), Downe House School (document LXT4346), Harrow School (document JXS0205), Lancing College (document AXZ513), Marlborough College (document AXZ650), Repton School (document LXT573), Sedbergh School (document TXD1289), Sherborne School (document TXD0393), St. Edward’s School (document TXD1842), St Leonards– Mayfield School (document TXD0825), Tonbridge School (document LXT686), Worth School (document SJN0266), and Wycombe Abbey (document SJN1256) in their respective responses to the OFT’s section 26 Notices dated 9 February 2004.
Please find attached the first of two questionnaires. If you would like your schools to be included in the annual survey, you should complete and return as follows:

Questionnaire 1. First guestimate of the annual fee to apply from September 2003. Please complete and return to me by 7 February. I will send out the summary by 15 February.

Questionnaire 2. Considered estimated or actual annual fee to apply from September 2003. I will send out the second questionnaire around the second week in April and the results soon after.

I would be grateful if you would complete the first questionnaire and e-mail it back to my secretary, [...][C], at jb@soaks.org.

Yours sincerely

JP Patrick

Sevenoaks School

< <Fees survey.2003.doc> >'

337. The questionnaire attached to the electronic mail, was set out in a similar format as those sent out in 2001.

'School Fees Survey 2003/2004

Senior School Annual Fees Inclusive of All Compulsory Extras

Name of School:

<table>
<thead>
<tr>
<th>Academic Year</th>
<th>Academic Year % Increase</th>
</tr>
</thead>
</table>

Boarding

Day

Please quote the annual fee in each case and return this form by e-mail to the Bursar’s Secretary, Sevenoaks School at jb@soaks.org by no later than 7 February 2003.'

Electronic mail from Julian Patrick to Darren Milne, Director of Finance and Resources of Cheltenham Ladies’ College, dated 7 February 2003 with questionnaire attached\(^{483}\)

338. This electronic mail states,

'Dear Bursar

Please find attached the first of two questionnaires. If you would like your School to be included in the annual survey, you should complete and return the forms as follows:

\(^{483}\) Provided by Cheltenham Ladies’ College as part of its Leniency application (document LXT1109).
Questionnaire 1. First guestimate of the annual fee to apply from September 2003. Please complete and return to me by 7 February. I will send out the summary by 15 February.

Questionnaire 2. Considered estimated or actual annual fee to apply from September 2003. I will send out the second questionnaire around the second week in April and the results soon after.

I would be grateful if you would complete the first questionnaire and e-mail it back to my secretary, [...][C], at jb@soaks.org.

Yours sincerely
JP Patrick
Sevenoaks School
< <Fees survey.2003.doc> >'

Electronic mail from [...][C]$^{484}$ to all 49 Participant schools dated 12 February 2003 with Sevenoaks Survey dated 12 February 2003 attached

339. This electronic mail states,

'I attach a summary of the replies received to date. If you have not yet supplied your figures or wish to amend those already sent, please e-mail them to me by 9am on Friday 14 February and I will circulate a complete summary later that day.

[...][C]
For Julian Patrick
Sevenoaks School
< <ESTIMATED OR FIXED FEES 2003.doc> >'

Electronic mail from Julian Patrick$^{485}$ to 50$^{486}$ Participant schools dated 14 February 2003 with Sevenoaks Survey dated 14 February 2003 attached

340. This electronic mail states,

'Dear Bursar As promised, please find enclosed the latest version. I will be sending out the second questionnaire during the week commencing 14 April.

[...][C]

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$^{484}$ Provided by Harrow School (document JXS0203) as part of its response (document JXS0151R) to the OFT’s section 26 Notice dated 9 February 2004 (document SMG017).

$^{485}$ Provided by Canford School (document LXT3276). Also provided by: Charterhouse School (document LXT3417); Downe House School (document JXS0427); Harrow School (document JXS0202); Lancing College (document AXZ511); Marlborough College (document AXZ654); Repton School (document LXT579); Sherborne School (document TXD0396); Shrewsbury School (document TXD0219); St Leonards–Mayfield School (document TXD0820); Worth School (document SJN0269); and Wycombe Abbey School (document SJN1262) in their respective responses to the OFT’s section 26 Notices dated 9 February 2004. Also provided by Winchester College as part of its Leniency application (document TXD1929).

$^{486}$ Gordonstoun School also appears as an addressee of the e-mail for the first time.
Electronic mail from Julian Patrick\textsuperscript{487} circulated to 50\textsuperscript{488} school participants requesting updates, dated 11 March 2003 with Sevenoaks Survey dated 26 February 2003 attached

341. This electronic mail states,

'Dear Bursar

Since the last summary was circulated on 14 February, I believe some Bursars may have revised their estimates or have fixed their fees for 2003/2004. In my own case, I have revised the estimate of the day fee increase from 9\% to 11\% but kept the boarding fee increase at 9\%.

If you have made any changes to your estimates and/or have fixed the fees for 2003/04, please let me know the figures and I will circulate a revised summary by Friday of this week.

Julian

ESTIMATED OR FIXED FEES 2003.doc'

Electronic mail from Julian Patrick\textsuperscript{489} circulated to 47\textsuperscript{490} Participant schools, dated 14 March 2003 with attached Sevenoaks Survey

342. This electronic mail states,

'Please find attached the latest version as at today’s date.

Julian Patrick
Bursar
Sevenoaks School

< <ESTIMATED OR FIXED FEES 2003.doc.>>

\textsuperscript{487} Provided by Charterhouse School (document LXT3418). Also provided by Bedford School (document LXT2542), Dauntsey’s School (document LXT4015), Downe House School (document JXS0722), Lancing College (document AXZ510), Marlborough College (document AXZ655), Oakham School (document AXZ290), Repton School (document LXT580), Royal Hospital School (document JXS0051), Rugby School (document TXD1460), Sedbergh School (document TXD1291), Sherborne School (document TXD0397), St Leonards–Mayfield School (document TXD0818), Worth School (document SJN0270) and Wycombe Abbey School (document SJN1264) as part of their respective responses to the OFT’s section 26 Notices dated 9 February 2004. Also provided by Cheltenham Ladies’ College and Winchester College as part of their Leniency applications.

\textsuperscript{488} Gordonstoun School is also included as an addressee in the electronic mail.

\textsuperscript{489} Provided by Harrow School in its response (document JXS0151R) to the OFT’s section 26 Notice dated 9 February 2004 (document SMG017).

\textsuperscript{490} Rugby School and Malvern College do not appear as addressees of the electronic mail.
343. This electronic mail states,

'Dear Bursar,

Please find attached the summary of fees as at 17 March and a second questionnaire. If your School’s figures need amending, please provide the correct figures on the attached sheet and indicate if they are estimated or fixed.

If you complete and return the form to my secretary, [...][C] at jb@soaks.org by Thursday 17 April, I will circulate the results by the end of the week.

Julian Patrick
Bursar
Sevenoaks School
< <Fees survey.2003.doc>>
< <ESTIMATED OR FIXED FEES 2003.doc>>'

Electronic mail from [...][C]492 to 47493 Participant schools attaching the Sevenoaks Survey dated 17 April 2003

344. This electronic mail states,

'Here’s the latest version for your information.

[...][C]

for Julian Patrick, Sevenoaks Schools.'

**Purpose of the Sevenoaks Survey**

345. Paragraph 4 of Julian Patrick’s Witness statement records that,

'The dates of the two circulations of the survey, February and May, tied in with when I would start considering my fee increase recommendation to the Board of Governors and when the school takes the decision to set the fees. The budget is presented to the Finance Committee, generally either towards the end of February or in early March. The budget is ratified or presented again to the full board of Governors at their meeting

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491 Document provided by Worth School (document SJN0275) in its response to the OFT’s section 26 Notice dated 9 February 2004 (document SMG042).
492 Document provided by Charterhouse School (document LXT3424); Downe House School (document JXS0679); Haileybury (document LXT091); Kings Canterbury School (document AXZ434M); Lancing College (document AXZ507); Oakham School (document AXZ293); Royal Hospital School (document JXS0052); Sherborne School (document TXD0403); Worth School (document SJN0277); and Wycombe Abbey School (document SJN1269) in their respective responses to the OFT’s section 26 Notices dated 9 February 2004. Also provided by Cheltenham Ladies’ College (document LXT1142) as part of its Leniency application.
493 Rugby School and Malvern College do not appear as addressees of the electronic mail.
later in March, when the fees at Sevenoaks are set. Some schools that participate in the survey do not set their fees until the Summer term which begins in April. Although we set our fees by the end of the Lent term, in March, we circulate another survey in May. This was for the benefit of the other schools who had yet to set their fees.'

346. At the end of a covering letter dated 30 January 2001 the Sevenoaks bursar stated,

'I hope you find the summaries helpful and that the [above] mentioned dates [re circulation of later May survey] fit in well with your governors meetings at which your budgets and fee proposals are presented.'

347. An electronic mail from the Sevenoaks bursar in April 2002 to the Participant schools states,

'Dear Bursar
SCHOOL FEES 2002/03
The flurry of emails and interest that has been shown about the level of fees to be charged from September suggests to me that bursars might welcome a second survey now rather than wait until early May. If you would like to be included in this second survey, please would you e–mail back to me your latest prediction of your School’s fees for the next year. …'

348. This documentary evidence makes explicit that the purpose of circulating the results of the Sevenoaks Survey is to provide the Participant schools with information concerning their competitors’ proposed fee increases, in order to be available to them when making their own fee decision for the coming academic year.

Relevance of timing of the Sevenoaks Survey

349. Most of the Participant schools have similar procedures and structures for their respective budgetary processes. In general, the Participant schools commence their budgetary process in the Spring term of an academic year and progress through a number of stages (for example, budget requests from individual departments and estimates of capital expenditure etc) before the budget (including the fee increase) is approved by the school’s full Board of Governors or equivalent body, typically in approximately May or June each year. However, some Governing Bodies approve the fee increases as early as March.

350. By February the majority of the Participant schools’ bursars are in a position to make a broad estimate of the likely fee increase for the next academic year that they will be recommending to the Board of Governors. However, at that stage certain factors that will influence the likely fee recommendation are unknown, such as teachers’ salary increases (which usually follow those in the state sector). This significant factor is not

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495 Electronic mail dated 17 April 2002 (document LXT3484).
496 January to March.
known until April. The fee proposal along with the budget will be scrutinised by the finance sub-committee (or equivalent committee) of each of the Participant schools before being submitted to the full Board of Governors for approval. Section II part E below sets out the budgetary process for each of the Participant schools.

351. The OFT considers that the timing of the Sevenoaks bursar’s requests for estimates from the Participant schools and the Sevenoaks Survey circulations, in February and May, as well as the updates, is significant in that they correspond to the time of the year when the Participant schools are considering their budgets and in the process of calculating their respective fee increases for the coming academic year. Therefore each of the Participant schools would have had access to the prospective fee increases of 49 of its competitor schools when considering its own fee increases.

Requests for earlier circulation of the Sevenoaks Survey

352. Additional documentary evidence provides further illustration of the purpose and relevance of the timing of the Sevenoaks Survey. A letter from the bursar of Oakham School to the bursar of Sevenoaks states,

'Dear Julian, School Fees 2001/02. Please find enclosed a completed Questionnaire I for our school as requested. As you rightly infer, the annual survey summaries prove to be of immense value when preparing budget and fee proposals. In light of this, I should point out that our Finance and General Purposes Committee is scheduled for 17th May 2001. Therefore it is likely that I will receive the results of the Questionnaire II Survey too late to be of any real value to us at this meeting. Would it be at all possible for Questionnaire II returns to be made one week earlier thus enabling a summary to be circulated during the week commencing 7th May? May I just add that I am very grateful to you for your initiative in undertaking this annual survey.'

353. In response to this request the Sevenoaks bursar states in a letter to all Participant schools,

'I have received a number of requests to bring forward by one week the circulation of the second summary. I am happy to do this if this is what the majority would like but it does mean that the second questionnaire must be completed and returned to me by no later than Friday 4 May.'

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497 Letter dated 6 February 2001 (document AXZ277) provided by Oakham School in response to the OFT’s section 26 Notice sent on 9 February 2004 (document SMG023).
E. Evidence of participation in the Sevenoaks Survey relating to each of the Participant Schools

**Ampleforth College**

Evidence of participation in the Sevenoaks Survey\(^{499}\)


355. First, the Sevenoaks Survey includes fee-increase estimates for Ampleforth College for each of the years 2001/2002, 2002/2003 and 2003/2004\(^{500}\).

356. Second, Ampleforth College has stated in its response to a request for information made by the OFT under section 26 of the Act that:

> 'Ampleforth contributed to the Sevenoaks survey every year from 2000.'\(^{501}\)

Enclosed with Ampleforth College's response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2002/2003 and 2003/2004 that Ampleforth College received from the Sevenoaks bursar or his assistant.

357. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004, Ampleforth College was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools\(^{502}\). The OFT considers that this demonstrates that Ampleforth College received at least one circulation of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004 by, respectively, 11 February 2002 and 11 March 2003.

358. Fourth, the OFT notes that a number of Ampleforth College's internal documents for each of the academic years 2001/2002 to 2003/2004 are consistent with and further evidence for the conclusion that Ampleforth College participated in the Sevenoaks Survey in respect of those academic years.

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\(^{499}\) See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.

\(^{500}\) See the table at paragraph 369 below.

\(^{501}\) Taken from the answers to questions 7 and 9 in Ampleforth College’s response dated 8 March 2004 (document LXT1366R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG002).

\(^{502}\) Documents LXT3412 and LXT2542 show, respectively, that the electronic mail address alsh@ampleforth.org.uk was the recipient of electronic mails transmitting summaries of other schools' fee-increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – 'ampleforth.org.uk' – corresponds with the domain name for the electronic mail address of the Procurator of Ampleforth College that is recorded on Ampleforth College’s 8 March 2004 letter responding to the OFT’s section 26 Notice to it dated 9 February 2004. The OFT therefore considers that Ampleforth College received the electronic mails described above that were sent to the electronic mail address alsh@ampleforth.org.uk.
2001/2002 academic year

359. The OFT considers that the following extract from Ampleforth College’s internal documents is consistent with, and further evidence for, the conclusion that Ampleforth College participated in the Survey for 2001/2002.

Undated document entitled 'Procurator's Report to Advisors June 2001'\textsuperscript{503}

360. The report at page 5, last paragraph states,

'It is attached analysis of fee increases at other schools.'

Attached to the report is a schedule of 50 schools all of whom are participants in the Sevenoaks Survey and their proposed boarding fee increases and levels for the academic year 2001/2002. The OFT notes that, for 47 of the 50 schools\textsuperscript{504}, the boarding fee increase figures recorded on the schedule are precisely the same figures as are recorded on the circulation of the Sevenoaks Survey dated 29 May 2001, the nearest circulation in time that precedes the June 2001 date that is written on the Procurator’s report in question.

2002/2003 academic year

361. The OFT considers that the following extracts from Ampleforth College’s internal documents are consistent with and further evidence for the conclusion that Ampleforth College participated in the Survey for 2002/2003.

Undated document entitled 'St Laurence Education Trust Upper School Procurators Report to Advisors March 2002'\textsuperscript{505}

362. The report at page 2, last paragraph, headed 'Fees' states,

'I am enclosing a copy of the latest fees survey in which the current fees and projected fees for several schools are given. Surveys at this time of year are not very reliable but it would appear that many schools have increases of 5% and above in mind. Our level of fees is if anything slightly below those of our national competitors.'

Document entitled 'Minutes of a meeting of the Trustees of the St Laurence Education Trust, held at 2pm on 2\textsuperscript{nd} July 2002 in the Abbots Meeting Room'\textsuperscript{506}

363. Paragraph 4 of the second page states,

'College Fees. After discussion the Council approved an increase in fees by 7%. It was noted that this is in line with practice in the rest

\textsuperscript{503} Document LXT1466.
\textsuperscript{504} The figure for Epsom School is 6.5% on the table compared to the 7.7% that is recorded in the Sevenoaks Survey. The figure for Millfield School is 8% on the table compared to the 6% that is recorded in the Sevenoaks Survey. The figure for Mill Hill School is 5% on the table compared to the 8% that is recorded in the Sevenoaks Survey.
\textsuperscript{505} Document LXT1482.
\textsuperscript{506} Document LXT1563.
of the boarding sector and against a background of rising costs, and
the need to provide ever-improved facilities.'

2003/2004 academic year

364. The OFT considers that the following extract from Ampleforth College’s
internal documents (which had a circulation of the Sevenoaks Survey
attached to it) is consistent with, and further evidence for, the conclusion

Undated document entitled ‘St Laurence Education Trust Upper School
Procurators Report to Advisors June 2003’

365. The report at page 4, last paragraph states,

'I have attached the detailed response to the circular about fee increases.
Our fees are comparable to our competitor schools, if not slightly below.
Our day fees appear too low and it might be suggested that the day fee
increases by the same amount as the boarding fee. This would add
approximately £20,000 extra to our revenue. The day fee is at present
something of a bargain. I have also attached a report summarising the
level of fee increases. The average increase is in the range of 8–9%.'

A copy of the circulation of the results of the Sevenoaks Survey in
respect of the academic year 2003/2004, dated 17 March 2003,
is attached to the report.

Fee–setting process

366. Ampleforth College’s fee–setting process during the relevant period can,
in essence, be described as follows.508 The school commences its
budgetary process in April of each year when the Procurator – broadly
speaking, the equivalent to a bursar – of Ampleforth Abbey Trust (of
which Ampleforth College is a part) asks the Budget Section Controllers of
all parts of the Ampleforth Abbey Trust509 for information on costs. The
Budget Section Controllers return their costs information in April and May.
The Procurator discusses the returns with the Budget Section Controllers
which results in agreed costs for the coming academic year which will
start in September. A suggested level of fees is then calculated based on
the projected number of students for the following academic year and on
budget costs.

367. The draft budget for all the works of the Ampleforth Abbey Trust is
submitted to the Finance Committee for the Ampleforth Abbey Trust,
which meets in the first two weeks of June each year. This Finance
Committee 'approves' a recommended budget for the Ampleforth Abbey
Trust as a whole, which includes Ampleforth College’s budget. The
budget for Ampleforth College is then extracted from the consolidated

507 Document LXT1565.
508 The description of Ampleforth College’s fee–setting process is taken from the answer to
question 6 contained in Ampleforth College’s 8 March 2004 response (document LXT1366R) to
the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG002).
509 See paragraphs 40 to 42 for a description of the structure of the Ampleforth Abbey Trust.
Ampleforth Abbey Trust budget and submitted to, first, the Abbot's Advisors for Ampleforth College and then, second, to the St Laurence Education Trust ('SLET') which gives final approval of Ampleforth College's budget and fee increases when it meets on the first Wednesday in July. Parents are informed of any changes in fees at the end of July when they receive the account for the coming term (that is, the first term of the coming academic year).

**Timing of the Sevenoaks Survey in relation to the fee-setting process**

368. The OFT notes that according to the Sevenoaks bursar's witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Ampleforth College, at distinct points in its fee-setting process. Towards the end of January or in early February the Sevenoaks bursar's request for prospective fee increases would have been sent to the Participant schools, including Ampleforth College, and Ampleforth College would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid-February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of other circulations, the precise number of which varied from year to year.

369. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Ampleforth College in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boarding</td>
</tr>
<tr>
<td><strong>Circulations</strong></td>
<td></td>
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<tr>
<td><em>First main circulation of Sevenoaks Survey</em></td>
<td>13 February</td>
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<tr>
<td>Other circulations:</td>
<td>1 May</td>
</tr>
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<td></td>
<td>8 May</td>
</tr>
<tr>
<td><em>Second main circulation of Sevenoaks Survey</em></td>
<td>14 May</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>17 May</td>
</tr>
</tbody>
</table>

510 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
### 2002/2003

<table>
<thead>
<tr>
<th>Date</th>
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<th>Day</th>
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<tbody>
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<td>29 May</td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>25 June</td>
<td></td>
<td>6</td>
</tr>
</tbody>
</table>

- **First main circulation of Sevenoaks Survey**
  - 11 February

- Other circulations:
  - 15 February

- **Second main circulation of Sevenoaks Survey**
  - 22 April

- Other circulations:
  - 11 June

### 2003/2004

<table>
<thead>
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</table>

- **First main circulation of Sevenoaks Survey**
  - 14 February
  - 26 February
  - 14 March
  - 17 March

- **Second main circulation of Sevenoaks Survey**
  - 17 April

- Other circulations:
  - –

### Finalisation of fee increases

370. The final fee increases for Ampleforth College during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 7.25 per cent for boarding fees and 8.75 per cent for day fees; the
fees were finalised on 2 and 3 July 2001\footnote{See the Minutes of the Meeting of the St Laurence Education Trust held on 2 and 3 July 2001 (document LXT1560). It should be noted that the St Laurence Education Trust is also referred to as the Ampleforth Abbey Council and that the two names are used interchangeably.}. For the 2002/2003 academic year the final fee increase was 7 per cent for both boarding and day fees; the fees were finalised on 2 July 2002\footnote{See the Minutes of a meeting of the St Laurence Education Trust held on 2 July 2002 (document LXT1563).}. For the 2003/2004 academic year the final fee increase was 8 per cent for boarding fees and 10 per cent for day fees; both fees were finalised on 1 July 2003\footnote{See the answer to question 24 contained in Ampleforth College’s 8 March 2004 response (document LXT1366R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG002). See also the Minutes of the Ampleforth Abbey Council meeting held on 1 July 2003 (document LXT1564).}.

\textit{Conclusion regarding Ampleforth College’s participation in the Sevenoaks Survey}\footnote{See paragraphs 355 to 364 above.}

371. In relation to the 2001/2002 academic year, the OFT considers that Ampleforth College participated in the Sevenoaks Survey on the basis that:

\begin{itemize}
  \item the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Ampleforth College and Ampleforth College has participated in the Sevenoaks Survey in two other relevant years;
  \item Ampleforth College has stated that it contributed to the Sevenoaks Survey in respect of this academic year; and
  \item an extract from Ampleforth College’s internal documents, to which is attached a schedule of the 50 Participant schools and their proposed boarding fee increases and levels for 2001/2002, is consistent with Ampleforth College’s participation in the Survey in respect of this academic year.
\end{itemize}

372. In relation to the 2002/2003 academic year, the OFT considers that Ampleforth College participated in the Sevenoaks Survey on the basis that:

\begin{itemize}
  \item the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Ampleforth College and Ampleforth College has participated in the Sevenoaks Survey in two other relevant years;
  \item Ampleforth College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;
\end{itemize}
• the Sevenoaks bursar or his assistant sent Ampleforth College at least one circulation of the Sevenoaks Survey for this year; and

• extracts from a number of Ampleforth College’s internal documents are consistent with Ampleforth College’s participation in the Survey in respect of this academic year, including in one case a reference to ‘the latest fees survey in which the current fees and projected fees for several schools are given’.

373. In relation to the 2003/2004 academic year, the OFT considers that Ampleforth College participated in the Sevenoaks Survey on the basis that:

• the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Ampleforth College and Ampleforth College has participated in the Sevenoaks Survey in two other relevant years (see the two paragraphs following);

• Ampleforth College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

• the Sevenoaks bursar or his assistant sent Ampleforth College at least one circulation of the Sevenoaks Survey for this year; and

• an extract from one of Ampleforth College’s internal documents is consistent with Ampleforth College’s participation in the Survey in respect of this academic year and has a copy of the Survey attached to it.

374. The OFT therefore considers that Ampleforth College both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 357, 358 and 370 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Ampleforth College will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

375. The OFT concludes that the evidence set out above demonstrates that Ampleforth College participated in the Sevenoaks Survey in respect of each of those academic years and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

377. First, the Sevenoaks Survey includes fee-increase estimates for Bedford School for each of the years 2001/2002, 2002/2003 and 2003/2004.\footnote{See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.}

378. Second, Bedford School has stated in its response to a request for information made by the OFT under section 26 of the Act that,

   'Bedford School contributed to the Sevenoaks Study from January 2000 onwards in successive years.'\footnote{The answer to question 7 contained in Bedford School’s 27 February 2004 response (document LXT2498R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG003).}

   Enclosed with Bedford School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of the years 2002/2003 and 2003/2004 that Bedford School received from the Sevenoaks bursar or his assistant.

379. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Bedford School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools.\footnote{Documents LXT2749, JXS0048 and LXT2542 show, respectively, that the electronic mail address hculley@bedfordschool.org.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘bedfordschool.org.uk’ – corresponds with the domain name for the electronic mail address of the bursar of Bedford School that is recorded on Bedford School’s letter to the OFT dated 26 March 2004 (document LXT2498R). The OFT therefore considers that Bedford School received the electronic mails described above that were sent to the electronic mail address hculley@bedfordschool.org.uk.}


380. Fourth, the OFT notes that a number of Bedford School’s internal documents for each of the academic years 2001/2002 to 2003/2004 are consistent with and further evidence for the conclusion that Bedford School participated in the Sevenoaks Survey in respect of these academic years.

2001/2002 academic year

381. The OFT considers that the following extracts from Bedford School’s internal documents are consistent with and further evidence for the

Agenda for a meeting of the Bedford School Finance Committee to be held on 8 May 2001 and attachment

382. Paragraph 8 of the agenda for this meeting states,

'Fee Proposals. Papers are attached.'

383. Attached to the agenda is a document headed 'Finance Committee Item No. 8'. This document states,

'3. Fee Increase.

a. ...It is hoped to be able to table at the meeting the list of the fee increases for the top HMC schools, which the Sevenoaks Bursar compiles each year.'

Minutes of the Bedford School Finance Committee held on 8 May 2001

384. The minutes of this meeting state at page 3,

'F264. FEE PROPOSALS

The Bursar was unable to table the final expected fee increases for major HMC schools as it was not yet ready for issue. He tabled the provisional figures; the level of national increases was discussed. There was discussion on the level of fees over the next two years.'

2002/2003 academic year

385. The OFT considers that the following extracts from Bedford School’s internal documents (three of which had a circulation of the Sevenoaks Survey attached to them) are consistent with and further evidence for the conclusion that Bedford School participated in the Survey for 2002/2003.

Undated document entitled 'Boarding Committee Item No. 7c BOARDING FEES FOR 2002/03'

386. This document states,

'The fees increase proposed for the senior full Boarding fee is in line with the expected increase nationally and is slightly less than the tuition fee increases (between 7.1% and 7.5%). A list of expected fee increases by HMC schools is attached for your information.'

A copy of the circulation of the Sevenoaks Survey dated 15 February 2002 is attached to the document.

519 Documents LXT2212 and LXT2218.
520 Document LXT2211.
This document states,

'School Governors Item No. 7c FEE PROPOSALS'

1. The expected fee increases at other leading HMC schools is attached for information. The average increase expected in this region is around 7% (East Anglian Bursars Association figures).

A copy of the circulation of the Sevenoaks Survey dated 22 April 2002 is attached to the document.

Undated document entitled 'Finance Committee Item No. 8 FEE PROPOSALS'

The first paragraph of this document states,

'The expected fee increases for a range of leading HMC schools are attached.'

A copy of the circulation of the Sevenoaks Survey dated 15 February 2002 is attached to the document.

Minutes of the Bedford School Finance Committee held on 22 April 2002

The minutes of this meeting state at page 6,

'F300 FEE PROPOSALS

There was discussion on the level of fees of other schools and the benefits enjoyed by our Day Boys due to the boarding ethos of the School. The Head Master pointed out that the paper did not include fees from St Albans and BMS and may therefore give us more comfort than it should. BMS are looking at a 6.5% fee increase and the High School at 7.9%. The Bursar tabled a paper giving an update of the Fee Proposals.'

2003/2004 academic year

The OFT considers that the following extracts from Bedford School’s internal documents (one of which had a circulation of the Sevenoaks Survey attached to it) are consistent with and further evidence for the conclusion that Bedford School participated in the Survey for 2003/2004.

Undated document entitled 'School Governors Item No 9d FEE PROPOSALS'

This document states,

'The expected fee increases for a range of leading HMC schools are attached...'

A copy of the circulation of the Sevenoaks Survey dated 17 March 2003 is attached to the document.

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522 Document LXT2179.
523 Document LXT2218.
524 Document LXT2177.
525 Documents LXT1710C and LXT1710D.
Minutes of the Bedford School Finance Committee held on 20 May 2003

392. The minutes of this meeting state at page 4,

"F337 FEE PROPOSALS

A paper had been circulated prior to the meeting. A chart which had been compiled to give comparative increases at other schools showed that 9% was in line with the average expected increase in tuition fees. The Bursar had been concerned about an issue raised at the ISBA Conference regarding price signalling and how it would be necessary to demonstrate the School’s independence when setting the fee increase."

Fee–setting process

393. Bedford School’s fee–setting process during the relevant period can, in essence, be described as follows. In the autumn term (September to December) of the academic year the school prepares draft budgets for the coming academic year which it uses to prepare approximate projections of the expected fee increase. In the spring term (January to March) of the academic year the Policy Committee of the Harpur Trust looks at a number of factors and recommends to the Governing Body of the Harpur Trust the upper fee increase limit within which Bedford School’s committees (for example the school’s Finance Committee) should be authorised to set fee increases. The Harpur Trust Governing Body considers this recommendation and determines a maximum percentage by which it may increase fees. After being notified of the maximum permitted fee increase, Bedford School notifies the parents of its pupils of the approximate level of the expected fee increase.

394. In the summer term (April to June or July) of the academic year, Bedford School’s Finance Committee considers the budget papers and then makes a recommendation to the Bedford School Committee (which comprises the School Governors of Bedford School) as to the appropriate fee increase for the following year. The Bedford School Committee agrees budgets and the level of fee increase for the following year, if it is within the upper limit prescribed by the Harpur Trust Governing Body, and it is agreed that parents should be notified of the fee increase. The final step in the fee–setting process is for, first, the Harpur Trust’s Policy Committee and then, second, the Harpur Trust’s Governing Body to receive a summary of the school’s budget and to note the fee increases agreed upon.

526 Document LXT2342.
527 The description of Bedford School’s fee–setting process is taken from the answer to question 6 contained in Bedford School’s 27 February 2004 response (document LXT2498R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG003).
528 This should not be confused with the distinct entity that is the Harpur Trust Governing Body already described.
529 If the school committees have generated a level of fee increase higher than the Governing Body’s prescribed upper limit, the Policy Committee and the Governing Body consider and either authorise, or not, the higher figure.
Timing of the Sevenoaks Survey in relation to the fee–setting process

395. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Bedford School, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Bedford School, and Bedford School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

396. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Bedford School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004:\footnote{530 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.}

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
<th>Boarding</th>
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</tr>
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<td>First main circulation of Sevenoaks Survey</td>
<td>13 February</td>
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<tr>
<td>Other circulations:</td>
<td>1 May</td>
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<td>8 May</td>
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<td>Second main circulation of Sevenoaks Survey</td>
<td>14 May</td>
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<tr>
<td>Circulations</td>
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Sevenoaks Survey

Other circulations:

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<td>11 June</td>
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Second main circulation of Sevenoaks Survey

<table>
<thead>
<tr>
<th>Date</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 February</td>
<td></td>
<td>8</td>
</tr>
<tr>
<td>14 March</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>17 April</td>
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</tr>
</tbody>
</table>

Other circulations:

<table>
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<th>Day</th>
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<tbody>
<tr>
<td>14 February</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>26 February</td>
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<td>8</td>
</tr>
<tr>
<td>17 April</td>
<td></td>
<td>8</td>
</tr>
</tbody>
</table>

Finalisation of fee increases

397. The final fee increases for Bedford School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 7.7 per cent for boarding and 8.2 per cent for day fees and it was finalised on 8 June 2001. For the 2002/2003 academic year the final fee increase was 7.6 per cent for both boarding and day fees and was finalised on 25 May 2002. For the 2003/2004 academic year the final increase was 7.2 per cent for boarding and 8.0 per cent for day fees and was finalised on 25 June 2003.

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531 See minute B1598c of the meeting of the Governors of Bedford School held on 8 June 2001 (document LXT2427), approving the tuition fees set out in the bursar’s paper on tuition fees (document LXT2440) that was recommended by the meeting of the Bedford School Finance Committee held on 8 May 2001 at section F264 of the minutes of that meeting (document LXT2436). See also the statement of Bedford School made in the Schools’ Joint Factual Statement (document JM 01-a).

532 See page 8 of the minutes of the meeting of the Bedford School Governors held on 25 May 2002 (document LXT2170).
fee increase was 8.63 per cent for boarding and 9 per cent for day fees and it was finalised on 7 June 2003.\textsuperscript{533}

\textit{Conclusion regarding Bedford School’s participation in the Sevenoaks Survey}\textsuperscript{534}

398. In relation to the 2001/2002 academic year, the OFT considers that Bedford School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Bedford School and Bedford School has participated in the Sevenoaks Survey in two other relevant years;

- the Sevenoaks bursar or his assistant sent Bedford School at least one circulation of the Sevenoaks Survey for this year;

- Bedford School has stated that it contributed to the Sevenoaks Survey in respect of this academic year; and

- extracts from a number of Bedford School’s internal documents are consistent with Bedford School’s participation in the Survey in respect of this academic year, in one case referring expressly to ‘the list of the fee increases for the top HMC schools, which the Sevenoaks Bursar compiles each year’.

399. In relation to the 2002/2003 academic year, the OFT considers that Bedford School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Bedford School and Bedford School has participated in the Sevenoaks Survey in two other relevant years;

- Bedford School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Bedford School at least one circulation of the Sevenoaks Survey for this year; and

- extracts from a number of Bedford School’s internal documents are consistent with Bedford School’s participation in the Sevenoaks Survey for this academic year, including three that had a copy of the Survey attached to them.

400. In relation to the 2003/2004 academic year, the OFT considers that Bedford School participated in the Sevenoaks Survey on the basis that:

\textsuperscript{533} See section B1714b of the minutes of the meeting of the Bedford School Governors held on 7 June 2003 (document LXT1704). See also, for each year’s increase, Bedford School’s response (document LXT2498R) to question 24 of the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG003).

\textsuperscript{534} See paragraphs 377 to 0 above.
the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Bedford School and Bedford School has participated in the Sevenoaks Survey in two other relevant years;

Bedford School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

the Sevenoaks bursar or his assistant sent Bedford School at least one circulation of the Sevenoaks Survey for this year; and

extracts from Bedford School’s internal documents are consistent with Bedford School’s participation in the Survey for this academic year, including one that had a copy of the Survey attached to it.

The OFT therefore considers that Bedford School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 379 and 397 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Bedford School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

The OFT concludes that the evidence set out above demonstrates that Bedford School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

Benenden School

Evidence of participation in the Sevenoaks Survey


Second, as part of Benenden School’s leniency application, it provided an overview, dated 26 January 2004, of the documents and information that it had provided to the OFT. This overview states in relation to the years in which Benenden School participated in the Sevenoaks Survey

535 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
536 See the table at paragraph 413 below.

Benenden only began to participate in this exercise some five years ago. Surviving paperwork is thin, being confined to the 2000/01 and 2001/2002 summaries and a one–off linked exercise relating to foundation income. This may reflect the fact that Benenden did not place a high degree of value on the reliability of the data in terms of methodology, comparability and timing. In fact, Benenden did not participate in the 2003/4 survey.  

Enclosed with Benenden School’s response was a circulation of the Sevenoaks Survey in respect of the year 2001/2002 that Benenden School received from the Sevenoaks bursar or his assistant.

406. Benenden School responded to a later request from the OFT to clarify the years in which it participated in the Sevenoaks Survey. In respect of the 2002/2003 academic year, Benenden School initially stated,

‘Mr Allen, the present Bursar, joined the school in January 2002... he... certainly has no recollection of submitting any figures for inclusion in the Survey for the academic year 2002/03. Since there is (as stated in the Overview to Benendens [sic] original volume of evidence) no paper work relating to the 2002/03 Survey, Benenden is unable to explain how the figure of 6.6% was recorded against its name in the 22 April 2002 update.’

However, Benenden School later clarified that,

‘Mr Allen (the present Bursar) joined the school on 1 January 2003 and assumed the role of Bursar from Robin Dalton Holmes on 17 February 2003. It follows that the reference, in our letter of 3 August 2005, to Mr Allen’s having joined the school in January 2002 was incorrect...

In relation to the queries you raised, this obviously means that the present Bursar is unable to speak for events in 2002...’

It follows that Mr Allen cannot speak for what did or did not happen in relation to the Survey for the academic year 2002/2003, which would have been circulated between February and June 2002, before Mr Allen joined Benenden School.

407. In respect of the academic year 2003/04 academic year, Benenden School stated,

‘Mr Allen is clear that no figures were submitted. Indeed, you will note that the Benenden entry is blank in the summary circulated as at 14 February 2003. By 14 April 2003 (when the updated summary as at 17 March was circulated), the Chairman of the Council had already written to Benenden parents... giving an

537 Document LXT2685.
Benenden School has since clarified that the letter from the Chairman of the Council to parents that gave an indication of the likely level of fee increases for the 2003/2004 academic year was sent on 17 March 2003. Given Benenden School’s statement that it did not submit its figures to the Sevenoaks bursar for inclusion in the Survey, the OFT asked Sevenoaks School to clarify the source of the proposed fee increase figures for Benenden School that the Sevenoaks bursar recorded in the iterations of the Sevenoaks Survey that were circulated in respect of the academic years 2002/2003 and 2003/2004. The response from Sevenoaks School, submitted through its lawyers on its behalf, stated,

"By way of a general comment, Mr Patrick’s recollection is that he would normally only include a school in the survey if it had contributed data to the survey...

So far as the year 2002/2003 is concerned, I note that data concerning Benenden School is included in the data circulated on 15 February, 22 April and 11 June 2002. I also note that the data changed between the February and April circulation (£19,200/14.9% [sic – the figure should be 4.9%] in February, £19,500/6.6% in April). We have been unable to find any papers or e-mails explaining this data and Julian Patrick has no recollection, beyond the general comment above, which can explain the inclusion of Benenden School data.

So far as the year 2003/2004 is concerned... Sevenoaks' records show that a survey sheet produced on 12 February 2003 contains no entry for Benenden. However, sheets produced on 26 February 2003 and again on 28 April 2003 do contain an entry for Benenden that show estimated boarding fees of £21,450, an increase of 10%. Sevenoaks can find no records of where the data supporting those entries come from. Julian Patrick has no recollection beyond the general comments above, in relation to the inclusion of Benenden data in respect of 2003/2004. In particular, he cannot rule out the possibility that he heard the details from a source other than from the school itself, given that all Benenden parents had been told of a 10% increase. However, in his view, it is more probable that the information on the spreadsheet came from Benenden School."

Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Benenden School was an addressee of at least one electronic mail that the

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541 Document LXT2745.
542 Letter from the OFT to Sevenoaks School’s solicitors dated 21 September 2005 (document MDB0030).
543 Letter from Sevenoaks School’s solicitors to the OFT dated 29 September 2005 (document MDB0078G).
Sevenoaks bursar or his assistant sent to Participant schools\textsuperscript{544}. The OFT considers that this demonstrates that Benenden School received at least one circulation of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 14 May 2001, 11 February 2002 and 11 March 2003.

\textbf{Fee–setting process}

410. Benenden School’s fee–setting process until approximately February 2003 can, in essence, be described as follows\textsuperscript{545}. In January of the academic year Benenden School’s Executive (a sub–group of Benenden School’s Council) began to consider the main factors that would affect Benenden School’s cost base, including teachers’ salaries as well as various financial targets, including a target surplus. The Executive made recommendations on these cost factors to the March meeting of Benenden School’s Council. At the same time that the Executive considered cost factors Benenden School’s bursar considered budget bids supplied by departments at Benenden School. In April the bursar produced a draft budget which was discussed with Benenden School’s headmaster in order to try and ensure that the draft budget met the financial targets set by the Council. A final draft budget was then presented to a May meeting of Benenden School’s Executive. The Executive would then agree a draft final budget, including a fee increase, to be recommended to the June meeting of Benenden School’s Council, at which the fee increase was set. Parents are normally notified of the fee increases in June, shortly after the Council meeting at which the fee increases are finalised.

411. From February 2003 Benenden School’s fee–setting process was changed to take effect from the coming academic year. In approximately February 2003, when a new bursar started at the school, a new finance committee was set up. The fee–setting process that Benenden School now adheres to is as follows. In January or February of an academic year the bursar examines various factors that affect Benenden School’s cost base, in accordance with guidelines set by Benenden School’s Finance Committee. This process would produce a series of planning assumptions that the finance committee would discuss in, typically, February of an academic year, before presenting the assumptions to Benenden School’s Executive Committee; revised draft assumptions would be approved in time for a March meeting of Benenden School’s Council. The Council would then

\textsuperscript{544} Documents LXT2749, JXS0048 show, respectively, that the electronic mail address gdt@benenden.kent.sch.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002 and 2002/2003. Document LXT2542 shows that the electronic mail address nja@benenden.kent.sch.uk was the recipient of electronic mails transmitting summaries of other school’s fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic year 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘benenden.kent.sch.uk’ – corresponds with the domain name for Benenden School’s website address: see http://www.benenden.kent.sch.uk/. The OFT therefore considers that Benenden School received the electronic mails described above that were sent to the electronic mail address gdt@benenden.kent.sch.uk and nja@benenden.kent.sch.uk.

\textsuperscript{545} This description of Benenden’s fee–setting process is taken from the 4 February 2005 witness statement of Robin Dalton–Homes, the bursar of Benenden School from January 1983 to February 2003 (document GCOR1030A).
notify parents of an approximate level of fee increase that they might expect for the coming academic year starting the following September. Benenden School holds one more meeting of each of the Finance Committee, the Executive and the Council before a final budget and fee increase are set in May.

**Timing of the Sevenoaks Survey in relation to the fee-setting process**

412. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Benenden School, at distinct points in its fee-setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Benenden School, and Benenden School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid-February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

413. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Benenden School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

<table>
<thead>
<tr>
<th>Circulations</th>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2001/2002</td>
</tr>
<tr>
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<td>Boarding</td>
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<td>7</td>
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<td></td>
<td>29 May</td>
<td>7.9</td>
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546 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
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<th>Date</th>
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<th>Day</th>
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<td><strong>2003/2004</strong></td>
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<td></td>
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<td>–</td>
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<td>17 March</td>
<td>10</td>
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<td>10</td>
</tr>
<tr>
<td>Other circulations:</td>
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<td>–</td>
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</table>

**Finalisation of fee increases**

414. The final fee increases for Benenden School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 7.9 per cent for boarding pupils and it was finalised on 14 June 2001. For the 2002/2003 academic year the final fee increase was 6.5 per cent for boarding pupils and it was finalised on 13 June 2002. For

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547 See paragraph 1.01.9 of the meeting of Benenden School’s Council held on 14 June 2001 (document LXT2712).
548 See paragraph 2.02.10 of the meeting of Benenden School’s Council held on 13 June 2002 (document LXT2727).
the 2003/2004 academic year the final fee increase was 10 per cent for
board ing pupils and it was finalised in June 2003\textsuperscript{549}.

\textit{Conclusion regarding Benenden School’s participation in the Sevenoaks Survey}\textsuperscript{550}

415. In relation to the 2001/2002 academic year, the OFT considers that
Benenden School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included
fee-increase estimates for Benenden School, these estimates
accurately reflected Benenden School’s actual fee increase for this
year and Benenden School has participated in the Sevenoaks
Survey in two other relevant years;

- the Sevenoaks bursar or his assistant sent Benenden School at
least one circulation of the Sevenoaks Survey for this year; and

- Benenden School has stated that it participated in the Sevenoaks
Survey in respect of this academic year and, moreover, it provided
the OFT with a copy of at least one circulation of the Survey in
respect of this academic year.

416. In relation to the 2002/2003 academic year, the OFT considers that
Benenden School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included
fee-increase estimates for Benenden School;

- the fee-increase estimates included in the Survey almost exactly
reflect Benenden School’s actual fee increase (the final estimate in
the Survey was 6.6%, compared to Benenden School’s actual
increase of 6.6%); and

- the Sevenoaks bursar or his assistant sent Benenden School at
least one circulation of the Sevenoaks Survey for this year.

417. In relation to the 2003/2004 academic year, the OFT considers that
Benenden School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included
fee-increase estimates for Benenden School from 26 February
2003;

- the fee-increase estimates for Benenden School accurately reflect
Benenden School’s actual fee increase (both the estimates and the
actual increase were 10%);

\textsuperscript{549} See the letter from the Chairman of Benenden School’s Council to parents dated 19 June 2003
(document LXT2746).

\textsuperscript{550} See paragraphs 404 to 414 above.
• the Sevenoaks bursar has stated that ‘it is more probable that the information on the spreadsheet came from Benenden School’; and

• the Sevenoaks bursar or his assistant sent Benenden School at least one circulation of the Sevenoaks Survey for this year.

418. The OFT notes Benenden School’s submission that it did not participate in the 2003/2004 Sevenoaks Survey and its suggestion that its figures may have been included in the 2003/2004 Survey as a result of its letter to parents on 17 March 2003. However, since it is clear that accurate figures for Benenden’s fee increase for the year 2003/2004 were included in the Survey as early as 26 February 2003, the OFT rejects those submissions.

419. The OFT therefore considers that this demonstrates that Benenden School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraph 408 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Benenden School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases. The OFT notes that there is no evidence in relation to the 2002/2003 and 2003/2004 academic years to suggest that Benenden School informed the Sevenoaks bursar that it no longer wished to be included in the ongoing arrangements for the Sevenoaks Survey. On that basis, the OFT considers that the Sevenoaks bursar would have been under the impression that Benenden School continued to participate in the Sevenoaks Survey in the academic years 2002/2003 and 2003/2004 and it was on that basis that the Sevenoaks Survey in respect of those years was sent to Benenden School.

420. The OFT concludes that the evidence set out above demonstrates that Benenden School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

Bradfield College

Evidence of participation in the Sevenoaks Survey


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551 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
422. First, the Sevenoaks Survey includes fee-increase estimates for Bradfield College for each of the years 2001/2002 and 2003/2004\(^{552}\).

423. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Bradfield College contributed to the Sevenoaks Survey and a request by the OFT to supply copies of the Sevenoaks Surveys from 2000 onward, Bradfield College stated,

'Bradfield College submitted responses to each of the surveys in 2000, 2001 and 2002. Bradfield was at a very early stage of producing a budget for the academic year 2003/2004 when the Sevenoaks Survey was being compiled in 2003 and a limited response to the first 2003 request was given. However, the Sevenoaks Survey ceased in 2003 before the results of the final survey were circulated.'\(^{553}\)

Enclosed with Bradfield College’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2001/2002 and 2003/2004 that Bradfield College received from the Sevenoaks bursar or his assistant.

424. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004, Bradfield College was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools\(^{554}\). The OFT considers that this demonstrates that Bradfield College received at least one circulation of the Sevenoaks Survey for the academic years 2002/2003 and 2003/2004 by, respectively, 11 February 2002 and 11 March 2003.

Fee-setting process

425. Bradfield College’s fee–setting process during the time period that the OFT is considering in this Decision can, in essence, be described as follows\(^{555}\). In December of an academic year the school would ask its spending department heads to return budget bids for the following budget year. Spending department heads would return figures a month later in January and Bradfield College’s bursar would prepare a first draft budget. The first draft budget would be submitted to the Senior Management Team ('SMT') in February and during the course of February and March the SMT would refine these figures and consider wider aspects of school

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\(^{552}\) See the table at paragraph 427 below.

\(^{553}\) The answers to question 15 contained in Bradfield College’s 5 March 2004 response (document LXT2905AAR) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG004).

\(^{554}\) Documents JXS0048 and LXT2542 show, respectively, that the electronic mail address bursar@bradfieldcollege.org.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2002/2003 and 2003/2004. The OFT notes that this electronic mail address is the same as the electronic mail address of the bursar of Bradfield College that is recorded on Bradfield College’s letter to the OFT dated 5 March 2005 (document LXT2905AA(R)). The OFT therefore considers that the bursar of Bradfield College received the electronic mails described above that were sent to the electronic mail address bursar@bradfieldcollege.org.uk.

\(^{555}\) The description of Bradfield College’s fee–setting process is taken from the answer to question 6 contained in Bradfield College’s 5 March 2004 response (document LXT2905AAR) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG004).
expenditure. In May, Bradfield College’s Finance and General Purpose Committee (‘FGPC’) would meet to discuss a draft budget after which time the budget would be revised to take account of various amended financial targets, for example surplus generation and the level of school fees. In the last step of the fee–setting process, the FGPC would submit the draft budget to the school’s Full Council in June. After approval by Bradfield College’s Full Council, Bradfield College’s headmaster would notify the parents of Bradfield College’s pupils of the fee increases that had been set.

Timing of the Sevenoaks Survey in relation to the fee–setting process

426. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 315 to 317 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Bradfield College, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Bradfield College, and Bradfield College would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

427. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Bradfield College in respect of each of the academic years 2001/2002 and 2003/2004\textsuperscript{556}.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
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<tr>
<td></td>
<td>Boarding</td>
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<tr>
<td><strong>2001/2002</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Circulations</strong></td>
<td></td>
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<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>13 February</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May</td>
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<td></td>
<td>8 May</td>
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<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>14 May</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>17 May</td>
</tr>
</tbody>
</table>

\textsuperscript{556} The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
<table>
<thead>
<tr>
<th>Date</th>
<th>Boarding</th>
<th>Day</th>
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<tr>
<td>29 May</td>
<td>7.5</td>
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</tr>
<tr>
<td>25 June</td>
<td>7.5</td>
<td>14.7</td>
</tr>
</tbody>
</table>

**2002/2003**

| First main circulation of Sevenoaks Survey | 11 February | –   | –   |
| Other circulations:                        | 15 February | –   | –   |
| Second main circulation of Sevenoaks Survey| 22 April    | –   | –   |
| Other circulations:                        | 11 June     | –   | –   |

**2003/2004**

| First main circulation of Sevenoaks Survey | 12 February | 6    | 6    |
| Other circulations:                        | 14 February | 6    | 6    |
|                                              | 26 February | 6    | 6    |
|                                              | 14 March    | 6    | 6    |
|                                              | 17 March    | 6    | 6    |
| Second main circulation of Sevenoaks Survey | 17 April    | 6    | 6    |
| Other circulations:                        | –           | –    | –    |

*Finalisation of fee increases*

428. The final fee increases for Bradfield College during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 8.09 per cent for boarding pupils (fees for day pupils were calculated as a percentage of the increased level of the fees for boarding pupils) and it was finalised on 21 June 2001. For the 2002/2003 academic year the final fee increase was 7.6 per cent for boarding pupils (fees for day pupils were calculated as a percentage of the increased level of the fees for boarding pupils) and it was finalised on 21 June 2001. See section 371 of the minutes of Bradfield College’s Council meeting held on 21 June 2001 (document BRA008).
pupils were calculated as a percentage of the increased level of the fees for boarding pupils) and it was finalised on 20 June 2002\textsuperscript{558}. For the 2003/2004 academic year the final fee increase was 8.8 per cent for boarding pupils (fees for day pupils were calculated as a percentage of the increased level of the fees for boarding pupils) and it was finalised on 19 June 2003\textsuperscript{559}.

Conclusion regarding Bradfield College’s participation in the Sevenoaks Survey\textsuperscript{560}

429. In relation to the 2001/2002 academic year, the OFT considers that Bradfield College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Bradfield College and Bradfield College has participated in the Sevenoaks Survey in two other relevant years; and
- Bradfield College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year.

430. In relation to the 2002/2003 academic year, the OFT considers that Bradfield College participated in the Sevenoaks Survey on the basis that:

- Bradfield College has stated that it contributed to the Sevenoaks Survey in respect of this academic year;
- although the Sevenoaks Survey in respect of this academic year did not include fee-increase estimates for Bradfield College, Bradfield College has participated in the Sevenoaks Survey in two other relevant years; and
- the Sevenoaks bursar or his assistant sent Bradfield College at least one circulation of the Sevenoaks Survey for this year.

431. In relation to the 2003/2004 academic year, the OFT considers that Bradfield College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Bradfield College and Bradfield College has participated in the Sevenoaks Survey in two other relevant years;
- Bradfield College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided

\textsuperscript{558} See section 3750 of the minutes of Bradfield College’s Council meeting held on 20 June 2002 (document LXT2941).
\textsuperscript{559} See section 3804 of the minutes of Bradfield College’s Council meeting held on 19 June 2003 (document LXT2927).
\textsuperscript{560} See paragraphs 422 to 428 above.
the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Bradfield College at least one circulation of the Sevenoaks Survey for this year.

432. The OFT therefore considers that Bradfield College both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 424 and 428 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Bradfield College will have received at least one circulation of the Sevenoaks Survey containing competitors' estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

433. The OFT concludes that the evidence set out above demonstrates that Bradfield College participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Bromsgrove School**

*Evidence of participation in the Sevenoaks Survey*\(^\text{561}\)


435. First, the Sevenoaks Survey includes fee-increase estimates for Bromsgrove School for each of the years 2001/2002, 2002/2003 and 2003/2004\(^\text{562}\).

436. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Bromsgrove School contributed to the Sevenoaks Survey, Bromsgrove School stated,

'\(\text{The school contributed to the Sevenoaks Survey in 2000, 2001, 2002 and 2003.}\)\(^\text{563}\)

Enclosed with Bromsgrove School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2001/2002 to 2003/2004 that Bromsgrove School received from the Sevenoaks bursar or his assistant.

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\(^{561}\) See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.

\(^{562}\) See the table at paragraph 453 below.

\(^{563}\) The answer to question 7 contained in Bromsgrove School’s 19 March 2004 response (document JXS0734R) to the OFT’s section 26 Notice to it dated 9 February 2004.
Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Bromsgrove School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools\textsuperscript{564}. The OFT considers that this demonstrates that Bromsgrove School received at least one circulation of the Sevenoaks Survey for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 14 May 2001, 11 February 2002 and 11 March 2003.

Fourth, the OFT notes that a number of Bromsgrove School’s internal documents for each of the academic years 2001/2002 to 2003/2004 are consistent with and further evidence for the conclusion that Bromsgrove School participated in the Sevenoaks Survey in respect of those academic years.

2001/2002 academic year

The OFT considers that the following extracts from Bromsgrove School’s internal documents (one of which expressly refers to ‘a survey conducted by Sevenoaks School of fees from major boarding/day schools’ as being attached, whilst another had a circulation of the Sevenoaks Survey attached to it) are consistent with and further evidence for the conclusion that Bromsgrove School participated in the Survey for 2001/2002.

Minutes of the Meeting of the Finance and Property Committee held on 27 February 2001\textsuperscript{565}

A section of the minutes headed ‘Fee Increase Proposals’ notes in relation to the setting of Bromsgrove School’s fee increase for the academic year 2001/2002,

‘… it was noted that Bromsgrove remains cheap for boarding and cheap for day when compared with predominantly boarding schools. However, Bromsgrove remains expensive in the local day market…

It was agreed that the recommended increase to the Governors should be 6% across the school with the exception of Upper School boarding where the increase should be 7.5%…

It was noted that information from the Bursars’ meeting of the likely increases at other schools would be available shortly after the Governors’ meeting and therefore the decision might be deferred to be finalised by 2 or 3 delegated Governors.’

\textsuperscript{564} Documents LXT2749, JXS0048 and LXT2542 show, respectively, that the electronic mail address dwilliams@bromsgrove-school.co.uk was the recipient of electronic mails transmitting summaries of other schools’ fee-increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘bromsgrove–school.co.uk’ – corresponds with the domain name for the electronic mail address of the bursar of Bromsgrove School that is recorded on Bromsgrove School’s letter to the OFT dated 6 September 2005 (document MDB0050). The OFT therefore considers that Bromsgrove School received the electronic mails described above that were sent to the electronic mail address dwilliams@bromsgrove-school.co.uk.

\textsuperscript{565} Document JXS0818.
441. The note states,

'Attached is a survey conducted by Sevenoaks School of fees from major boarding and boarding/day Schools.

As can be seen Bromsgrove boarding fees are very cheap in comparison with Schools at the top end of the boarding market...

The recommendation for the Executive is that we increase fees by 5.5% on all fees across the Bromsgrove system other than Upper School boarding fees which would increase by 7.0%...

The recommendation from the Executive is 5.5% on all fees and 7% on Upper School boarding. However the Financial Controller and I have looked at the situation again and feel that 6.0% and 7.5% are the more likely figures if current surpluses (or rent to Trustees) are to be maintained.'

The OFT notes that no circulation of the Sevenoaks Survey was actually attached to the copy of the note provided to the OFT.

Minutes of the meeting of the Governors of Bromsgrove School held on 10 March 2001.

442. The section of the minutes entitled 'Minute 2436 Fee Increase Proposals' stated,

'A paper showing fee comparisons with other schools was tabled. It was noted that Bromsgrove is expensive in terms of day fees compared with the local day market but cheap when compared with the day fees at boarding schools with day pupils and the boarding fees are very low when compared with their boarding fees...

The recommended fee increases for Bromsgrove included in the paper and supported by the FPC are 6% across the system, except for Upper School Boarding at 7.5%.

It was agreed that the final determination of the fee increase would be handled by the Chairman, the Chairman of the FPC, the Headmaster and the Financial Controller. The Governing Body gave its support to a flexing upwards of up to 1%.'

(Emphasis added).

Attached to the minutes is a copy of the circulation of the Sevenoaks Survey dated 13 February 2001.

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566 Documents JXS0819 and JXS0820.
567 Document JXS0821.
The OFT considers that the following extracts from Bromsgrove School’s internal documents (two of which had a circulation of the Sevenoaks Survey attached to them) are consistent with and further evidence for the conclusion that Bromsgrove School participated in the Survey for 2002/2003.

Note dated February 2002 from T M Taylor (the headmaster of Bromsgrove School at the time of the infringement) to Bromsgrove School’s Finance and Property Committee entitled ‘FEE INCREASE PROPOSALS’ and attached paper

444. The cover note states,

'Enclosed is a paper linking the likely rate of fee increases in other schools. Bearing in mind the pressures on our budgets and our need to be seen to compete with the higher end of the boarding market, the executive recommends fee increases of:–

<p>| | |</p>
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<tbody>
<tr>
<td>Day</td>
<td>7%</td>
</tr>
<tr>
<td>Boarding</td>
<td>8%</td>
</tr>
</tbody>
</table>

Both increases to apply right across the Bromsgrove system.

I am concerned about the size of these increases, but feel that we need increased revenue by this amount, if we are to both provide the standard of education appropriate to our market position and pay rent in full to the trustees.'

(Emphasis added).

Attached to the note is a copy of the Sevenoaks Survey dated 2002/2003, figures as at 11 February 2002.

Minutes of the meeting of the Finance and Property Committee of Bromsgrove School held on 19 February 2002

445. The section of the minutes entitled 'Fee Increase Proposals’ states,

'...in view of the likely increases at other schools, together with the continuing low level of the boarding fees compared to the market place and taking into account the high likely increase in teachers’ salaries, it was agreed that increases to be put forward to the Governors should be as follows…'
Note dated March 2002 from TM Taylor (the headmaster of Bromsgrove School at the time of the infringement) to the trustees and governors of Bromsgrove School, entitled ‘FEE INCREASE PROPOSALS – SEPTEMBER 2002’ and attached paper571

446. The note states,

'Attached are papers listing the likely rate of fee increases in other schools – boarding and local day...

Bearing in mind the pressure on our budgets (see paper on teachers’ salaries) and our need to be seen to compete with the higher end of the boarding market...

This would make the Upper School fee increases to be:

Boarding 10.2%
Day 7.33%...

The FPC has considered this matter carefully and recommends these fee increases to the Governing Body.'

Attached to the note is a copy of the circulation of the Sevenoaks Survey dated 15 February 2002.

2003/2004 academic year

447. The OFT considers that the following extracts from Bromsgrove School’s internal documents (both of which had a circulation of the Sevenoaks Survey attached to them) are consistent with and further evidence for the conclusion that Bromsgrove School participated in the Survey for 2003/2004.

Note dated February 2003 from the headmaster of Bromsgrove School to Bromsgrove School’s Finance and Property Committee and attached paper572

448. The note states,

'The Executive recommends that fees be increased as follows –

i) Day... – 8%. We feel we need to peg rises here to remain competitive. This percentage is below the rate of fee increase needed to cover increased costs – see later...

iii) Upper School Boarding... – 9.5%...'

Attached to the note is a copy of the circulation of the Sevenoaks Survey dated 14 February 2003.

Minutes of the meeting of the Finance and Property Committee held on 26 February 2003 and attached paper573

449. Minute 906 of the minutes entitled ‘Headmaster’s Report’ states

571 Document JXS0824.
572 Document JXS0827.
573 Document JXS0828.
'Fee increase proposals – the EXT are recommending an increase of 8% on day fees and 9.5% on all boarding fees except for L3 and U3 boarding where an increase of 15% is being proposed to bring the fees in line with the Forces Boarding School allowance. This gives an overall increase of 8.6%...

The survey of anticipated increases together with information received from the Worcester schools indicate fee increases in the range 8–8.5%. It was agreed that the information regarding proposed fee increases to be obtained by the Director of Services at the regional bursars' meeting should be circulated to the Committee.'

Attached to the minutes is a copy of the circulation of the Sevenoaks Survey dated 14 March 2003.

Fee–setting process

450. Bromsgrove School's fee–setting process during the relevant period can, in essence, be described as follows574. In January of an academic year Bromsgrove School's Financial Controller575 would start to consider the budget for the coming academic year beginning the following September taking into account a number of factors that may affect Bromsgrove School's cost base. In late January the Financial Controller would have reached a recommended fee increase which would be submitted to Bromsgrove School's headmaster and Director of Services for discussion between the three of them. Also in late January, or in early February, a recommendation of the next year's fee increase would be submitted to Bromsgrove School's Finance and Property Committee for discussion. The executive considers the thoughts of bursars on fees as expressed in meetings of various bursar groups and also the results of the first Sevenoaks Survey.

451. Also in February, the Finance and Property Committee makes a recommendation to Bromsgrove School's Governing Body. The Governing Body debates the recommended increase. If all the information with regard to Bromsgrove School's cost increases is not available at that time, the fee increase may be subject to further review by selected governors before the final increase figure is set. Finally, at the end of March the Chairman of the Governors sends out a letter to parents Bromsgrove School's pupils informing them of the fee increases for the coming academic year. The OFT notes that this fee increase is notified to parents before the second circulation of the results of the Sevenoaks Survey.

574 The description of Bromsgrove School's fee–setting process is taken from the answer to question 6 contained in Bromsgrove School's 19 March 2004 response (document JXS0734R) to the OFT's section 26 Notice to it dated 9 February 2004.

575 The introduction to Bromsgrove School's 19 March 2004 response (document JXS0734R) to the OFT's section 26 Notice to it dated 9 February 2004 notes that Bromsgrove School does not have a bursar. Rather, it has a Financial Controller and a Director of Services. The Financial Controller is responsible for all financial accountancy matters and for the calculation and preparation of all management accounts. The Director of Services is responsible for all aspects of infrastructure support within the school including all budgetary expenditure associated with that support and line management responsibilities for the support staff.
Timing of the Sevenoaks Survey in relation to the fee-setting process

452. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Bromsgrove School, at distinct points in its fee-setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Bromsgrove School, and Bromsgrove School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid-February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

453. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Bromsgrove School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004. The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
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<tbody>
<tr>
<td></td>
<td>Boarding</td>
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<tr>
<td><strong>2001/2002</strong></td>
<td>6</td>
</tr>
<tr>
<td><strong>First main circulation of Sevenoaks Survey</strong></td>
<td>13 February</td>
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<tr>
<td>Other circulations:</td>
<td>1 May</td>
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<td></td>
<td>8 May</td>
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<tr>
<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
<td>14 May</td>
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<tr>
<td>Other circulations:</td>
<td>17 May</td>
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<tr>
<td></td>
<td>29 May</td>
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<td></td>
<td>25 June</td>
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<tr>
<td><strong>2002/2003</strong></td>
<td>7</td>
</tr>
<tr>
<td><strong>First main circulation of</strong></td>
<td>11 February</td>
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</table>
### Finalisation of fee increases

The final fee increases for Bromsgrove School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 8 per cent for boarding pupils and 6.5 per cent for day pupils and it was finalised in March 2001.\(^{577}\) For the 2002/2003 academic year the final fee increase was 10.2 per cent for boarding pupils and 7.33 per cent for day pupils and it was finalised on 9 March 2002\(^ {578}\). For the 2003/2004 academic year the final fee increase was 9.5 per cent for

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577 See the answer to question 24 contained in Bromsgrove School’s 19 March 2004 response (document JXS0734R) to the OFT’s section 26 Notice to it dated 9 February 2004; it should be noted that the OFT does not have specific documentation to show the date on which the fee increase was finalised but given Bromsgrove School’s explanation that fee increases are likely to be approved each March – see paragraph 454 above – the OFT considers that the fee increase for this academic year was finalised in March 2001.

578 See minute 2486, entitled ‘Fee Increase Proposals’, of the minutes of Bromsgrove School’s Governing Body meeting held on 9 March 2002 (document JXS0825). See also the answer to question 24 contained in Bromsgrove School’s 19 March 2004 response (document JXS0734R) to the OFT’s section 26 Notice to it dated 9 February 2004.

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<tr>
<td><strong>Sevenoaks Survey</strong></td>
<td></td>
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<tr>
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<td>7</td>
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<td>22 April</td>
<td>10.2</td>
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<tr>
<td><strong>2003/2004</strong></td>
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<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>12 February</td>
<td>8.5</td>
<td>8.5</td>
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<td>Other circulations:</td>
<td>14 February</td>
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<td></td>
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<td>17 March</td>
<td>8.5</td>
<td>8.5</td>
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<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>17 April</td>
<td>9.7</td>
<td>8.1</td>
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boarding pupils and 8 per cent for day pupils and it was finalised on 7 June 2003\(^{579}\).

Conclusion regarding Bromsgrove School’s participation in the Sevenoaks Survey\(^{580}\)

455. In relation to the 2001/2002 academic year, the OFT considers that Bromsgrove School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Bromsgrove School, these estimates reflected Bromsgrove School’s actual fee increases with a high degree of accuracy and Bromsgrove School has participated in the Sevenoaks Survey in two other relevant years;

- Bromsgrove School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Bromsgrove School at least one circulation of the Sevenoaks Survey for this year; and

- extracts from a number of Bromsgrove School’s internal documents are consistent with Bromsgrove School’s participation in the Survey in respect of this academic year, including one that had a copy of the Sevenoaks Survey attached to it and one that referred expressly to ‘a survey conducted by Sevenoaks School of fees from major boarding and boarding/day Schools’.

456. In relation to the 2002/2003 academic year, the OFT considers that Bromsgrove School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Bromsgrove School, these estimates reflected Bromsgrove School’s actual fee increases with a high degree of accuracy and Bromsgrove School has participated in the Sevenoaks Survey in two other relevant years;

- Bromsgrove School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

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\(^{579}\) See minute 2545, entitled ‘Fee Increase Proposals’, of the minutes of Bromsgrove School’s Governing Body meeting held on 22 March 2003 (document JXS0832). See also the answer to question 24 contained in Bromsgrove School’s 19 March 2004 response (document JXS0734R) to the OFT’s section 26 Notice to it dated 9 February 2004.

\(^{580}\) See paragraphs 435 to 449 above.
the Sevenoaks bursar or his assistant sent Bromsgrove School at least one circulation of the Sevenoaks Survey for this year; and

- extracts from a number of Bromsgrove School’s internal documents are consistent with Bromsgrove School’s participation in the Survey in respect of this academic year, including two that had a copy of the Survey attached to them.

457. In relation to the 2003/2004 academic year, the OFT considers that Bromsgrove School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Bromsgrove School, these estimates reflected Bromsgrove School’s actual fee increases with a high degree of accuracy and Bromsgrove School has participated in the Sevenoaks Survey in two other relevant years;

- Bromsgrove School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Bromsgrove School at least one circulation of the Sevenoaks Survey for this year; and

- extracts from a number of Bromsgrove School’s internal documents are consistent with Bromsgrove School’s participation in the Survey in respect of this academic year, including one that had a copy of the Sevenoaks Survey attached to it.

458. The OFT therefore considers that Bromsgrove School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraph 437 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Bromsgrove School received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of the academic years 2002/2003 and 2003/2004 before it finalised its own fee increases. In respect of the 2001/2002 academic year, although the OFT does not have specific evidence to demonstrate that Bromsgrove School received circulations of the Sevenoaks Survey before it finalised its own fee increase, the OFT considers that the fact that Bromsgrove School contributed its own fee increase figures to the Sevenoaks Survey in that year (see paragraph 436 above) means that it nevertheless participated in the Sevenoaks Survey for that year.

459. The OFT concludes that the evidence set out above demonstrates that Bromsgrove School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the
Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Bryanston School**

_Evidence of participation in the Sevenoaks Survey_ \(^{581}\)


461. First, the Sevenoaks Survey includes fee-increase estimates for Bryanston School for the years 2001/2002 and 2003/2004 \(^{582}\).

462. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Bryanston School contributed to the Sevenoaks Survey and a request by the OFT to supply copies of the Sevenoaks Surveys from 2000 onward, Bryanston School stated,

\[\text{'Although no records have been kept for previous years, the Bursar took no part in this survey after doubts were raised as to the propriety of such activity in early 2003...}\]

\[\text{Copies of this survey were not kept by Bryanston.'}^{583}\]

463. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004, Bryanston School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools \(^{584}\). The OFT considers that this demonstrates that Bryanston School received at least one circulation of the Sevenoaks Survey for the academic years 2002/2003 and 2003/2004 by, respectively, 11 February 2002 and 11 March 2003. In relation to the academic year 2001/2002, the OFT considers that, because the circulation of the Sevenoaks Survey dated 13 February and 1 May 2001 recorded figures for Bryanston School, Bryanston would in all likelihood have received at least one circulation of the Sevenoaks Survey by, at the latest, 1 May 2001.

464. Fourth, the OFT notes that one of Bryanston School’s internal documents for the 2002/2003 academic year is consistent with, and further evidence

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\(^{581}\) See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.

\(^{582}\) See the table at paragraph 473 below.

\(^{583}\) The answers to questions 15 and 17 contained in Bryanston School’s 5 March 2004 response (document LXT3119R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG005).

\(^{584}\) Documents LXT3412 and LXT2542 show, respectively, that the electronic mail address _bursar@bryanston.co.uk_ was the recipient of electronic mails transmitting summaries of other schools’ fee-increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘bryanston.co.uk’ – corresponds with the domain name for the electronic mail address of the bursar of Bryanston School that is recorded on Bryanston School’s letter to the OFT dated 9 March 2004 (document LXT3119R). The OFT therefore considers that Bryanston School received the electronic mails described above that were sent to the electronic mail address _bursar@bryanston.co.uk_.

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for, the conclusion that Bryanston School participated in the Sevenoaks Survey in respect of this year.

465. 2002/2003

466. The OFT considers that the following extract from Bryanston School’s internal documents is consistent with, and further evidence for, the conclusion that Bryanston School participated in the Survey for this academic year.


468. The document states,

‘5. In order to maintain a balance in the budget and ensure sufficient cash generation to sustain our ambitions, the Committee is invited to consider an increase in the fees for 2002/2003 of 7.0%…

7. As is normal practice, I have asked fellow Bursars in comparator schools for their best estimates as to fee levels for next year. None of the following figures have yet been confirmed…’.

Fee–setting process

469. Bryanston School’s fee–setting process during the relevant period can, in essence, be described as follows. In the spring term of each financial year (January to March), Bryanston School’s departments are asked to assess requirements for capital expenditure for the coming academic year. Requests are summarised and prioritised at a meeting of the Bryanston School’s bursar, Director of Studies, Financial Controller and Head of Technology. The result of this meeting is a recommended summary of the budget, which is then submitted to Bryanston School’s senior management team. The budget summary is based primarily on a number of cost–related factors. As a result of funding requirements to cover costs, an income requirement is generated that produces a proposed fee requirement.

470. In May or June of the academic year, the preliminary annual budget is then set. Bryanston School states that,

‘It is first considered in the May meeting of the F and GP Committee and then again at the June Council meeting. It is only at this time of the year that the level of the School’s fees is discussed. The report on Fees and the Notes to the Preliminary Budget are considered together, inextricably linked as they are, and should be read in conjunction.

It will be noted that the report presented by the Bursar each year up to 2002 incorporated anticipated fee increases in some 13 “comparator schools”. In 2003, doubts were raised as to the propriety of exchanging this information and the Governors instructed that the Bursar should

585 Document LXT3069.
cease to take part in this practice. Thus no such information was
obtained or included in the report for the year 2003/2004.586

471. At the end of June of each academic year, Bryanston School’s Chairman
of Governors notifies the parents of Bryanston School’s pupils of the fee
increases for the coming academic year.

Timing of the Sevenoaks Survey in relation to the fee–setting process

472. The OFT notes that according to the Sevenoaks bursar’s witness
statement, as set out at paragraphs 316 to 321 above, the circulations of
the results of the Sevenoaks Survey would have been sent to the
Participant schools, including Bryanston School, at distinct points in its
fee–setting process. Towards the end of January or in early February the
Sevenoaks bursar’s request for prospective fee increases would have been
sent to the Participant schools, including Bryanston School, and Bryanston
School would have submitted an estimate to the Survey. The results of
this first request for information would have been circulated in mid–
February and the results of the second request for information would have
been circulated in May. After each of the two main circulations, the
Sevenoaks bursar would have sent out a number of circulations, the
precise number of which varied from year to year.

473. The table below sets out the percentage fee increase figures that were
recorded in the Sevenoaks Survey circulations for Bryanston School in
respect of each of the academic years 2001/2002, 2002/2003 and
2003/2004587.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001/2002</td>
<td></td>
</tr>
<tr>
<td><strong>Circulations</strong></td>
<td></td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>13 February</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May</td>
</tr>
<tr>
<td></td>
<td>8 May</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>14 May</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>17 May</td>
</tr>
</tbody>
</table>

586 The answer to question 4 contained in Bryanston School’s 9 March 2004 response (document LXT3119R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG005).
587 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
<table>
<thead>
<tr>
<th>Date</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>29 May</td>
<td>5.5</td>
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<td>25 June</td>
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<tr>
<td>First main</td>
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<td></td>
</tr>
<tr>
<td>circulation</td>
<td>11 February</td>
<td>–</td>
</tr>
<tr>
<td>of Sevenoaks</td>
<td>Other circulations: 15 February</td>
<td>–</td>
</tr>
<tr>
<td>Survey</td>
<td>Second main</td>
<td>22 April</td>
</tr>
<tr>
<td></td>
<td>circulation of</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sevenoaks Survey</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Other circulations: 11 June</td>
<td>–</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2003/2004</th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>First main</td>
<td></td>
<td></td>
</tr>
<tr>
<td>circulation</td>
<td>12 February</td>
<td>6</td>
</tr>
<tr>
<td>of Sevenoaks</td>
<td>Other circulations: 14 February</td>
<td>6</td>
</tr>
<tr>
<td>Survey</td>
<td>26 February</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>14 March</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>17 March</td>
<td>6</td>
</tr>
<tr>
<td>Second main</td>
<td>17 April</td>
<td>6</td>
</tr>
<tr>
<td>circulation</td>
<td></td>
<td>6</td>
</tr>
<tr>
<td>of Sevenoaks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Survey</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Finalisation of fee increases**

474. The final fee increases for Bryanston School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 7 per cent for boarding pupils and 9.9 per cent for day pupils. For the 2002/2003 academic year the final fee increase was 7.2 per cent for boarding pupils and 11.4 per cent for day pupils. For the 2003/2004
academic year the final fee increase was 7.5 per cent for both boarding and day pupils.\footnote{588}

**Conclusion regarding Bryanston School’s participation in the Sevenoaks Survey**\footnote{589}

475. In relation to the 2001/2002 academic year, the OFT considers that Bryanston School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Bryanston School and Bryanston School has participated in the Sevenoaks Survey in two other relevant years; and

- the OFT infers from the fact that Bryanston School said that it stopped participating in the Survey in early 2003 that it participated in the Survey until that time and, therefore, that Bryanston School has accepted that it participated in the Sevenoaks Survey in respect of this academic year.

476. In relation to the 2002/2003 academic year, the OFT considers that Bryanston School participated in the Sevenoaks Survey on the basis that:

- the OFT infers from the fact that Bryanston School said that it stopped participating in the Survey in early 2003 that it participated in the Survey until that time and, therefore, that Bryanston School has accepted that it participated in the Sevenoaks Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Bryanston School at least one circulation of the Sevenoaks Survey for this year; and

- an extract from Bryanston School’s internal documents is consistent with Bryanston School’s participation in the Survey for this academic year.

477. In relation to the 2003/2004 academic year, the OFT considers that Bryanston School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Bryanston School and Bryanston School has participated in the Sevenoaks Survey in two other relevant years;

- the OFT infers from the fact that Bryanston School said that it stopped participating in the Survey in early 2003 that it participated in the Survey until that time and, therefore, that

\footnote{588}{The OFT does not have specific documentation to show the date on which Bryanston School’s fee increases were finalised for any of the academic years from 2001/2002 to 2003/2004. However, given Bryanston School’s explanation that fee increases are likely to be approved in May or June of each academic year (see paragraphs 470 and 471 above) the OFT considers that the fee increase for each academic year was finalised in May or June.}

\footnote{589}{See paragraphs 461 to 474 above.}
Bryanston School has accepted that it participated in the Sevenoaks Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Bryanston School at least one circulation of the Sevenoaks Survey for this year.

478. The OFT therefore considers that Bryanston School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of the academic years 2001/2002 and 2003/2004 and that it received the Sevenoaks Survey in respect of the academic year 2002/2003. Further, the OFT notes that the evidence set out at paragraphs 463 and 474 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Bryanston School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

479. The OFT concludes that the evidence set out above demonstrates that Bryanston School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Canford School**

_Evidence of participation in the Sevenoaks Survey_


482. Second, Canford School has stated in its response to a request for information made by the OFT under section 26 of the Act that,

> 'Copies of the Sevenoaks survey from January 2000 are in the enclosed pack... and show that Canford has contributed or had its data included in the survey.'

Enclosed with Canford School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of the years 2001/2002 and 2003/2004 that Canford School received from the Sevenoaks bursar or his assistant.

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590 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
591 See the table at paragraph 493 below.
592 The answer to question 7 contained in Canford School’s 4 March 2004 response (document LXT3134R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG006).
Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Canford School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools\(^{593}\). The OFT considers that this demonstrates that Canford School received at least one circulation of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 14 May 2001, 11 February 2002 and 11 March 2003.

Fourth, the OFT notes that a number of Canford School’s internal documents for the academic year 2002/2003 are consistent with and further evidence for the conclusion that Canford School participated in the Sevenoaks Survey in respect of that academic year.

**2002/2003 academic year**

Fourth, the OFT notes that a number of Canford School’s internal documents for the academic year 2002/2003 are consistent with and further evidence for the conclusion that Canford School participated in the Sevenoaks Survey in respect of that academic year.

Agenda Item 4.2 for a meeting of the Finance Committee of Canford School held on 15 May 2002\(^{594}\)

This document, a table of schools with figures recorded against each school’s name, is headed, ‘Survey of Boarding Fees’.

This document, a table of schools with figures recorded against each school’s name, is headed, ‘Survey of Boarding Fees’.

The table contains estimated fee increase for Canford and 13 other Participant schools. At the bottom of the table is recorded, ‘DSBP 1 May 2002’. The OFT notes that the fee increase information recorded in the table for 11 of the 14 schools is identical to or almost the same as information that is recorded for the schools in the Sevenoaks Survey dated 22 April 2002, the nearest circulation of the Sevenoaks Survey in time that precedes the meeting of Canford School’s Finance Committee for which this table was prepared\(^{595}\).

\(^{593}\) Documents LXT2749, LXT3412 and LXT2542 show, respectively, that the electronic mail address bursar@canford.com was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. The OFT notes that this electronic mail address – bursar@canford.com – is the same electronic mail address for the bursar of Canford School that is recorded on Canford School’s 4 March 2004 response (document LXT3134R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG006). The OFT therefore considers that the bursar of Canford School received the electronic mails described above that were sent to the electronic mail address bursar@canford.com.

\(^{594}\) Document LXT3190.

\(^{595}\) The figure for Bryanston School is 7.5% in the table but there is no figure for Bryanston recorded in the update of the Sevenoaks Survey in question. The figure for Tonbridge School is 7.1% in the table compared to the 7.2% that is recorded in the update of the Sevenoaks Survey in question. The figure for Harrow School is 5.75% in the table compared to the 5.7% that is recorded in the update of the Sevenoaks Survey in question. The figure for Radley College is 7.25% in the table compared to the 6% that is recorded in the update of the Sevenoaks Survey in question. The figure for Charterhouse School is 6% in the table compared to the 5% that is
Paragraph 2018 at page 3 of the minutes states,

'The Bursar pointed out that the proposed increase of 6% in fees was significantly less than that to be announced by competitor schools. An increase of around 7% was commonly anticipated nationally. **In view of these considerations the Governors decided that the fee increase should be raised to 6.5%.**'

(Emphasis added).

The meeting of Canford School’s Governing Body on 6 June 2002 was the first meeting of the Governors of Canford School following the meeting of Canford School’s Finance Committee held on 15 May 2002 which had before it a table of estimated fee increases for Canford and 13 other Participant schools headed ‘Survey of Boarding Fees’ (see paragraph 486 above).

**Fee–setting process**

490. Canford School’s fee–setting process during the relevant period can, in essence, be described as follows\(^597\). Canford School’s fee–setting process begins as part of its budgetary process. In October of each academic year, school departments submit bids for capital and maintenance projects. In January of each academic year, departments make bids for revised budgets for fees (not school fees), charges and allowances that they must pay and, by late February, all budget holders have submitted bids for revised budgets. In April or May of each academic year the Governors’ Salaries Sub–Committee considers teachers’ pay rises. Between February and May Canford School’s bursar collates the various bids for funds into a draft budget to be reviewed by the May meeting of the Finance and Executive Committee.

491. The Finance and Executive Committee then agree a projected fee increase which is submitted to Canford School’s full governing body for consideration in June of each academic year. After the Governing body has decided on the final fee increase in June the level of fee increase is notified to parents of Canford School’s pupils.

**Timing of the Sevenoaks Survey in relation to the fee–setting process**

492. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of

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\(^{596}\) Document LXT3199.

\(^{597}\) The description of Canford School’s fee–setting process is taken from the answer to question 6 contained in Canford School’s 4 March 2004 response (document LXT3134R) to the OFT’s section 26 Notice to it dated 9 February 2004 unless otherwise stated (document SMG006). See also the statement of Canford School relating to the role of its bursar made in the Schools’ Joint Factual Statement (document JM 01–a).
the results of the Sevenoaks Survey would have been sent to the Participant schools, including Canford School, at distinct points in its fee-setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Canford School, and Canford School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid-February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

493. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Canford School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004. The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boarding</td>
</tr>
<tr>
<td>2001/2002</td>
<td></td>
</tr>
<tr>
<td><em>First main circulation of Sevenoaks Survey</em></td>
<td>13 February</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May</td>
</tr>
<tr>
<td></td>
<td>8 May</td>
</tr>
<tr>
<td><em>Second main circulation of Sevenoaks Survey</em></td>
<td>14 May</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>17 May</td>
</tr>
<tr>
<td></td>
<td>29 May</td>
</tr>
<tr>
<td></td>
<td>25 June</td>
</tr>
</tbody>
</table>

| 2002/2003       |                           |              |
| *First main circulation of Sevenoaks Survey* | 11 February | – | – |
| Other circulations: | 15 February   | 7 | 7 |
Second main circulation of Sevenoaks Survey  |  22 April  |  6  |  6.5  
Other circulations:  |  11 June  |  6  |  6.5  

<table>
<thead>
<tr>
<th></th>
<th>2003/2004</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>12 February</td>
<td>8</td>
<td>8</td>
</tr>
</tbody>
</table>
Other circulations: | 14 February | 8  | 8  |
| | 26 February | 8  | 8  |
| | 14 March | 8  | 8  |
| | 17 March | 8  | 8  |
| Second main circulation of Sevenoaks Survey | 17 April | 8  | 8  |
Other circulations: | – | – | –  

**Finalisation of fee increases**

494. The final fee increases for Canford School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 7.3 per cent for both boarding and day fees and it was finalised on 2 June 2001\(^599\). For the 2002/2003 academic year the final fee increase was 6.5 per cent for both boarding and day fees and was finalised on 6 June 2002\(^600\). For the 2003/2004 academic year the final fee increase was 9.5 per cent for both boarding and day fees and it was finalised on 4 June 2003\(^601\).

\(^{599}\) See section 2 of Minute 1973 of the meeting of Canford School's Governing Body held on 2 June 2001 (document LXT3176).

\(^{600}\) See section 2 of Minute 2018 of the meeting of Canford School's Governing Body held on 6 June 2002 (document LXT3199).

\(^{601}\) See section 2 of Minute 2065 of the meeting of Canford School's Governing Body held on 4 June 2003 (document LXT3219). See also, for each year’s increase, Canford School’s response to question 24 contained in its 4 March 2004 response (document LXT3134R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG006).
Conclusion regarding Canford School’s participation in the Sevenoaks Survey

495. In relation to the 2001/2002 academic year, the OFT considers that Canford School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Canford School and Canford School has participated in the Sevenoaks Survey in two other relevant years;

- Canford School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Canford School at least one circulation of the Sevenoaks Survey for this year.

496. In relation to the 2002/2003 academic year, the OFT considers that Canford School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Canford School and Canford School has participated in the Sevenoaks Survey in two other relevant years;

- Canford School has stated that it contributed to the Sevenoaks Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Canford School at least one circulation of the Sevenoaks Survey for this year; and

- extracts from a number of Canford School’s internal documents are consistent with Canford School’s participation in the Survey in respect of this academic year.

497. In relation to the 2003/2004 academic year, the OFT considers that Canford School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Canford School and Canford School has participated in the Sevenoaks Survey in two other relevant years;

- Canford School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Canford School at least one circulation of the Sevenoaks Survey for this year.

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[602] See paragraphs 481 to 489 above.
498. The OFT therefore considers that Canford School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraph 483 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Canford School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

499. The OFT concludes that the evidence set out above demonstrates that Canford School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

*Charterhouse School*

*Evidence of participation in the Sevenoaks Survey*


502. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Charterhouse School contributed to the Sevenoaks, Charterhouse School stated, ’2000 2001 2002 2003.’ Enclosed with Charterhouse School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2001/2002 to 2003/2004 that Charterhouse School received from the Sevenoaks bursar or his assistant.

503. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Charterhouse School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools. The OFT

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603 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.

604 See the table at paragraph 509 below.

605 The answer to question 7 contained in Charterhouse School’s 1 March 2004 response (document LXT3299) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG008).

606 Documents LXT2749, LXT4010 and LXT2542 show, respectively, that the electronic mail address bursar@charterhouse.org.uk was the recipient of electronic mails transmitting summaries of other schools’ fee-increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – charterhouse.org.uk – corresponds with the domain name for

504. Fourth, the OFT notes that one of Charterhouse School’s internal documents for the academic year 2002/2003 is consistent with, and further evidence for, the conclusion that Charterhouse School participated in the Sevenoaks Survey in respect of this academic year.

2002/2003 academic year

505. The OFT considers that the following extract from Charterhouse School’s internal documents is consistent with, and further evidence for, the conclusion that Charterhouse School participated in the Survey for 2002/2003.

Agenda Item 9 – Financial Plan – for consideration by a meeting of the Finance and General Purposes Committee held on 23 May 2002 607

506. The document is entitled 'FEES ACCOUNT – FINANCIAL PLAN 2001–2002'. The section of the document headed ‘Points to note’ states,

(i) An increase of 7% has been included in the Financial Plan...

(ii) Other independent Schools are currently in the process of determining fees for 2002–2003 and early indications are that 6–7% will be in the mid range of increases...

(vi) A table giving information on other Independent schools fee increases is attached. An updated version will be tabled at the meeting.'

Attached to the Financial Plan as 'Agenda Item 11' is a list of Charterhouse School and 22 other independent schools that participate in the Sevenoaks Survey. The fee increase estimate figures for 18 of the 23 schools on the list are identical or very similar to the fee increase figures recorded on the Sevenoaks Survey update dated 22 April 2002, the nearest update in time that precedes the date of the meeting of Charterhouse School’s Finance and General Purposes Committee for which the Financial Plan in question has been prepared.

Fee–setting process

507. Charterhouse School’s fee–setting process during the relevant period can, in essence, be described as follows. In February of each academic year Charterhouse School begins work on a financial plan for its next financial year which begins on 1 August. The Clerk and bursar of Charterhouse School request budget–holding staff at Charterhouse School to submit

Charterhouse School’s website address and for the contact electronic mail addresses given for Charterhouse School on its website: see http://www.charterhouse.org.uk/contact_us.asp. The OFT therefore considers that Charterhouse School received the electronic mails described above that were sent to the electronic mail address bursar@charterhouse.org.uk. 607 Document LXT3326.
bids for the coming academic year by March of the existing academic year. The Clerk and bursar then compiles a financial plan for the following financial year which is presented to the May meeting of Charterhouse School’s Finance and General Purposes Committee for discussion. The Finance and General Purposes Committee then makes a recommendation to the June meeting of Charterhouse School’s Governing Body which makes the final decision regarding the fee increase for the following financial year.

**Timing of the Sevenoaks Survey in relation to the fee-setting process**

508. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Charterhouse School, at distinct points in its fee-setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Charterhouse School, and Charterhouse School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid-February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

509. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Charterhouse School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001/2002</td>
<td></td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>13 February</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May</td>
</tr>
<tr>
<td></td>
<td>8 May</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>14 May</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>17 May</td>
</tr>
</tbody>
</table>

608 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
## Finalisation of fee increases

510. The final fee increases for Charterhouse School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 7 per cent for both day and boarding pupils and it was finalised on 15 June 2001.\footnote{See item 11 in the minutes of the meeting of the Governing Body of Charterhouse School held on 15 June 2001 (document LXT3318), approving the recommendation in item 2 of the figures recommended by Charterhouse School’s Finance and General Purposes Committee in Agenda Item 11 for the Governing Body of Charterhouse School (document LXT3317).}

For the 2002/2003 academic year the final fee increase...
was 8.4 per cent for both boarding and day pupils and it was finalised on 21 June 2002\textsuperscript{610}. For the 2003/2004 academic year the final fee increase was 8.6 per cent for both boarding and day pupils and it was finalised in June 2003\textsuperscript{611}.

\textit{Conclusion regarding Charterhouse School’s participation in the Sevenoaks Survey}\textsuperscript{612}

511. In relation to the 2001/2002 academic year, the OFT considers that Charterhouse School participated in the Sevenoaks Survey on the basis that:

\begin{itemize}
\item the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Charterhouse School and Charterhouse School has participated in the Sevenoaks Survey in two other relevant years;
\item Charterhouse School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and
\item the Sevenoaks bursar or his assistant sent Charterhouse School at least one circulation of the Sevenoaks Survey for this year.
\end{itemize}

512. In relation to the 2002/2003 academic year, the OFT considers that Charterhouse School participated in the Sevenoaks Survey on the basis that:

\begin{itemize}
\item the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Charterhouse School and Charterhouse School has participated in the Sevenoaks Survey in two other relevant years;
\item Charterhouse School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;
\item the Sevenoaks bursar or his assistant sent Charterhouse School at least one circulation of the Sevenoaks Survey for this year; and
\end{itemize}

\textsuperscript{610} See item 9 of the minutes of the meeting of the Governing Body of Charterhouse School held on 21 June 2002 (document LXT3330).

\textsuperscript{611} See the answer to question 24 contained in Charterhouse School’s 1 March 2004 response (document LXT3299) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG008); it should be noted that the OFT does not have specific documentation to show the date on which the fee increase was finalised but given Charterhouse School’s explanation that fee increases are likely to be approved each June (see paragraph 507 above) the OFT considers that the fee increase for this academic year was finalised in June 2003.

\textsuperscript{612} See paragraphs 501 to 506 above.
an extract from Charterhouse School’s internal documents is consistent with Charterhouse School’s participation in the Survey for that academic year.

513. In relation to the 2003/2004 academic year, the OFT considers that Charterhouse School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Charterhouse School and Charterhouse School has participated in the Sevenoaks Survey in two other relevant years;

- Charterhouse School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Charterhouse School at least one circulation of the Sevenoaks Survey for this year.

514. The OFT therefore considers that Charterhouse School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 503 and 510 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Charterhouse School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

515. The OFT concludes that the evidence set out above demonstrates that Charterhouse School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

Cheltenham College

Evidence of participation in the Sevenoaks Survey


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613 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
518. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Cheltenham College contributed to the Sevenoaks Survey and a request by the OFT to supply copies of the Sevenoaks Surveys from 2000 onward, Cheltenham College stated, 'We have contributed in the past, probably mostly by e mail... 
...We attach [copies of the Sevenoaks Survey]... dated 2000–2001, 2002–2003, 2003–2004 – if there are other copies of other years they have been discarded.'

Enclosed with Cheltenham College’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2002/2003 and 2003/2004 that Cheltenham College received from the Sevenoaks bursar or his assistant.

519. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Cheltenham College was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools. The OFT considers that this demonstrates that Cheltenham College received at least one circulation of the Sevenoaks Survey for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 14 May 2001, 17 April 2002 and 11 March 2003.

520. Fourth, the OFT notes that a number of Cheltenham College’s internal documents for each of the academic years 2001/2002 to 2003/2004 are consistent with and further evidence for the conclusion that Cheltenham College participated in the Sevenoaks Survey in respect of these academic years.

2001/2002 academic year

521. The OFT considers that the following extract from Cheltenham College’s internal documents is consistent with, and further evidence for, the conclusion that Cheltenham College participated in the Survey for 2001/2002.

Non-published minutes of a meeting of the Senior Management Team of Cheltenham College held on 15 May 2001

522. Part of the minutes state that,

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614 See the table at paragraph 531 below.
615 The answer to questions 15 and 17 contained in Cheltenham College’s 17 February 2004 response (document LXT3429) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG007).
616 Documents LXT2749, LXT4010 and LXT2542 show, respectively, that the electronic mail address smith.denis@cheltcoll.gloucs.sch.uk was the recipient of electronic mails transmitting summaries of other schools' fee-increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘cheltcoll.gloucs.sch.uk’ – corresponds with Cheltenham College’s website address: see www.cheltcoll.gloucs.sch.uk. The OFT therefore considers that Cheltenham College received the electronic mails described above that were sent to the electronic mail address smith.denis@cheltcoll.gloucs.sch.uk.
'DNS reported that the fees increase for 2001/2002 was likely to be in the region of 9%. When asked how this compared with other schools, he said that this level of increase would place College fees mid–way when compared with fifty similar schools (including some members of the Rugby Group).’

2002/2003 academic year

The OFT considers that the following extracts from Cheltenham College’s internal documents are consistent with and further evidence for the conclusion that Cheltenham College participated in the Survey for 2002/2003.

Electronic mail dated 17 April 2002 from Denis Smith at Cheltenham College to Stephen Frilling at Cheltenham College

This electronic mail, which is headed 'School Fee Survey', attaches an electronic mail dated 17 April 2002 from the Sevenoaks bursar to various participants in the Sevenoaks Survey, including Denis Smith at Cheltenham College. The electronic mail notes in relation to the attached electronic mail from the Sevenoaks bursar,

'8%! – I told you there would be a creep upwards.
Denis'.

The text of the electronic mail initially sent by the Sevenoaks bursar to Denis Smith states:

'SCHOOL FEES 2002/3

The flurry of e–mails and interest that has been shown about the level of fees to be charged from September suggests to me that Bursars might welcome a second survey now rather than wait until early May.

If you would like to be included in this second survey, please would you e–mail back to me your latest prediction of your School’s fees for next year. If there is no change from the previous figure you supplied please also let me know.

I will circularise the summary early next week if you can let me have your reply by this Friday.

In my own case the original guestimate of 6.5% proved to be understated and we have now fixed the fees for next year at an increase of 8% resulting in a boarding fee of £17,487 p.a. and a day fee of £10,662 p.a.

I look forward to hearing from you.

Best Wishes
Julian Patrick

Sevenoaks School'.

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617 Document LXT3470. The OFT considers that ‘DNS’ in this quotation refers to Denis Smith, the bursar of Cheltenham College at the relevant time; see for example the electronic mail from the Sevenoaks bursar to Denis Smith at Cheltenham College, also quoted in this paragraph.

618 Document LXT3484.
2003/2004 academic year

525. The OFT considers that the following extracts from Cheltenham College’s internal documents (which had a circulation of the Sevenoaks Survey attached to them) are consistent with and further evidence for the conclusion that Cheltenham College participated in the Survey for 2003/2004.

Electronic mail dated 11 March 2003 from Denis Smith at Cheltenham College to Jonathan Lancashire and Stephen Frilling at Cheltenham College 619

526. The electronic mail states,

'Latest for info'.

A copy of a circulation of the Sevenoaks Survey for the academic year 2003/2004 is attached to the document.

Electronic mail dated 14 March 2003 from Denis Smith at Cheltenham College to Stephen Frilling and Paul Chamberlain at Cheltenham College 620

527. The electronic mail states,

'As we suspected the estimated fees increases for September are creeping up but some strange differences e.g. Radley 10%, St. Edward’s Oxford 5% and CLC 8.5%

Denis'

A copy of a circulation of the Sevenoaks Survey for the academic year 2003/2004 is attached to the document.

Fee–setting process

528. Cheltenham College’s fee–setting process during the relevant period can, in essence, be described as follows621. In January of each academic year the deputy bursar (finance) at Cheltenham College (‘the DB(F)’) begins work on a budget for its next financial year which begins on 1 September. In January the DB(F) requests budget–holding staff at Cheltenham College to submit bids for the coming academic year. These bids are returned to DB(F) in approximately the middle of February. The DB(F) and the bursar of Cheltenham College consider various items of expenditure that must be covered by the budget in late February or early March and the DB(F) then compiles reports for senior management on their subordinate budgets. The budget is revised over the subsequent three months as figures change and pupil numbers become more firm. Cheltenham College states that it considers fee increases in accordance with certain internal targets for an

619 Document LXT3519.
620 Document LXT3520.
621 The description of Cheltenham College’s fee–setting process is taken from the answer to question 6 contained in Cheltenham College’s 17 February 2004 response (document LXT3429) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG007).
operating surplus each year and other factors that may affect the school’s cost base.

529. The Finance and General Purposes Committee considers in May the budget prepared by the bursar and DB(F) and normally approves the figures at a meeting in June before recommending figures to Cheltenham College’s Council in the same month. The Council then considers the figures and gives final approval of them if it sees fit. It should be noted that, although final approval usually takes place in June of each academic year, Cheltenham College usually informs parents that fees will rise the following September in the Easter holidays of that year. The DB(F) during the relevant period was Stephen Frilling.622

Timing of the Sevenoaks Survey in relation to the fee–setting process

530. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Cheltenham College, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Cheltenham College, and Cheltenham College would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

531. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Cheltenham College in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.623

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<thead>
<tr>
<th>Year</th>
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<td>7</td>
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</table>

622 See document TC09d.
623 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
532. The final fee increases for Cheltenham College during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 9 per cent for both day and boarding pupils. For the 2002/2003 academic year the final fee increase was 7.5 per cent for both boarding pupils.
and day pupils. For the 2003/2004 academic year the final fee increase was 8 per cent for both boarding and day pupils.\textsuperscript{624}

Conclusion regarding Cheltenham College's participation in the Sevenoaks Survey

533. In relation to the 2001/2002 academic year, the OFT considers that Cheltenham College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Cheltenham College and Cheltenham College has participated in the Sevenoaks Survey in two other relevant years;
- the OFT infers from Cheltenham College’s statement at paragraph 518 above that it contributed to the Sevenoaks Survey in respect of this academic year;
- the Sevenoaks bursar or his assistant sent Cheltenham College at least one circulation of the Sevenoaks Survey for this year; and
- extracts from Cheltenham College’s internal documents are consistent with Cheltenham College’s participation in the Survey for this academic year.

534. In relation to the 2002/2003 academic year, the OFT considers that Cheltenham College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Cheltenham College and Cheltenham College has participated in the Sevenoaks Survey in two other relevant years;
- the OFT infers from Cheltenham College's statement at paragraph 518 above that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;
- the Sevenoaks bursar or his assistant sent Cheltenham College at least one circulation of the Sevenoaks Survey for this year; and

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\textsuperscript{624} Fee increase figures taken from the answer to question 32 in Cheltenham College’s 17 February 2004 response (document LXT3429) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG007). The OFT does not have specific documentation to show the date on which the fee increases were finalised for these three academic years but given Cheltenham College’s explanation that fee increases are likely to be approved each June – see paragraph 529 above – the OFT considers that the fee increase for this academic year was finalised in June of each academic year.

\textsuperscript{625} See paragraphs 517 to 525 above.
extracts from one of Cheltenham College’s internal documents forwarding an electronic mail from the Sevenoaks bursar are consistent with Cheltenham College’s participation in the Survey for this academic year.

535. In relation to the 2003/2004 academic year, the OFT considers that Cheltenham College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Cheltenham College and Cheltenham College has participated in the Sevenoaks Survey in two other relevant years;
- the OFT infers from Cheltenham College's statement at paragraph 518 above that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;
- the Sevenoaks bursar or his assistant sent Cheltenham College at least one circulation of the Sevenoaks Survey for this year; and
- extracts from Cheltenham College’s internal documents are consistent with Cheltenham College’s participation in the Survey for this academic year, including two that had a copy of the Survey attached to them.

536. The OFT therefore considers that Cheltenham College both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 519 and 532 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Cheltenham College will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

537. The OFT concludes that the evidence set out above demonstrates that Cheltenham College participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the

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626 Cheltenham College argued in the Schools’ Joint Factual Statement (document JM 01–a) that the school’s fees were set independently by its Council. The OFT does not accept that this decision is independent of the DB(F), however, who (together with the bursar) prepares the budget which is approved by the Finance and General Purposes Committee and subsequently recommended by that committee to the Council (see paragraphs 528 and 529 above). Thus, regardless of whether the Council saw results of the Sevenoaks Survey, at least some of those involved in preparing the draft budget, including fees, that was submitted to the Council saw the Survey. In those circumstances, the OFT considers that it is entirely appropriate to take account of the fact that “Cheltenham College” received at least one circulation of the Survey before finalising its fee increase.
Sevenoaks Survey before it made its final decision on the fee increases for those years.

Cheltenham Ladies’ College

Evidence of participation in the Sevenoaks Survey


540. Second, Darren Milne, the bursar at Cheltenham Ladies’ College from March 2002 to February 2003, stated in relation to the Sevenoaks Survey,

‘9. . . in April 2002, I contacted Sevenoaks School and starting contributing to the survey...
11. Since I have only been at CLC for two years and my start of employment was after the survey had already started in the 2002/3 year, my contribution to the survey, and my attention to it has changed over the two years.’

Also, Cheltenham Ladies’ College confirmed that it received circulations of the Sevenoaks Survey in respect of the 2001/2002 academic year and provided the OFT with at least one circulation of the Sevenoaks Survey in respect of the years 2001/2002 and 2003/2004 that Cheltenham Ladies’ College received from the Sevenoaks bursar or his assistant.

541. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Cheltenham Ladies’ College was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools. The OFT considers that this demonstrates that Cheltenham Ladies’ College received at least one circulation of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004.

627 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
628 See the table at paragraph 552 below.
630 See the letter dated 10 August 2005 from solicitors representing Cheltenham Ladies’ College to the OFT (document MDB0054).
631 Documents LXT2749, JXS0048 and LXT2542 show, respectively, that the electronic mail address siddalla@cheltladiescollege.org was the recipient of electronic mails transmitting summaries of other schools’ fee-increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘cheltladiescollege.org’ – corresponds with the domain name for Cheltenham Ladies’ College’s website address and for the contact electronic mail addresses given for Cheltenham Ladies’ College on its website: see http://www.cheltladiescollege.org/contact/. The OFT therefore considers that Cheltenham Ladies’ College received the electronic mails described above that were sent to the electronic mail address siddalla@cheltladiescollege.org.

542. Fourth, the OFT notes that a number of Cheltenham Ladies’ College’s internal documents for each of the academic years 2001/2002 to 2003/2004, and the 15 February 2005 witness statement by the bursar of Cheltenham Ladies’ College at the relevant time, are consistent with and further evidence for the conclusion that Cheltenham Ladies’ College participated in the Sevenoaks Survey in respect of those academic years.

2001/2002 academic year

543. The OFT considers that the following extract from Cheltenham Ladies’ College’s internal documents is consistent with, and further evidence for, the conclusion that Cheltenham Ladies’ College participated in the Survey for 2001/2002.

Minutes of the meeting of Cheltenham Ladies’ College Council held on 15 June 2001

544. Appendix 8 of the minutes, at paragraph 5.3 states,

'The FEC have recently reviewed fee levels for many comparable schools.'

2002/2003 academic year

545. The OFT considers that the following extract from the 15 February 2005 witness statement of Darren Milne is consistent with, and further evidence for, the conclusion that Cheltenham Ladies’ College participated in the Survey for 2002/2003:

'13. The Sevenoaks and the Lacrosse fee information were not a significant part of the budget preparation. In 2002 the information was not presented to FEC until May, i.e. very late in the budget process. In 2003 the information was made available to the Council much earlier, in March. However, in both years the focus of CLC’s budget has always been based on detailed analysis of our cost base and meeting the same percentage investment surplus target each year. Therefore the use of surveys is no more than a simple logic check that proves that the detailed work carried out by the management to arrive at the appropriate fee increase is not wildly out of line with that of other schools.'

(Emphasis added).

2003/2004 academic year

546. The OFT considers that the following extracts, from the 15 February 2005 witness statement of Darren Milne and from Cheltenham Ladies’ College’s internal documents, are consistent with and further evidence for the

632 Document TXD3171.
633 Document GCOR1033A.

547. The 15 February 2005 witness statement of Darren Milne states,

'13. The Sevenoaks and the Lacrosse fee information were not a significant part of the budget preparation. In 2002 the information was not presented to FEC until May, i.e. very late in the budget process. **In 2003 the information was made available to the Council much earlier, in March.** However, in both years the focus of CLC’s budget has always been based on detailed analysis of our cost base and meeting the same percentage investment surplus target each year. Therefore the use of surveys is no more than a simple logic check that proves that the detailed work carried out by the management to arrive at the appropriate fee increase is not wildly out of line with that of other schools'.

(Emphasis added).

Electronic mail from Darren Milne at Cheltenham Ladies’ College to Peter Chadlington, a Council member of Cheltenham Ladies’ College, and forwarded to […][C], Lord Chadlington’s PA, dated 12 February 2003 and attachments

548. The electronic mail states,

'attached is [sic] a couple of rough notes on what I wanted to run by you!'

Attached to the electronic mail are two documents. One document is a text document entitled 'Notes on fees for council' and the other is a spreadsheet entitled 'all schools 2002–2003 and 2003–4 fees'. The attached note on fees states,

'…

• Many schools going for large increases
• We must not fall behind, we will not be investing they will catch up…
• Estimates on this year at 7% we would be size of boarding fee we were 20/36. % increase we were 20/33…'

The attached spreadsheet lists various fee increase figures for the schools that participate in the Sevenoaks Survey in different formats, including fee increase figures for the academic year 2003/2004.

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634 Ibid.
635 Document LXT1114. It should be noted that as at 12 February 2003, Peter Chadlington was a trustee of Cheltenham Ladies’ College and also the Chairman of its Finance and Executive Committee. As at 12 February 2003 […][C] was Peter Chadlington’s personal assistant (see letter dated 1 September 2005 from solicitors representing Cheltenham Ladies’ College to the OFT – document MDB0053). See also the statement of Cheltenham Ladies’ College relating to this electronic mail in the Schools’ Joint Factual Statement (document JM 01–a).
Fee–setting process

549. Cheltenham Ladies’ College’s fee–setting process until approximately February 2003 can, in essence, be described as follows636. Cheltenham Ladies’ College’s fee–setting procedure takes place within the context of an annually updated development plan covering the following three years, and against the backdrop of factors that affect its cost base, including teachers’ salaries, and also certain financial targets, such as a target surplus and Cheltenham Ladies’ College’s long–term 10–year financial forecast. Cheltenham Ladies’ College’s bursar commences the annual budget process by sending an updated draft development plan to Cheltenham Ladies’ College’s Finance and Executive Committee in January of an academic year. The plan is then reviewed at a February planning meeting of Cheltenham Ladies’ College’s Council. At the Council meeting, Cheltenham Ladies’ College’s trustees will approve certain recommendations and authorise Cheltenham Ladies’ College’s senior management team to finalise the three year draft development plan.

550. Cheltenham Ladies’ College’s bursar then begins to prepare a detailed budget for the next financial year by collating submissions from the various budget holders at Cheltenham Ladies’ College. A draft budget is then produced to a March meeting of Cheltenham Ladies’ College’s Finance and Executive Committee, which critiques the draft budget and provides guidance for revised drafts of the budget. At the end of March, Cheltenham Ladies’ College’s Council is presented with a revised draft budget, including the approximate level of fee increases. The Chairman of the Council will then notify parents of the approximate level of fee increases for the coming academic year during the Easter holidays. Cheltenham Ladies’ College holds two more Finance and Executive Committee meetings in the summer term at which revised draft budgets are discussed. Cheltenham Ladies’ College’s Council approves the final budget and fee increase at a meeting in June before notifying parents of the final fee increases.

Timing of the Sevenoaks Survey in relation to the fee–setting process

551. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Cheltenham Ladies’ College, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Cheltenham Ladies’ College, and Cheltenham Ladies’ College would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a

636 This description of Cheltenham Ladies’ College’s fee–setting process is taken from the 15 February 2005 witness statement of Darren Milne (document GCOR1033A).
number of circulations, the precise number of which varied from year to year.

The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Cheltenham Ladies’ College in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.637

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<thead>
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<th>Year</th>
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637 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
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<td></td>
<td>26 February</td>
<td>7</td>
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<td>14 March</td>
<td>8.5</td>
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<td></td>
<td>17 March</td>
<td>8.5</td>
<td>8.5</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>17 April</td>
<td>8.5</td>
<td>8.5</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
</tbody>
</table>

**Finalisation of fee increases**

The final fee increases for Cheltenham Ladies’ College during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 5.9 per cent for boarding pupils and 8.9 per cent for day pupils and it was finalised on 15 June 2001. For the 2002/2003 academic year the final fee increase was 6 per cent for both boarding and day pupils and it was finalised on 14 June 2002. For the 2003/2004 academic year the final fee increase was 9 per cent for boarding pupils and 10 per cent for day pupils and it was finalised on 13 June 2003.

**Conclusion regarding Cheltenham Ladies’ College’s participation in the Sevenoaks Survey**

In relation to the 2001/2002 academic year, the OFT considers that Cheltenham Ladies’ College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Cheltenham Ladies’ College, these estimates accurately reflected Cheltenham Ladies’ College’s actual fee increases and Cheltenham Ladies’ College has participated in the Sevenoaks Survey in two other relevant years;

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638 See section C01/07 of the minutes of and Appendix 8 to Cheltenham Ladies’ College’s Council meeting held on 15 June 2001 (document TXD3171).
639 See section C/02/34 of the minutes of Cheltenham Ladies’ College’s Council meeting held on 14 June 2002 (document TXD3199).
640 See section e) of item C/03/31 of the minutes of Cheltenham Ladies’ College’s Council meeting held on 13 June 2003 (document TXD3241).
641 See paragraphs 539 to 548 above.
• Cheltenham Ladies’ College has stated that it received the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with copies of the Sevenoaks Survey in respect of this academic year;

• the Sevenoaks bursar or his assistant sent Cheltenham Ladies’ College at least one circulation of the Sevenoaks Survey for this year; and

• an extract from Cheltenham Ladies’ College’s internal documents is consistent with Cheltenham Ladies’ College’s participation in the Survey for this academic year.

555. In relation to the 2002/2003 academic year, the OFT considers that Cheltenham Ladies’ College participated in the Sevenoaks Survey on the basis that:

• the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Cheltenham Ladies’ College, these estimates accurately reflected Cheltenham Ladies’ College’s actual fee increases and Cheltenham Ladies’ College has participated in the Sevenoaks Survey in two other relevant years;

• the Sevenoaks bursar or his assistant sent Cheltenham Ladies’ College at least one circulation of the Sevenoaks Survey for this year; and

• an extract from the 15 February 2005 witness statement of the bursar of Cheltenham Ladies’ College is consistent with Cheltenham Ladies’ College’s participation in the Survey for this academic year.

556. In relation to the 2003/2004 academic year, the OFT considers that Cheltenham Ladies’ College participated in the Sevenoaks Survey on the basis that:

• the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Cheltenham Ladies’ College, these estimates accurately reflected Cheltenham Ladies’ College’s actual fee increases and Cheltenham Ladies’ College has participated in the Sevenoaks Survey in two other relevant years;

• the Sevenoaks bursar or his assistant sent Cheltenham Ladies’ College at least one circulation of the Sevenoaks Survey for this year; and

• extracts from Cheltenham Ladies’ College’s internal documents and from the 15 February 2005 witness statement of the bursar of Cheltenham Ladies’ College are consistent with Cheltenham Ladies’ College’s participation in the Survey for this academic year.

557. The OFT therefore considers that Cheltenham Ladies’ College both contributed its own fee-increase estimates to and received the Sevenoaks
Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 541 and 553 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Cheltenham Ladies’ College will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

558. The OFT concludes that the evidence set out above demonstrates that Cheltenham Ladies’ College participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

Clifton College

Evidence of participation in the Sevenoaks Survey


561. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Clifton College contributed to the Sevenoaks Survey, Clifton College noted,

’Clifton College contributed to the Sevenoaks Study from 2000 to 2003 inclusive.’\footnote{The answer to question 15 contained in Clifton College’s 10 March 2004 response (document LXT3717R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG009).}

Enclosed with Clifton College’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of the year 2003/2004 that Clifton College received from the Sevenoaks bursar or his assistant.

562. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004, Clifton College was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools\footnote{Documents LXT3412 and LXT2542 show, respectively, that the electronic mail address odelany@Clifton-College.avon.sch.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘clifton-college.avon.sch.uk’ – corresponds with the domain name for the electronic mail address that is recorded on Clifton College’s letter to the OFT dated 10 March 2004 (document LXT3717R). The OFT therefore considers that Clifton College}.

563. Fourth, the OFT notes that a number of Clifton College’s internal documents for the academic year 2003/2004 is consistent with, and further evidence for, the conclusion that Clifton College participated in the Sevenoaks Survey in respect of that academic year.

2003/2004 academic year

564. The OFT considers that the following extracts from Clifton College’s internal documents are consistent with and further evidence for the conclusion that Clifton College participated in the Survey for 2003/2004.

Minutes of a meeting of the Audit Committee of Clifton College held on 17 March 2003

565. The minutes of the meeting state that,

'The Bursar had circulated information regarding the proposed 2003/4 fee increases for some 60 schools across the independent sector. The national average increase for boarding fees is circa 8% while local day fees are rising by an average of approximately 10%.'

Other than the Sevenoaks Survey, the OFT is not aware of any national survey of proposed fee increases that collated the fee increases of around 60 schools for this academic year. Nor have any of the Participant schools made any representations to the OFT as to the existence of any other such survey.

A Report of the College Executive Committee to a meeting of Clifton College’s Council meeting held on 22 March 2003

566. Part of the section headed 'Five-Year Plan' states,

'A comprehensive survey of schools suggests that the national average increase in boarding fees will be 7.85%...'  

Other than the Sevenoaks Survey, the OFT is not aware of any national survey of proposed fee increases for this academic year. Nor have any of the Participant schools made any representations to the OFT as to the existence of any other such survey.

Fee-setting process

567. Clifton College’s fee-setting process during the time period that the OFT is considering in this Decision can, in essence, be described as follows.
Early in each calendar year departments within Clifton College submit funding bids to Clifton College’s Head and/or chief accountant. Clifton College’s bursar and chief accountant consider each year what level of fee increase may be necessary, in accordance with certain internal targets for a cash surplus each year and other factors that may affect the school’s cost base. Based on the above, the bursar and chief accountant assess the impact upon the overall financial plan of various levels of fee increases and make an initial recommendation. The Financial Plan is then considered by various members of Clifton College’s senior management team. This results in a revised draft Financial Plan that is submitted to the spring meeting of Clifton College’s Council at which the maximum level of fee increase for the coming academic year is determined. Clifton College’s bursar notifies fee increases to the parents of Clifton College’s pupils during the Easter holidays.

**Timing of the Sevenoaks Survey in relation to the fee-setting process**

568. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Clifton College, at distinct points in its fee-setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Clifton College, and Clifton College would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid-February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

569. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Clifton College in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001/2002</td>
<td></td>
</tr>
<tr>
<td>Boarding</td>
<td>4</td>
</tr>
<tr>
<td>Day</td>
<td>2</td>
</tr>
</tbody>
</table>

### Circulations

<table>
<thead>
<tr>
<th>Circulation</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>13 February</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May</td>
</tr>
</tbody>
</table>

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648 The description of Clifton College’s fee-setting process is taken from the answer to question 6 contained in Clifton College’s 10 March 2004 response (document LXT3171R) to the OFT’s section 26 Notice to it dated 9 February 2004. (document SMG009)

649 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
<table>
<thead>
<tr>
<th>Year</th>
<th>Circulation Type</th>
<th>Date</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002/2003</td>
<td>Second main circulation of Sevenoaks Survey</td>
<td>14 May</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>Other circulations:</td>
<td>17 May</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>29 May</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td></td>
<td>25 June</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td><strong>2002/2003</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>First main circulation of Sevenoaks Survey</strong></td>
<td>11 February</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td><strong>Other circulations:</strong></td>
<td>15 February</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
<td>22 April</td>
<td>7.5</td>
<td>6.5</td>
</tr>
<tr>
<td></td>
<td><strong>Other circulations:</strong></td>
<td>11 June</td>
<td>7.5</td>
<td>6.5</td>
</tr>
<tr>
<td>2003/2004</td>
<td><strong>First main circulation of Sevenoaks Survey</strong></td>
<td>12 February</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td><strong>Other circulations:</strong></td>
<td>14 February</td>
<td>6</td>
<td>6</td>
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<td></td>
<td>26 February</td>
<td>6</td>
<td>6</td>
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<td>14 March</td>
<td>7</td>
<td>6</td>
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<tr>
<td></td>
<td></td>
<td>17 March</td>
<td>7</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
<td>17 April</td>
<td>8</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td><strong>Other circulations:</strong></td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
</tbody>
</table>
Finalisation of fee increases

570. The final fee increases for Clifton College during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 7 per cent for boarding pupils and 4 per cent for day pupils and it was finalised in June 2001.\(^{650}\) For the 2002/2003 academic year the final fee increase was 7.15 per cent for boarding pupils and 7 per cent for day pupils and it was finalised on 29 June 2002.\(^ {651}\) For the 2003/2004 academic year the final fee increase was 8 per cent for both boarding and day pupils and it was finalised on 28 June 2003.\(^ {652}\)

Conclusion regarding Clifton College’s participation in the Sevenoaks Survey\(^ {653}\)

571. In relation to the 2001/2002 academic year, the OFT considers that Clifton College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Clifton College and Clifton College has participated in the Sevenoaks Survey in two other relevant years; and
- Clifton College has stated that it contributed to the Sevenoaks Survey in respect of this academic year.

572. In relation to the 2002/2003 academic year, the OFT considers that Clifton College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Clifton College and Clifton College has participated in the Sevenoaks Survey in two other relevant years;
- Clifton College has stated that it contributed to the Sevenoaks Survey in respect of this academic year; and
- the Sevenoaks bursar or his assistant sent Clifton College at least one circulation of the Sevenoaks Survey for this year.

573. In relation to the 2003/2004 academic year, the OFT considers that Clifton College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Clifton College and Clifton College has participated in the Sevenoaks Survey in two other relevant years;

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\(^{650}\) See section 8a of the minutes of the meeting of the Clifton College Council held on 30 June 2001 which approved the fee increase recommended by the College Executive Committee held on 27 March 2001 (documents LXT3727 and LXT3747).

\(^{651}\) See section 19a of the minutes of the meeting of the Clifton College Council held on 29 June 2002 (document LXT3729).

\(^{652}\) See section 5a of the minutes of the meeting of the Clifton College Council held on 28 June 2003 (document LXT3731).

\(^{653}\) See paragraphs 560 to 566 above.
• Clifton College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

• the Sevenoaks bursar or his assistant sent Clifton College at least one circulation of the Sevenoaks Survey for this year; and

• extracts from Clifton College’s internal documents are consistent with Clifton College’s participation in the Survey for this academic year.

574. The OFT therefore considers that Clifton College both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 562 and 570 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Clifton College will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

575. The OFT concludes that the evidence set out above demonstrates that Clifton College participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Cranleigh School**

*Evidence of participation in the Sevenoaks Survey*


578. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Cranleigh School contributed to the Sevenoaks Survey, Cranleigh School noted,

'Cranleigh School thinks that it responded to the Sevenoaks survey in relation to the academic years 2000, 2001, 2003 and possibly, 2002... Cranleigh School can locate no direct paper or electronic evidence of participation in the 2002 survey. However, it notes that there is reference to a survey in the Governing Body finance papers. It

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654 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
655 See the table at paragraph 586 below.
may be, therefore, that the Sevenoaks survey was responded to for 2002 but Cranleigh School cannot say for sure.'656

Enclosed with Cranleigh School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of the years 2001/2002 and 2003/2004 that Cranleigh School received from the Sevenoaks bursar or his assistant.

579. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Cranleigh School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools657. The OFT considers that this demonstrates that Cranleigh School received at least one circulation of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 14 May 2001, 11 February 2002 and 11 March 2003.

580. Fourth, the OFT notes that a number of Cranleigh School’s internal documents for the academic year 2001/2002 is consistent with, and further evidence for, the conclusion that Cranleigh School participated in the Sevenoaks Survey in respect of that academic year.

2001/2002 academic year

581. The OFT considers that the following extracts from Cranleigh School’s internal documents (one of which had two circulations of the Sevenoaks Survey attached to it) are consistent with and further evidence for the conclusion that Cranleigh School participated in the Survey for 2001/2002.

Undated document entitled ‘FEES 2001/2002’ 658

582. This document states,

‘The following information is attached to assist you in making 2001/02 fee level recommendation to the Governing Body: …

… Annex D – Proposed fee rises at other schools.

You will note that a fee increase of 5.75% will make our senior boarding fee slightly higher than those of Radley, Bradfield, Worth School and Charterhouse.’

656The answer to question 7 contained in Cranleigh School’s 12 March 2004 response (LXT164R) to the OFT’s section 26 Notice to it dated 9 February 2004 (SMG010).

657 Documents LXT2749, JXS0048 and LXT2542 show, respectively, that the electronic mail address msrj@cranleigh.org was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic address – ‘cranleigh.org’ – corresponds with the domain name for Cranleigh School’s website address and for the contact electronic mail addresses given for Cranleigh School on its website: see http://www.cranleigh.org/pages/cranleighschool/63.asp. The OFT therefore considers that Cranleigh School received the electronic mails described above that were sent to the electronic mail address msrj@cranleigh.org.

658 Document LXT289.
Two circulations of the Sevenoaks Survey for the academic year 2001/2002, one undated and one dated 8 May 2001 are attached at Annex D to the document.

Minutes of the meeting of Cranleigh School’s Finance Committee held on 17 May 2001

583. A paragraph headed 'fees' in these minutes states,

‘Fees: a comparison with other schools suggested that most were expecting to have fee rises around 6%. Cranleigh had crept up towards the top end of the fee spectrum. The draft budget had been set with an increase of 5.75%. It was agreed that the budget should be re–run using fee figures as follows:

<table>
<thead>
<tr>
<th></th>
<th>2000/01</th>
<th>2001/02</th>
<th>Annual</th>
<th>% Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Boarder</td>
<td>£5,500</td>
<td>£5,830</td>
<td>£17,490</td>
<td>6.0%</td>
</tr>
<tr>
<td>Senior Day</td>
<td>£4,200</td>
<td>£4,495</td>
<td>£13,485</td>
<td>7.0%</td>
</tr>
</tbody>
</table>

...

The OFT notes that the 17 May 2001 meeting of Cranleigh School’s Governing Body was its first meeting following the undated document that had the 8 May 2001 circulation of the Sevenoaks Survey attached to it (see paragraph 581 above). The OFT also notes that the minutes of the 17 May meeting – like the undated document with the 8 May 2001 circulation of the Sevenoaks Survey attached to it – refer to fee increases of other schools.

Fee–setting process

584. Cranleigh School’s fee–setting process during the relevant period can, in essence, be described as follows. Cranleigh School’s fee–setting procedure takes place against the backdrop of cash flow forecasts of up to some five years in the future using broad assumptions relating to income and expenditure. In January of each academic year Cranleigh School’s bursar starts planning a detailed annual budget. In February of each year, the Finance Committee of the Governing Body gives the bursar guidance on anticipated expenditure, including the level of salaries and the possible range of fee increases needed to balance expenditure in order to meet financial targets. Between April and June of each academic year Cranleigh School refined its costs and the bursar constructed a detailed budget for consideration at the May meeting of Cranleigh School’s Finance Committee and the June meeting of Cranleigh School’s Governing Body at

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659 Document LXT192.
660 The description of Cranleigh School’s fee–setting process is taken from the answer to question 6 contained in Cranleigh School’s 12 March 2004 response (document LXT164R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG010).
which prospective salaries and fees are studied, amended if necessary and approved.

**Timing of the Sevenoaks Survey in relation to the fee–setting process**

585. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Cranleigh School, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Cranleigh School, and Cranleigh School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

586. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Cranleigh School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boarding</td>
</tr>
<tr>
<td>2001/2002</td>
<td></td>
</tr>
<tr>
<td>Circulations</td>
<td></td>
</tr>
<tr>
<td><em>First main circulation of Sevenoaks Survey</em></td>
<td>13 February</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May</td>
</tr>
<tr>
<td></td>
<td>8 May</td>
</tr>
<tr>
<td><em>Second main circulation of Sevenoaks Survey</em></td>
<td>14 May</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>17 May</td>
</tr>
<tr>
<td></td>
<td>29 May</td>
</tr>
<tr>
<td></td>
<td>25 June</td>
</tr>
</tbody>
</table>

661 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
<table>
<thead>
<tr>
<th></th>
<th>2002/2003</th>
<th></th>
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</tr>
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<tbody>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>11 February</td>
<td>5.5</td>
<td>5.5</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>15 February</td>
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<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>22 April</td>
<td>5.5</td>
<td>5.5</td>
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<tr>
<td>Other circulations:</td>
<td>11 June</td>
<td>5.5</td>
<td>5.5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>2003/2004</th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>12 February</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>14 February</td>
<td>7</td>
<td>7</td>
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<tr>
<td></td>
<td>26 February</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>14 March</td>
<td>7</td>
<td>7</td>
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<td></td>
<td>17 March</td>
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<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>17 April</td>
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<td>8</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
</tbody>
</table>

**Finalisation of fee increases**

587. The final fee increases for Cranleigh School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 6 per cent for boarding fees and 7 per cent for day fees and it was finalised on 16 June 2001\(^{662}\). For the 2002/2003 academic year the final fee increase was 6 per cent for boarding fees and 7 per cent for day fees

\(^{662}\) See section 660f of the minutes of the meeting of Cranleigh School’s Finance Committee held on 17 May 2001 (document LXT192) and Cranleigh School’s response to question 24 and annex contained in its 12 March 2004 response (documents LXT164R and LXT302) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG010). See also paragraph 1423d of the meeting of Cranleigh School’s Governing Body held on 16 June 2001 (document LXT219) and the statement of Cranleigh School relating to the finalisation of its fees made in the Schools’ Joint Factual Statement (document JM 01–a).
and it was finalised on 15 June 2002. For the 2003/2004 academic year the final fee increase was 8.02 per cent for boarding fees and 9.98 per cent for day fees and it was finalised on 14 June 2003.

Conclusion regarding Cranleigh School’s participation in the Sevenoaks Survey

588. In relation to the 2001/2002 academic year, the OFT considers that Cranleigh School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Cranleigh School and Cranleigh School has participated in the Sevenoaks Survey in two other relevant years;
- Cranleigh School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;
- the Sevenoaks bursar or his assistant sent Cranleigh School at least one circulation of the Sevenoaks Survey for this year; and
- extracts from Cranleigh School’s internal documents are consistent with Cranleigh School’s participation in the Survey for this academic year, including one that had two copies of the Survey attached to it.

589. In relation to the 2002/2003 academic year, the OFT considers that Cranleigh School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Cranleigh School and Cranleigh School has participated in the Sevenoaks Survey in two other relevant years;
- Cranleigh School has stated that it contributed to the Sevenoaks Survey in respect of this academic year;
- the Sevenoaks bursar or his assistant sent Cranleigh School at least one circulation of the Sevenoaks Survey for this year.

663 See section 689b of the minutes of the meeting of the Finance Committee held on 29 May 2002 – (document LXT195) and Cranleigh School’s response to question 24 and annex contained in its 12 March 2004 response (documents LXT164R and LXT302) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG010). See also paragraph 1457c of the minutes of the meeting of Cranleigh School’s Governing Body held on 14 and 15 June 2002 (document LXT222) and the statement of Cranleigh School relating to the finalisation of its fees made in the Schools’ Joint Factual Statement (document JM 01–a).

664 See section 1495d of the minutes of the meeting of the Governing Body held on 14 June 2003 (document LXT225). See also Cranleigh School’s response to question 24 and annex contained in its 12 March 2004 response (documents LXT164R and LXT302) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG010).

665 See paragraphs 577 to 583 above.
590. In relation to the 2003/2004 academic year, the OFT considers that Cranleigh School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Cranleigh School and Cranleigh School has participated in the Sevenoaks Survey in two other relevant years;

- Cranleigh School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Cranleigh School at least one circulation of the Sevenoaks Survey for this year.

591. The OFT therefore considers that Cranleigh School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 579 and 587 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Cranleigh School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

592. The OFT concludes that the evidence set out above demonstrates that Cranleigh School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Dauntsey’s School**

*Evidence of participation in the Sevenoaks Survey*[^666]


595. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Dauntsey’s School contributed to the Sevenoaks Survey, Dauntsey’s School stated,

[^666]: See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
[^667]: See the table at paragraph 599 below.
Enclosed with Dauntsey’s School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2002/2003 and 2003/2004 that Dauntsey’s School received from the Sevenoaks bursar or his assistant.

596. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Dauntsey’s School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools. The OFT considers that this demonstrates that Dauntsey’s School received at least one circulation of the Sevenoaks Survey for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 14 May 2001, 17 April 2002 and 11 March 2003.

Fee–setting process

597. Dauntsey’s School’s fee–setting process during the relevant period can, in essence, be described as follows. Dauntsey’s School’s bursar begins to consider the budget for the coming academic year in January by looking at factors such as pupil numbers and teachers’ salaries. The bursar then considers other cost factors such as academic expenditure, premises, maintenance and administration, before producing an outline budget and a recommendation for a fee increase for both boarding and day fees to a February meeting of the Finance and General Purpose Committee. The Finance and General Purpose Committee considers the bursar’s budget and fee proposals before submitting its recommended fee increase levels to be considered by a March meeting of the full Board of Governors of Dauntsey’s School. Once the full Board of Governors has approved the fee setting process.
increase level, the bursar of Dauntsey’s School notifies parents of the school’s pupils of the new fee levels.

Timing of the Sevenoaks Survey in relation to the fee–setting process

598. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Dauntsey’s School, at distinct points in its fee–setting process. Towards the end of January or in early February, the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Dauntsey’s School, and Dauntsey’s School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

599. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Dauntsey’s School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004\textsuperscript{671}.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boarding</td>
</tr>
<tr>
<td>2001/2002</td>
<td>10.5</td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>13 February</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May</td>
</tr>
<tr>
<td></td>
<td>8 May</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>14 May</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>17 May</td>
</tr>
<tr>
<td></td>
<td>29 May</td>
</tr>
<tr>
<td></td>
<td>25 June</td>
</tr>
</tbody>
</table>

\textsuperscript{671} The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
<table>
<thead>
<tr>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>First main circulation of Sevenoaks Survey</strong></td>
<td>11 February</td>
<td>5.5</td>
<td>5.5</td>
<td>12 February</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>15 February</td>
<td>5.5</td>
<td>5.5</td>
<td>14 February</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
<td>22 April</td>
<td>6</td>
<td>6</td>
<td>17 April</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>11 June</td>
<td>6</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| **Finalisation of fee increases** |             |            | Final fee increases for Dauntsey's School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 10 per cent for boarding pupils and 8.5 per cent for day pupils. For the 2002/2003 academic year the final fee increase was 6 per cent for both boarding and day pupils and it was finalised on 13 June 2002. For

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672 See the answer to question 24 contained in Dauntsey's School’s 11 March 2004 response (document LXT3850R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG011); it should be noted that the OFT does not have specific documentation to show the date on which the fee increase was finalised but given Dauntsey's School's explanation that fee increases are likely to be approved in March – see paragraph 597 above – the OFT considers that the fee increases for this academic year were finalised in March 2001.

673 See section 6e of the minutes of the meeting of the Governors held on 13 June 2002 (document LXT3986).
the 2003/2004 academic year the final fee increase was 9.8 per cent for both boarding and day pupils.\(^{674}\)

**Conclusion regarding Dauntsey’s School’s participation in the Sevenoaks Survey\(^{675}\)**

601. In relation to the 2001/2002 academic year, the OFT considers that Dauntsey’s School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Dauntsey’s School and Dauntsey’s School has participated in the Sevenoaks Survey in two other relevant years;

- Dauntsey’s School has stated that it contributed to the Sevenoaks Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Dauntsey’s School at least one circulation of the Sevenoaks Survey for this year.

602. In relation to the 2002/2003 academic year, the OFT considers that Dauntsey’s School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Dauntsey’s School and Dauntsey’s School has participated in the Sevenoaks Survey in two other relevant years;

- Dauntsey’s School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Dauntsey’s School at least one circulation of the Sevenoaks Survey for this year.

603. In relation to the 2003/2004 academic year, the OFT considers that Dauntsey’s School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Dauntsey’s School and Dauntsey’s School has participated in the Sevenoaks Survey in two other relevant years;

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\(^{674}\) See the answer to question 24 contained in Dauntsey School’s 11 March 2004 response (document LXT3850R) to the OFT’s section 26 Notice dated 9 February 2004 (document SMG011); it should be noted that the OFT does not have specific documentation to show the date on which the fee increase was finalised but given Dauntsey’s School’s explanation that fee increases are likely to be approved in March – see paragraph 597 above – the OFT considers that the fee increases for this academic year were finalised in March 2003.

\(^{675}\) See paragraphs 594 to 600 above.
- Dauntsey’s School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Dauntsey’s School at least one circulation of the Sevenoaks Survey for this year.

604. The OFT therefore considers that Dauntsey’s School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 596 and 600 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Dauntsey’s School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of the academic year 2002/2003 before it finalised its own fee increases. In respect of the 2001/2002 and 2003/2004 academic years, although the OFT does not have specific evidence to demonstrate that Dauntsey’s School received circulations of the Sevenoaks Survey before it finalised its own fee increase, the OFT considers that the fact that Dauntsey’s School contributed its own fee increase figures to the Sevenoaks Survey in that year (see paragraph 595 above) means that it nevertheless participated in the Sevenoaks Survey for that year.

605. The OFT concludes that the evidence set out above demonstrates that Dauntsey’s School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of the 2002/2003 academic year it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for that year.

**Downe House School**

**Evidence of participation in the Sevenoaks Survey**


608. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Downe House School contributed to the Sevenoaks Survey, Downe House School noted,

> 'As far as the current Bursar can remember the School contributed to the Sevenoaks survey every year.'

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676 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.

677 See the table at paragraph 612 below.
Enclosed with Downe House School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of the academic year 2003/2004 that Downe House School received from the Sevenoaks bursar or his assistant.


Fee-setting process

610. Downe House School’s fee-setting process during the relevant period can, in essence, be described as follows. The Governors of Downe House School set certain financial targets for the school, for example surplus generation, and the aim of the school’s financial planning is to achieve those aims. During the Lent term of each academic year (January to March) the bursar and Financial Controller of Downe House School prepare a draft budget for the coming academic year and a five year cash flow forecast. The draft budget takes account of a number of factors that may affect Downe House School’s cost base. A paper setting out these factors and the proposed fee level is sent out to Downe House School’s Finance and General Purposes Committee in late February or early March. The Finance and General Purposes Committee considers the draft budget and then makes recommendations to Downe House School’s Board of Governors. The Board of Governors meets at the end of the Lent term in March and determines the actual level of fee increase. During the Easter holidays the Chairman of the Board of Governors then sends a letter to parents of Downe House School’s pupils announcing the fee increase for the coming academic year.

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678 The answer to question 7 contained in Downe House School’s 5 March 2004 response (document LXT4057R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG012).

679 Documents LXT2749, LXT4010 and LXT2542 show, respectively, that the electronic mail address tpitchers@downehouse.berks.sch.uk was the recipient of electronic mails transmitting summaries of other schools’ fee—increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘downehouse.berks.sch.uk’ – is the electronic mail address of the bursar of Downe House School that is recorded on Downe House School’s 5 March 2004 response (document LXT4057R) to the OFT’s section 26 Notice to it dated 9 February 2005 (document SMG012). The OFT therefore considers that Downe House School received the electronic mails described above that were sent to the electronic mail address tpitchers@downehouse.berks.sch.uk.

680 The description of Downe House School’s fee—setting process is taken from the answer to question 6 contained in Downe House School’s 5 March 2004 response (document LXT4057R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG012).
Timing of the Sevenoaks Survey in relation to the fee-setting process

611. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Downe House School, at distinct points in its fee-setting process. Towards the end of January or in early February, the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Downe House School, and Downe House School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid-February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

612. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Downe House School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004. The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boarding</td>
</tr>
<tr>
<td><strong>2001/2002</strong></td>
<td></td>
</tr>
<tr>
<td>Circulations</td>
<td></td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>13 February</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May</td>
</tr>
<tr>
<td></td>
<td>8 May</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>14 May</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>17 May</td>
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<tr>
<td></td>
<td>29 May</td>
</tr>
<tr>
<td></td>
<td>25 June</td>
</tr>
<tr>
<td><strong>2002/2003</strong></td>
<td></td>
</tr>
<tr>
<td>First main circulation of</td>
<td>11 February</td>
</tr>
</tbody>
</table>

681 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
Finalisation of fee increases

613. The final fee increases for Downe House School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 10 per cent for both boarding and day pupils. For the 2002/2003 academic year the final fee increase was 6.5 per cent for both boarding and day pupils. For the 2003/2004 academic year the final fee increase was 8.7 per cent for both boarding and day pupils.\(^682\).

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\(^{682}\)The OFT does not have specific documentation to show the dates on which the fee increases were finalised for these three academic years but given Downe House School’s explanation that fee increases are likely to be approved in March – see paragraph 610 above – the OFT considers that the fee increases for these three academic years were finalised in March each year.
Conclusion regarding Downe House School’s participation in the Sevenoaks Survey

614. In relation to the 2001/2002 academic year, the OFT considers that Downe House School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Downe House School, these fee estimates accurately reflect Downe House School’s actual fee increases and Downe House School has participated in the Sevenoaks Survey in two other relevant years;

- Downe House School has stated that it contributed to the Sevenoaks Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Downe House School at least one circulation of the Sevenoaks Survey for this year.

615. In relation to the 2002/2003 academic year, the OFT considers that Downe House School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Downe House School, these fee estimates accurately reflect Downe House School’s actual fee increases and Downe House School has participated in the Sevenoaks Survey in two other relevant years;

- Downe House School has stated that it contributed to the Sevenoaks Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Downe House School at least one circulation of the Sevenoaks Survey for this year.

616. In relation to the 2003/2004 academic year, the OFT considers that Downe House School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Downe House School, these fee estimates accurately reflect Downe House School’s actual fee increases and Downe House School has participated in the Sevenoaks Survey in two other relevant years;

- Downe House School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

683 See paragraphs 607 to 613 above.
• the Sevenoaks bursar or his assistant sent Downe House School at least one circulation of the Sevenoaks Survey for this year.

The OFT therefore considers that Downe House School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Although the OFT does not have specific evidence to demonstrate that Downe House School received circulations of the Sevenoaks Survey before it finalised its own fee increase, the OFT considers that the fact that Downe House School contributed its own fee increase figures to the Sevenoaks Survey in those years (see paragraphs 608 and 612 above) means that it nevertheless participated in the Sevenoaks Survey for those years.

The OFT concludes that the evidence set out above demonstrates that Downe House School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004.

Eastbourne College

Evidence of participation in the Sevenoaks Survey


First, the Sevenoaks Survey includes fee-increase estimates for Eastbourne College for the years 2001/2002 and 2003/2004.

Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Eastbourne College contributed to the Sevenoaks Survey, Eastbourne College noted,


Enclosed with Eastbourne College’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2001/2002 to 2003/2004 that Eastbourne College received from the Sevenoaks bursar or his assistant.

Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Eastbourne College was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools. The OFT

684 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
685 See the table at paragraph 628 below.
686 The answer to question 7 contained in Eastbourne College’s 16 March 2004 response (document JXS0308R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG013).
687 Documents LXT2749, JXS0048 and LXT2542 show, respectively, that the electronic mail address MRHL@Eastbourne–college.co.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in

623. Fourth, the OFT notes that one of Eastbourne College’s internal documents for the academic year 2001/2002 is consistent with, and further evidence for, the conclusion that Eastbourne College participated in the Sevenoaks Survey in respect of that academic year.

2001/2002 academic year

624. The OFT considers that the following extract from Eastbourne College’s internal documents is consistent with, and further evidence for, the conclusion that Eastbourne College participated in the Survey for 2001/2002.

Record of Matters Discussed at the Chairman of Eastbourne College’s Pre–Agenda meeting held on Friday 18 May 2001

625. A paragraph under the heading, ‘Agenda Item 8 – Budget 2001/02’ stated,

‘In discussing the proposed fee increase, the Bursar said that he had received information on other schools’ proposed and confirmed increases, which ranged from 5% to 10%. He also showed, by reference to a survey of 50 of the largest schools that two-thirds of them had fees that were presently higher than the College. He, therefore, felt that 7% was not out of proportion this year. However, he cautioned against biasing the increase towards boarding for a third year running, as the proportion between day and boarding was already 65%, which was lower than most. After some discussion it was agreed that an increase of 7% should be proposed for both day and boarding.’

(Emphasis added).

Other than the Sevenoaks Survey, the OFT is not aware of any survey that collated fee increases of 50 schools for this academic year. Nor have any of the Participant schools made any representations to the OFT as to the existence of any other such survey.

Fee–setting process

626. Eastbourne College’s fee–setting process during the relevant period can, in essence, be described as follows. The Council of Eastbourne College...
sets certain financial targets for the school, for example surplus generation, and the school’s financial planning takes account of these targets and other financial influences. In April of each academic year all budget bids must be finalised and in early May the final budget amendments are made and fee budget options are considered. The final budget proposal that the Council of Eastbourne College considers each year is referred to as the 'Black Book'. The draft Black Book, which includes proposals for fee increases, is discussed at a meeting between the Chairman of Eastbourne College’s Council and those who prepare the budget in May, prior to a meeting of the full Council of Eastbourne College in June of the academic year. The Council meets in the middle of June and considers the budget as set out in the Black Book and, among other things, decides on the level of fee increase to be implemented.

Timing of the Sevenoaks Survey in relation to the fee–setting process

627. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Eastbourne College, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Eastbourne College, and Eastbourne College would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

628. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Eastbourne College in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boarding</td>
</tr>
<tr>
<td>2001/2002</td>
<td></td>
</tr>
</tbody>
</table>

Circulations

- **First main circulation of Sevenoaks Survey**: 13 February
- **Other circulations**: 1 May

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689 The description of Eastbourne College’s fee–setting process is taken from the answer to question 6 contained in Eastbourne College’s 16 March 2004 response (document JXS0308R) to the OFT’s section 26 Notice (document SMG013) to it dated 9 February 2004.

690 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
<table>
<thead>
<tr>
<th>Date</th>
<th>Boarding</th>
<th>Day</th>
<th>Fee Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>8 May</td>
<td>7.9</td>
<td>7.9</td>
<td></td>
</tr>
<tr>
<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
<td>14 May</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>17 May</td>
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</tr>
<tr>
<td>29 May</td>
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<th>Date</th>
<th>Boarding</th>
<th>Day</th>
<th>Fee Increase</th>
</tr>
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<tbody>
<tr>
<td><strong>2002/2003</strong></td>
<td>11 February</td>
<td>–</td>
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<tr>
<td>Other circulations:</td>
<td>15 February</td>
<td>–</td>
<td>–</td>
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<tr>
<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
<td>22 April</td>
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<td>Other circulations:</td>
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<tr>
<th>Date</th>
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<th>Day</th>
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<td>26 February</td>
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<td>14 March</td>
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<td>17 March</td>
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<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
<td>17 April</td>
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</tr>
<tr>
<td>Other circulations:</td>
<td>–</td>
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<td>–</td>
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</tbody>
</table>

**Finalisation of fee increases**

629. The final fee increases for Eastbourne College during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 7 per cent for both boarding and day pupils and it was finalised on 8
June 2001. For the 2002/2003 academic year the final fee increase was 7 per cent for both boarding and day pupils and it was finalised on 14 June 2002. For the 2003/2004 academic year the final fee increase was 8 per cent for both boarding and day pupils and it was finalised on 13 June 2003.

Conclusion regarding Eastbourne College’s participation in the Sevenoaks Survey

630. In relation to the 2001/2002 academic year, the OFT considers that Eastbourne College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Eastbourne College and Eastbourne College has participated in the Sevenoaks Survey in two other relevant years;

- Eastbourne College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Eastbourne College at least one circulation of the Sevenoaks Survey for this year; and

- an extract from Eastbourne College’s internal documents referring to ‘a survey of 50 of the largest schools’ is consistent with Eastbourne College’s participation in the Survey in respect of this academic year.

631. In relation to the 2002/2003 academic year, the OFT considers that Eastbourne College participated in the Sevenoaks Survey on the basis that:

- although the Sevenoaks Survey in respect of this academic year did not include fee-increase estimates for Eastbourne College, Eastbourne College has participated in the Sevenoaks Survey in two other relevant years;

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691 See section 49–51 of the minutes of the meeting of the Council held on 8 June 2001 (document JXS0344).
692 See section 44 of the minutes of the meeting of Eastbourne College’s Council held on 14 June 2002 (document JXS0369); it should be noted that section 46 of the minutes states that the ’Council agreed the proposed budget for 2001/02, including fee increase as presented in the briefing papers’; the OFT considers that this is a typing error given that the meeting was held in June 2002.
693 See section 34 of the minutes of the meeting of the Eastbourne College Council held on 13 June 2003 (document JXS0353); it should be noted that section 37 states that the ’Council agreed the proposed budget for 2001/02, including fee increases as presented in the briefing papers’; the OFT considers that this is a typing error given that the meeting was held in June 2003.
694 See paragraphs 620 to 624 above.
Eastbourne College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

• the Sevenoaks bursar or his assistant sent Eastbourne College at least one circulation of the Sevenoaks Survey for this year.

632. In relation to the 2003/2004 academic year, the OFT considers that Eastbourne College participated in the Sevenoaks Survey on the basis that:

• the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Eastbourne College and Eastbourne College has participated in the Sevenoaks Survey in two other relevant years;

• Eastbourne College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

• the Sevenoaks bursar or his assistant sent Eastbourne College at least one circulation of the Sevenoaks Survey for this year.

633. The OFT therefore considers that Eastbourne College both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 and 2003/2004 and that it received the Sevenoaks Survey in respect of the academic year 2002/2003. Further, the OFT notes that the evidence set out at paragraphs 622 and 629 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Eastbourne College will have received at least one circulation of the Sevenoaks Survey containing competitors' estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

634. The OFT concludes that the evidence set out above demonstrates that Eastbourne College participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

Epsom College

Evidence of participation in the Sevenoaks Survey\textsuperscript{695}


\textsuperscript{695} See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
First, the Sevenoaks Survey includes fee-increase estimates for Epsom College for each of the years 2001/2002, 2002/2003 and 2003/2004.696

Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Epsom College contributed to the Sevenoaks Survey, Epsom College noted,

"The School contributed to the Sevenoaks Survey every year since 2000."697

Enclosed with Epsom College’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2001/2002 to 2003/2004 that Epsom College received from the Sevenoaks bursar or his assistant.

Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Epsom College was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools698. The OFT considers that this demonstrates that Epsom College received at least one circulation of the Sevenoaks Survey for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 14 May 2001, 11 February 2002 and 11 March 2003.

Fee–setting process

Epsom College’s fee–setting process during the relevant period can, in essence, be described as follows.699 In February and March of an academic year Epsom College’s bursar draws up an initial budget with estimated fee increases based on estimates of costs from departments within the school. In April of the academic year, Epsom College’s bursar, Treasurer (Epsom College’s Finance Governor) and headmaster discuss the initial budget and make adjustments to it before submitting a revised budget to the Finance and Development sub–committee of Epsom College’s Board of Governors in May of the academic year. The May meeting of Epsom College’s Board of Governors then considers the proposed fee increases and approves the final level of fee increase.

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696 See the table at paragraph 641 below.
697 The answer to question 7 contained in Epsom College’s 8 March 2004 (document LXT305R) response to the OFT’s section 26 Notice (document SMG014) to it dated 9 February 2004.
698 Documents LXT2749, LXT3405 and LXT2542 show, respectively, that the electronic mail address bursar@epsomcollege.org.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘epsomcollege.org.uk’ – corresponds with the domain name for an electronic mail address of Epsom College that is recorded on Epsom College’s 8 March 2004 response (document LXT305R) to the OFT’s section 26 Notice to it dated 8 March (document SMG014). The OFT therefore considers that Epsom College received the electronic mails described above that were sent to the electronic mail address bursar@epsomcollege.org.uk.
699 The description of Epsom College’s fee–setting process is taken from the answer to question 6 contained in Epsom College’s 8 March 2004 (document LXT305R) response to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG014).
Parents of pupils at Epsom College are notified in June of the academic year of the following year’s fee increase.

Timing of the Sevenoaks Survey in relation to the fee-setting process

640. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Epsom College, at distinct points in its fee-setting process. Towards the end of January or in early February, the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Epsom College, and Epsom College would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid-February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

641. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Epsom College in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.  

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
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<tbody>
<tr>
<td></td>
<td>Boarding</td>
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<tr>
<td>2001/2002</td>
<td></td>
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<tr>
<td><strong>Circulations</strong></td>
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<td>Other circulations:</td>
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<td>8 May</td>
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<td>14 May</td>
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<td>Other circulations:</td>
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<td></td>
<td>29 May</td>
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<td>25 June</td>
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The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
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<tr>
<th></th>
<th>2002/2003</th>
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<td>Day</td>
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<td>7</td>
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<td>Second main circulation of Sevenoaks Survey</td>
<td>22 April</td>
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<td>Other circulations:</td>
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<td>2003/2004</td>
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<td></td>
<td>Boarding</td>
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<td></td>
<td>Other circulations:</td>
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**Finalisation of fee increases**

642. The final fee increases for Epsom College during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 7.7 per cent for boarding pupils and 7.2 per cent for day pupils and it was finalised on 16 May 2001701. For the 2002/2003 academic year the final fee increase was 10.6 per cent for boarding pupils and 6.5 per cent for day pupils and it was finalised on 29 May 2002702. For the 2003/2004

701 See section 55 of the minute the meeting of Epsom College’s Board of Governors held on 16 May 2001 (document LXT326).
702 See section 25 of the minutes of Epsom College’s Board of Governors meeting held on 29 May 2002 (document LXT340).
academic year the final fee increase was 9 per cent for both boarding and
day pupils and it was finalised on 21 May 2003\textsuperscript{703}.

Conclusion regarding Epsom College’s participation in the Sevenoaks Survey\textsuperscript{704}

643. In relation to the 2001/2002 academic year, the OFT considers that
Epsom College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included
fee-increase estimates for Epsom College and Epsom College has
participated in the Sevenoaks Survey in two other relevant years;

- Epsom College has stated that it contributed to the Sevenoaks
Survey in respect of this academic year and, moreover, it provided
the OFT with a copy of at least one circulation of the Survey in
respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Epsom College at least
one circulation of the Sevenoaks Survey for this year.

644. In relation to the 2002/2003 academic year, the OFT considers that
Epsom College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included
fee-increase estimates for Epsom College and Epsom College has
participated in the Sevenoaks Survey in two other relevant years;

- Epsom College has stated that it contributed to the Sevenoaks
Survey in respect of this academic year and, moreover, it provided
the OFT with a copy of at least one circulation of the Survey in
respect of this academic year;

- the Sevenoaks bursar or his assistant sent Epsom College at least
one circulation of the Sevenoaks Survey for this year.

645. In relation to the 2003/2004 academic year, the OFT considers that
Epsom College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included
fee-increase estimates for Epsom College and Epsom College has
participated in the Sevenoaks Survey in two other relevant years;

- Epsom College has stated that it contributed to the Sevenoaks
Survey in respect of this academic year and, moreover, it provided
the OFT with a copy of at least one circulation of the Survey in
respect of this academic year; and

\textsuperscript{703} See section 18 of the minutes of the meeting of Epsom College’s Board of Governors held on 21
May 2003 (document LXT347).

\textsuperscript{704} See paragraphs 636 to 642 above.
• the Sevenoaks bursar or his assistant sent Epsom College at least one circulation of the Sevenoaks Survey for this year.

646. The OFT therefore considers that Epsom College both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 638 and 642 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Epsom College will have received at least one circulation of the Sevenoaks Survey containing competitors' estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

647. The OFT concludes that the evidence set out above demonstrates that Epsom College participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

Eton College

Evidence of participation in the Sevenoaks Survey


650. Second, Andrew Wynn, the college bursar at Eton College from January 1998 to the present time, stated in relation to the Sevenoaks Survey,

'In 2003 I think that there were a total of three trawls that I took part in. In the years before 2003, this process was done on paper.'

Enclosed with Eton College’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of the years 2001/2002 to 2003/2004 that Eton College received from the Sevenoaks bursar or his assistant.

651. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Eton College was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools. The OFT considers

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705 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
706 See the table at paragraph 663 below.
707 See paragraph 6 of Andrew Wynn’s witness statement dated 8 February 2005 (document GCOR1034A).
708 Documents LXT2749 and LXT3405 show, respectively, that both of the electronic mail addresses bursar@etoncollege.org.uk and t.stanton@etoncollege.org.uk were the recipients of
that this demonstrates that Eton College received at least one circulation of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 14 May 2001, 11 February 2002 and 11 March 2003. In relation to the 2001/2002 academic year, the OFT considers that there is evidence that Eton College received at least one circulation of the Sevenoaks Survey by 12 May 2001 – see paragraph 653 below.

Fourth, the OFT notes that a number of Eton College’s internal documents for each of the academic years 2001/2002 to 2003/2004 are consistent with and further evidence for the conclusion that Eton College participated in the Sevenoaks Survey in respect of those academic years.

2001/2002 academic year

653. The OFT considers that the following extract from Eton College’s internal documents is consistent with, and further evidence for, the conclusion that Eton College participated in the Survey for 2001/2002.

Minutes of the meeting of the Provost and Fellows of Eton School held on 12 May 2001

654. The minutes state,

‘The School Bursar…favoured an increase of 6.75%…
...The fee intentions of about 40 other schools ranged from 4% to 10%; 6.7% would put Eton in the middle of that range and would take Eton from eleventh to sixth in the table of fees...

Mr Verey suggested that Eton should target to be within the top five schools and he recommended an increase of 7%. After discussion Fellows agreed to an increase of 6.77% and to adjustments to means-tested fee assistance.’

Other than the Sevenoaks Survey, the OFT is not aware of any survey that collated the fees of 40 or more schools in this academic year. Nor have any of the Participant schools made any representations to the OFT as to the existence of any other such survey.

electronic mails transmitting summaries of other schools fee-increase estimates contained in the Sevenoaks Survey in respect of the academic year 2001/2002. Document LXT3412 shows that the electronic mail address t.stanton@etoncollege.org.uk was the recipient of an electronic mail transmitting a summary of other schools fee-increase estimates contained in the Sevenoaks Survey in respect of the academic year 2002/2003. Document LXT2542 shows that the electronic mail address bursar@etoncollege.org.uk was the recipient of an electronic mail transmitting a summary of other schools fee-increase estimates contained in the Sevenoaks Survey in respect of the academic year 2003/2004. The OFT notes that the domain name in this electronic address – ‘etoncollege.org.uk’ – corresponds with the domain name for the electronic mail address that Eton College’s website gives to contact its bursar: see http://www.etoncollege.com/default.asp. The OFT therefore considers that Eton College received the electronic mails described above that were sent to the electronic mail address bursar@etoncollege.org.uk and to t.stanton@etoncollege.org.uk.

709 Document LXT1261.
The OFT considers that the following extracts from Eton College’s internal documents are consistent with and further evidence for the conclusion that Eton College participated in the Survey for 2001/2002.

Annex C to Agenda Item 6 for a meeting of the Provost and Fellows of Eton College held on 11 May 2002

656. The introduction to this annex states,

1. This Annex examines the external influences on the Eton fee...

2. In deciding the fee, the Provost and Fellows will consider the balance between the following influences:

| Other schools’ fees | Eton’s fee has some effect – it is arguable how much – on parents choosing a school... Comparisons with the leading group of schools show Eton to be in a very favourable position. However, the Financial Strategy Committee advised in 2001 that Eton’s fee should be kept in close touch with Winchester and Harrow. |

...'

Paragraph 10 of the same Annex then goes on to state,

'10. The Sevenoaks survey of fees at a number of schools tells us that Eton is 9th and that in February some bursars were thinking in terms of a fee increase around 5% – 6% this year, with a substantial minority forecasting something higher than 6%.'

(Emphasis added).

Minutes of the meeting of the Provost and Fellows of Eton School held on 11 May 2002

658. The minutes state,

'The Fellows had recognised that there was scope for such an increases [sic] since Eton’s fee was relatively low compared to a number of schools and Winchester’s in particular. Winchester’s fee was likely to go up by 7% and if Eton was to catch up an increase of 9% was indicated...

The Finance Committee had thought there would be good arguments for an increase of 9% many other schools were making an increase of 7%.'

(Emphasis added).
The OFT considers that the following extracts from Eton College’s internal documents are consistent with and further evidence for the conclusion that Eton College participated in the Survey for 2003/2004.

Agenda Item 3 for a meeting of the Finance Committee of Eton College held on 28 April 2003 and attached Annex A

660. The agenda item states,

'11. The Committee can be guided by the acceptance of the principle that Eton’s fee can be more 'at the top' of comparison with other leading schools instead of 'near but not at the top' which was the previous guide. Our indications of fee increases by other schools, especially Harrow and in particular Winchester, will be relevant.

Comment
12. The paper at Annex A reveals that the great majority of other schools intend to increase their fees between 7% and 11.6%, predominantly in the region of 8% – 10%.'

Annex A to the agenda item states,

'1. This Annex examines the external influences on the Eton fee...
2. In deciding the fee, the Provost and Fellows will consider the balance between the following influences:

<table>
<thead>
<tr>
<th>Stance…</th>
<th>Other schools' fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eton’s fee has some effect – it is arguable how much – on parents choosing a school… Comparisons with the leading group of schools show Eton to be in a very favourable position. However, the Financial Strategy Committee advised in 200 [sic] that Eton’s fee could be taken marginally ahead of Winchester.</td>
<td></td>
</tr>
</tbody>
</table>

Paragraph 10 of the same annex then goes on to state,

'The Sevenoaks survey of fees at a number of schools tells us that Eton is 8th and that in April most bursars were thinking in terms of a fee increase between 7% and 11.6%, predominantly in the region of 8% – 10%.'

(Emphasis added).

Fee–setting process

661. Eton College’s fee–setting process during the time period that the OFT is considering in this Decision can, in essence, be described as follows.

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712 Document LXT1192.
Eton College’s fee–setting procedure takes place against the backdrop of factors that affect its cost base, including teachers’ salaries, and also certain financial targets, such as Eton College’s five–year plan. In late March, the School bursar starts to work on preparing financial data for Eton’s five–year plan in order to produce a paper for the April or early May meeting of Eton College’s Finance Committee. The Finance Committee considers the school bursar’s paper and then either agrees the contents of the paper, including the recommended fee increase, or suggests an alternative fee increase. The school bursar then revises the paper, if necessary, for the May meeting of Eton College’s Provost and Fellows, which decides the actual fee increase. Parents are notified of fee increases shortly after they have been set by Eton College’s Provost and Fellows.

Timing of the Sevenoaks Survey in relation to the fee–setting process

662. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Eton College, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Eton College, and Eton College would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

663. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Eton College in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

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<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
<th>Circulations</th>
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<tr>
<td></td>
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<td>13 February 6 –</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other circulations: 1 May 6 –</td>
</tr>
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713 The description of Eton College’s fee–setting process is taken from paragraph 6 of the 8 February 2005 witness statement of Julian James, the School Bursar of Eton College (document GCOR1034B).

714 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
8 May 6.5 –

Second main circulation of Sevenoaks Survey

14 May 6.5 –

Other circulations:

17 May 6.5 –

29 May 6.5 –

25 June 6.5 –

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<th>2003/2004</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>12 February</td>
<td>8</td>
</tr>
</tbody>
</table>

Other circulations:

14 February 8 –

26 February 8 –

14 March 8 –

17 March 8 –

Second main circulation of Sevenoaks Survey

17 April 8 –

Other circulations: – – –

Finalisation of fee increases

664. The final fee increases for Eton College during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 6.77
per cent for boarding fees (limited to 4 per cent for pupils with bursaries) and it was finalised on 12 May 2001. For the 2002/2003 academic year the final fee increase was 8.5 per cent for boarding fees (limited to 5 per cent for pupils with bursaries) and it was finalised on 11 May 2002. For the 2003/2004 academic year the final fee increase was 9.75 per cent for boarding fees (limited to 5 per cent for pupils with bursaries) and it was finalised on 10 May 2003.

Conclusion regarding Eton College’s participation in the Sevenoaks Survey

In relation to the 2001/2002 academic year, the OFT considers that Eton College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Eton College and Eton College has participated in the Sevenoaks Survey in two other relevant years;

- Eton College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and provided the OFT with at least one circulation of the Survey that it received from the Sevenoaks bursar or his assistant, [...][C], in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Eton College at least one circulation of the Sevenoaks Survey for this year; and

- extracts from Eton College’s internal documents are consistent with Eton College’s participation in the Survey for this academic year.

In relation to the 2002/2003 academic year, the OFT considers that Eton College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Eton College and Eton College has participated in the Sevenoaks Survey in two other relevant years;

- Eton College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and provided the OFT with at least one circulation of the Survey that it received from the Sevenoaks bursar or his assistant, [...][C], in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Eton College at least one circulation of the Sevenoaks Survey for this year; and

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715 See section 7 of the minutes of the meeting of the Provost and Fellows at Eton held on 12 May 2001 (document LXT1261).
716 See section 6 of the minutes of the meeting of the Provost and Fellows at Eton held on 11 May 2002 (document LXT1183).
717 See section 7 of the minutes of the meeting of the Provost and Fellows of Eton held on 10 May 2003 (document LXT1199).
718 See paragraphs 649 to 659 above.
• extracts from Eton College’s internal documents are consistent with Eton College’s participation in the Survey for this academic year.

667. In relation to the 2003/2004 academic year, the OFT considers that Eton College participated in the Sevenoaks Survey on the basis that:

• the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Eton College and Eton College has participated in the Sevenoaks Survey in two other relevant years;

• Eton College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and provided the OFT with at least one circulation of the Survey that it received from the Sevenoaks bursar or his assistant, […][C], in respect of this academic year;

• the Sevenoaks bursar or his assistant sent Eton College at least one circulation of the Sevenoaks Survey for this year; and

• extracts from Eton College’s internal documents are consistent with Eton College’s participation in the Survey for this academic year.

668. The OFT therefore considers that Eton College both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 651 and 664 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Eton College will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

669. The OFT concludes that the evidence set out above demonstrates that Eton College participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

_Gresham’s School_

_Evidence of participation in the Sevenoaks Survey_719


719 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
671. First, the Sevenoaks Survey includes fee-increase estimates for Gresham’s School for each of the years 2001/2002, 2002/2003 and 2003/2004.720

672. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Gresham’s School contributed to the Sevenoaks Survey, Gresham’s School noted,

‘The Sevenoaks survey was directed to the Bursar and, to the best of his recollection, the previous Bursar believes that Gresham’s School contributed to the Sevenoaks survey each year from 2000 to 2003. However, no survey results from 2002 can be found in the School’s files because of the policy of not taking hard copies, and deleting electronic files.’721

Enclosed with Gresham’s School’s response were copies of the 13 February and 8 May 2001 circulations of the Sevenoaks Survey in respect of the 2001/2002 academic year and the 14 February 2003 circulation of the Sevenoaks Survey in respect of the 2003/2004 academic year that Gresham’s School received from the Sevenoaks bursar or his assistant.

673. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Gresham’s School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools.722 The OFT considers that this demonstrates that Gresham’s School received at least one circulation of the Sevenoaks Survey for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 14 May 2001, 17 April 2002 and 11 March 2003.

674. Fourth, the OFT notes that one of Gresham’s School’s internal documents for the academic year 2002/2003 is consistent with, and further evidence for, the conclusion that Gresham’s School participated in the Sevenoaks Survey in respect of that academic year.

2002/2003 academic year

675. The OFT considers that the following extract from one of Gresham’s School’s internal documents is consistent with, and further evidence for, the conclusion that Gresham’s School participated in the Survey for 2002/2003.

720 See the table at paragraph 680 below.
721 The answer to question 7 contained in Gresham’s School’s 18 March 2004 (document reference JXS0089R) response to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG015).
722 Documents LXT2749, LXT4010 and LXT2542 show, respectively, that the electronic mail address bursar@greshams–school.co.uk was the recipient of electronic mails transmitting summaries of other schools’ fee-increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. Gresham’s School confirmed in its 11 October 2005 response (document MDB0062) to the OFT’s section 26 Notice to it dated 4 October 2005 (document MDB0045G) that the electronic mail address bursar@greshams–school.co.uk was a valid electronic mail address for the bursar of Gresham’s School during the period January 2001 to December 2003 inclusive. The OFT therefore considers that the bursar of Gresham’s School received the electronic mails described above that were sent to the electronic mail address bursar@greshams–school.co.uk.
676. The section of the minutes headed 'BUDGET ESTIMATES, SCHOOL FEES AND STAFF SALARIES 2002/03,' notes:

'The Governors considered the question of fee increases at competitor schools. The Bursar and Headmaster confirmed that the increases overall were not out of line with similar schools... the Clerk submitted the recommendations from the Finance and Executive Committee on fees... for 2002/03:

a. That full boarding fees should be increased by 4.5%, weekly boarding by 8.5% at the Senior School and 7.5% at the Preparatory School and that day fees should be increased by 5.5%...

The Governors approved those recommendations...''

Fee–setting process

677. Gresham’s School’s fee–setting process during the relevant period can, in essence, be described as follows.\(^{724}\) The bursar and assistant bursar of Gresham’s School start preparing the budget for Gresham’s School’s next financial year (which begins in September) in January or February of an academic year. Factors considered in the budget include projected pupil numbers for the coming academic year and other increases in Gresham’s School’s cost base. The bursar and assistant bursar then prepare an initial briefing paper for the senior management and other members of the Finance and Executive Committee for discussion at the Committee’s meeting in February. Following this meeting, the Committee issues the bursar and assistant bursar with guidance on the levels of possible fee and salary increases.

678. The bursar and assistant bursar seek budget bids from all Heads of Department at Gresham’s School during the second half of the Lent Term (in March) before preparing detailed budget estimates for the meeting of the Finance and Executive Committee held at the end of April. This Committee considers the estimates, makes any changes it sees fit and then recommends the estimates to the Board of Governors for approval by the Board at its meeting in May. The Chairman of the Board of Governors informs parents of Gresham’s School’s pupils of the level of fees for the coming academic year by letter at the end of May.

Timing of the Sevenoaks Survey in relation to the fee–setting process

679. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the

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\(^{723}\) Document JXS0118.

\(^{724}\) The description of Gresham’s School’s fee–setting process is taken from the answer to question 6 contained in Gresham’s School’s 18 March 2004 (document reference JXS0089R) response to the OFT’s section 26 Notice (document SMG015) to it dated 9 February 2004.
Participant schools, including Gresham’s School, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Gresham’s School, and Gresham’s School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Gresham’s School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
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<tbody>
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<td></td>
<td>Boarding</td>
<td>Day</td>
<td></td>
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<tr>
<td>2001/2002</td>
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<td></td>
<td>25 June</td>
<td>5</td>
<td>5</td>
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<td>2002/2003</td>
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<td></td>
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<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>11 February</td>
<td>5</td>
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</tr>
<tr>
<td>Other circulations:</td>
<td>15 February</td>
<td>5</td>
<td>5</td>
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</tbody>
</table>

725 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
681. The final fee increases for Gresham’s School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 5 per cent for both boarding and day pupils and it was finalised on 15 May 2001726. For the 2002/2003 academic year the final fee increase was 4.5 per cent for boarding pupils and 5.5 per cent for day pupils and it was finalised on 14 May 2002727. For the 2003/2004 academic year the final fee increase was 10 per cent for both boarding and day pupils and it was finalised on 13 May 2003728.

Conclusion regarding Gresham’s School’s participation in the Sevenoaks Survey729

682. In relation to the 2001/2002 academic year, the OFT considers that Gresham’s School participated in the Sevenoaks Survey on the basis that:

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726 See the minutes of the meeting of Gresham’s School’s Board of Governors held on 15 May 2001 (document JXS0109).
727 See the minutes of the meeting of Gresham’s School’s Board of Governors held on 14 May 2002 (document JXS0118).
728 See the minutes of the meeting of Gresham’s School’s Board of Governors held on 13 May 2003 (document JXS0129).
729 See paragraphs 671 to 676 above.
• the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Gresham’s School, these estimates accurately reflected Gresham’s School’s actual fee increases and Gresham’s School has participated in the Sevenoaks Survey in two other relevant years;

• Gresham’s School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

• the Sevenoaks bursar or his assistant sent Gresham’s School at least one circulation of the Sevenoaks Survey for this year.

683. In relation to the 2002/2003 academic year, the OFT considers that Gresham’s School participated in the Sevenoaks Survey on the basis that:

• the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Gresham’s School, these estimates accurately reflected Gresham’s School’s actual fee increases and Gresham’s School has participated in the Sevenoaks Survey in two other relevant years;

• Gresham’s School has stated that it contributed to the Sevenoaks Survey in respect of this academic year;

• the Sevenoaks bursar or his assistant sent Gresham’s School at least one circulation of the Sevenoaks Survey for this year; and

• an extract from one of Gresham’s School’s internal documents is consistent with Gresham’s School’s participation in the Survey for this academic year.

684. In relation to the 2003/2004 academic year, the OFT considers that Gresham’s School participated in the Sevenoaks Survey on the basis that:

• the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Gresham’s School, these estimates accurately reflected Gresham’s School’s actual fee increases and Gresham’s School has participated in the Sevenoaks Survey in two other relevant years;

• Gresham’s School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

• the Sevenoaks bursar or his assistant sent Gresham’s School at least one circulation of the Sevenoaks Survey for this year.

685. The OFT therefore considers that Gresham’s School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further,
the OFT notes that the evidence set out at paragraphs 673 and 681 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Gresham’s School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

686. The OFT concludes that the evidence set out above demonstrates that Gresham’s School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Haileybury**

**Evidence of participation in the Sevenoaks Survey**


689. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Haileybury contributed to the Sevenoaks Survey, Haileybury noted,


Enclosed with Haileybury’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of the year 2003/2004 that Haileybury received from the Sevenoaks bursar or his assistant.

690. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Haileybury was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools. The OFT considers that this demonstrates that Haileybury received at least one circulation of the

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730 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
731 See the table at paragraph 702 below.
732 The answer to question 7 contained in Haileybury’s 1 March 2004 response (document LXT001R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG016).
733 Documents LXT2749, LXT4010 and LXT2542 show, respectively, that the electronic mail address johnp@haileybury.herts.sch.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. The OFT notes that this electronic mail address is the same electronic mail address of the bursar of Haileybury that is recorded on Haileybury’s letter to the OFT dated 1 March 2004 – document LXT001R. The OFT therefore considers that the bursar of Haileybury received the electronic mails described above that were sent to the electronic mail address johnp@haileybury.herts.sch.uk.

691. Fourth, the OFT notes that a number of Haileybury’s internal documents for each of the academic years 2001/2002 to 2003/2004 are consistent with and further evidence for the conclusion that Haileybury participated in the Sevenoaks Survey in respect of these academic years.

2001/2002 academic year

692. The OFT considers that the following extracts from Haileybury’s internal documents are consistent with and further evidence for the conclusion that Haileybury participated in the Survey for 2001/2002.

Minutes of a meeting of Haileybury’s Finance and General Purposes Committee held on 15 February 2001

693. Paragraph 41 d) of the minutes notes that,

‘...Based on these likely salary increases and the early indications of fee rises from other schools it was agreed that a rise of 6% should be used in the budget process.’

The OFT notes that the date of this meeting was before 1 March 2001, the date from which the Chapter I prohibition was applicable in this case. However, the OFT notes the fact of this meeting for the purpose of considering Haileybury’s conduct for the period from 1 March 2001.

Minutes of a meeting of Haileybury’s Finance and General Purposes Committee held on 8 June 2001

694. Paragraph 53 d) i) of the minutes states,

‘The committee considered a budget proposal based on a 6% rise in fees, a 4% increase for academic staff and a 3.5% increase for support staff... After discussion, and consideration of the fee rises and fee levels of comparable schools, it was decided that the following fee structure should apply...’

2002/2003 academic year

695. The OFT considers that the following extract from Haileybury’s internal documents is consistent with, and further evidence for, the conclusion that Haileybury participated in the Survey for 2002/2003.

734 Document LXT011.
735 See paragraph 1310 below.
736 Document LXT018.
696. A paragraph of the document headed 'Fees' states,

'...Early indications from other schools are that increases of between 5 and 7.5% are being considered, although it must be stressed that these are very early estimates which on past experience increase by between ½ and 1% during the course of the summer term. Based on this, and to continue the trend established last year whereby increases for day pupils were set at a higher level than those for boarders, it is recommended that at this stage the assumption should be made that the increase for day pupils will be 7% and that for boarders 6%....'

2003/2004 academic year

697. The OFT considers that the following extract from Haileybury’s internal documents is consistent with, and further evidence for, the conclusion that Haileybury participated in the Survey for 2003/2004.

Minutes of a meeting of Haileybury’s Council held on 14 March 2003

698. Paragraph 25 of the minutes states,

'...However, F&GP had considered that, realistically, increases of 8 to 9% were more likely to be necessary and this view appeared to be borne out by the estimated increases received from other schools...'

Fee–setting process

699. Haileybury’s fee–setting process during the relevant period can, in essence, be described as follows. Since 2001, Haileybury has set budgets for each financial year taking account of aims in a five year financial plan for the school. In February of each year Haileybury’s Financial and General Purpose Committee agreed a number of assumptions (relating to factors that affected Haileybury’s cost base, such as teachers’ salaries) based upon which Haileybury’s bursar would prepare the school’s budget for the year. Since the introduction of the five–year plan, these assumptions have their basis in the five–year plan.

700. The budget is then prepared for the meeting of the Financial and General Purposes Committee in June at which the budget, including fee rises, is presented. At the meeting, the proposed budget is either accepted or the Financial and General Purposes Committee directs that the budget should be revised. Before June 2002 the Financial and General Purposes

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737 Document LXT037.
738 Document MDB0063AN.
739 The description of Haileybury’s fee–setting process is taken from the answer to question 6 contained in Haileybury’s 1 March 2004 response (document LXT001R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG016) and in Haileybury’s statements about its fee–setting process contained in the Schools’ Joint Factual Statement (document JM 01–a).
Committee recommended the budget to Haileybury’s Council for approval. Following the Council meeting at which the fees were finally decided the Chairman of Council then wrote to all parents to notify them of the increase in school fees. In June 2002 the process was amended in that Haileybury’s Council delegated to the Financial and General Purposes Committee the final decision on fee levels. The letter to parents is still signed by the Chairman of Council and he has the right to attend the F&GP meeting that takes the decision but a Council meeting is only required to note the fee increase, and to endorse or amend all other aspects of the budget. In relation to the respective decisions of Haileybury’s Financial and General Purposes Committee and Haileybury’s Council members, Haileybury stated that,

‘In arriving at their decision, F&GP members were not provided with copies of any fee survey but the Bursar made them aware of the general level of likely fee rises being contemplated by comparable schools, as gathered from the most recent survey information...

...Council were not given any copies of any survey but the Bursar was in a position to provide up to date information on the latest survey returns.’\textsuperscript{740}

**Timing of the Sevenoaks Survey in relation to the fee–setting process**

701. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Haileybury, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Haileybury, and Haileybury would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

702. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Haileybury in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.\textsuperscript{741}

<table>
<thead>
<tr>
<th>Year</th>
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<th>Circulations</th>
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<tbody>
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<td>2001/2002</td>
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<td>6</td>
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<tr>
<td>Day</td>
<td>6</td>
<td>13 February</td>
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</tbody>
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\textsuperscript{740} Ibid.

\textsuperscript{741} The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
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<th>Sevenoaks Survey</th>
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<td>8 May</td>
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<td>14 May</td>
<td>6</td>
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<td>Other circulations:</td>
<td>17 May</td>
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<td>29 May</td>
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<td>25 June</td>
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<th><strong>2002/2003</strong></th>
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</tr>
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Finalisation of fee increases

703. The final fee increases for Haileybury during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 6.5 per cent for boarding pupils and 7.2 per cent for day pupils and it was finalised on 29 June 2001. For the 2002/2003 academic year the final fee increase was 6.5 per cent for boarding pupils and 8 per cent for day pupils and it was finalised on 30 May 2002. For the 2003/2004 academic year the final fee increase was 7 per cent for boarding pupils and 8.5 per cent for day pupils and it was finalised on 5 June 2003.

Conclusion regarding Haileybury’s participation in the Sevenoaks Survey

704. In relation to the 2001/2002 academic year, the OFT considers that Haileybury participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Haileybury and Haileybury has participated in the Sevenoaks Survey in two other relevant years;
- Haileybury has stated that it contributed to the Sevenoaks Survey in respect of this academic year;
- the Sevenoaks bursar or his assistant sent Haileybury at least one circulation of the Sevenoaks Survey for this year; and
- extracts from Haileybury’s internal documents are consistent with Haileybury’s participation in the Survey for this academic year.

705. In relation to the 2002/2003 academic year, the OFT considers that Haileybury participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Haileybury and Haileybury has participated in the Sevenoaks Survey in two other relevant years;
- Haileybury has stated that it contributed to the Sevenoaks Survey in respect of this academic year;

742 See paragraph 53 d) i) of the minutes of the 8 June 2001 meeting of Haileybury’s Finance and General Purposes Committee (document LXT018) and paragraph 28 e) of the 29 June 2001 meeting of Haileybury’s Council (document LXT020).

743 See paragraph 47 b of the minutes of the 30 May 2002 meeting of Haileybury’s Finance & General Purposes Committee relating to budgets for the academic year 2002/2003 (document LXT045), the note relating to ‘College Unrestricted Fund’ for the 30 May 2002 meeting of Haileybury’s Finance and General Purposes Committee (document LXT040) and paragraph 29 c) of the 28 June 2002 meeting of Haileybury’s Council (document MDB0063AK). See also Haileybury’s statement in the Schools’ Joint Factual Statement (document JM 01–a).

744 See paragraph 52 of the minutes of the 5 June 2003 meeting of Haileybury’s Finance and General Purposes Committee (document MDB0063X) and paragraph 43 of the 27 June 2003 meeting of Haileybury’s Council (document LXT058). See also Haileybury’s statement in the Schools’ Joint Factual Statement (document JM 01–a).

745 See paragraphs 688 to 697 above.
• the Sevenoaks bursar or his assistant sent Haileybury at least one circulation of the Sevenoaks Survey for this year; and

• an extract from Haileybury’s internal documents is consistent with Haileybury’s participation in the Survey for this academic year.

706. In relation to the 2003/2004 academic year, the OFT considers that Haileybury participated in the Sevenoaks Survey on the basis that:

• the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Haileybury and Haileybury has participated in the Sevenoaks Survey in two other relevant years;

• Haileybury has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

• the Sevenoaks bursar or his assistant sent Haileybury at least one circulation of the Sevenoaks Survey for this year; and

• an extract from Haileybury’s internal documents is consistent with Haileybury’s participation in the Survey for this academic year.

707. The OFT therefore considers that Haileybury both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 690 and 703 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Haileybury will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

708. The OFT concludes that the evidence set out above demonstrates that Haileybury participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Harrow School**

**Evidence of participation in the Sevenoaks Survey**


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746 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
710. First, the Sevenoaks Survey includes fee-increase estimates for Harrow School for each of the years 2001/2002, 2002/2003 and 2003/2004.747

711. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Harrow School contributed to the Sevenoaks Survey, Harrow School noted,

'Every year.'748

Enclosed with Harrow School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2001/2002 to 2003/2004 that Harrow School received from the Sevenoaks bursar or his assistant.

712. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Harrow School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools749. The OFT considers that this demonstrates that Harrow School received at least one circulation of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 1 May 2001, 11 February 2002 and 11 March 2003.

713. Fourth, the OFT notes that a number of Harrow School’s internal documents for the academic year 2003/2004 are consistent with and further evidence for the conclusion that Harrow School participated in the Sevenoaks Survey in respect of that academic year.

2003/2004 academic year

714. The OFT considers that the following extracts from Harrow School’s internal documents (one of which had a circulation of the Sevenoaks Survey attached to it) are consistent with and further evidence for the conclusion that Harrow School participated in the Survey for 2003/2004.

Electronic mail dated 12 February 2003 from the Sevenoaks bursar to other participants in the Sevenoaks Survey, including Harrow School750

715. The electronic mail states,

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747 See the table at paragraph 721 below.
748 The answer to question 15 contained in Harrow School’s 8 March 2004 (document JXS0151R) response to the OFT’s section 26 Notice (document SMG017) to it dated 9 February 2004.
749 Documents JXS0260, LXT3412 and LXT2542 show, respectively, that the electronic mail address bursarsec@admin.harrowschool.org.uk was the recipient of electronic mails transmitting summaries of other schools' fee—increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – 'admin.harrowschool.org.uk’ is the same as in the electronic mail address of the bursar of Harrow School that is recorded on Harrow School’s 8 March 2004 response (document JXS0151R) to the OFT’s section 26 Notice to it dated 9 February 2004. (document SMG017) The OFT therefore considers that the bursar of Harrow School received the electronic mails described above that were sent to the electronic mail address bursarsec@admin.harrowschool.org.uk.
750 Document JXS0203.
'Dear Bursar

I attach a summary of the replies received to date. If you have not yet supplied your figures or wish to amend those already sent, please email them to me by 9am on Friday 14 February and I will circulate a complete summary later that day…'

Attached to the electronic mail is a copy of the 12 February 2003 circulation of the Sevenoaks Survey. The electronic mail also has handwritten script on it that states,

'Copy to Governors Mtg file
(March)
GPC Agenda file
(May)...'

Electronic mail dated 14 March 2003 from the bursar at Sevenoaks to other participants in the Sevenoaks Survey, including Harrow School ⁷⁵¹

Electronic mail dated 14 March 2003 from the bursar of Harrow School to the headmaster of Harrow School ⁷⁵²

Electronic mail dated 14 March 2003 from the bursar of Harrow School to the headmaster of Harrow School ⁷⁵²

Electronic mail dated 14 March 2003 from the bursar of Harrow School to the headmaster of Harrow School ⁷⁵²

Electronic mail dated 14 March 2003 from the bursar of Harrow School to the headmaster of Harrow School ⁷⁵²

Electronic mail dated 14 March 2003 from the bursar of Harrow School to the headmaster of Harrow School ⁷⁵²

Electronic mail dated 14 March 2003 from the bursar of Harrow School to the headmaster of Harrow School ⁷⁵²

Electronic mail dated 14 March 2003 from the bursar of Harrow School to the headmaster of Harrow School ⁷⁵²

Electronic mail dated 14 March 2003 from the bursar of Harrow School to the headmaster of Harrow School ⁷⁵²

716. The electronic mail states, 'Please find attached the latest version as at today’s date' and attaches a copy of the 14 March 2003 circulation of the Sevenoaks Survey.

717. This electronic mail attaches the electronic mail and the copy of the Sevenoaks Survey described in the previous paragraph and states,

'For info!

Note Millfield School have finalised their fee: an 8% increase to £20,665. Radley are proposing 10%. Eton will probably move to 10% too. Like us, I believe they are deliberately suppressing their declared likely increase.

Nick'.

**Fee–setting process**

718. Harrow School’s fee–setting process during the relevant period can, in essence, be described as follows ⁷⁵³. Harrow School has a number of strategic financial objectives and its fee is designed to meet these objectives and to cover the costs of running the school. Up to and including the year 2001, the Finance Committee of Harrow School’s Governors (‘the GPC’) received formal papers on the draft budget at its May meeting. The GPC would consider and approve the revised draft budget at its June meeting and make a final decision on the fee increase for the following year. A final meeting of the GPC in July would then finalise the budget within the constraints of the fee increase.

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⁷⁵¹ Document SJN0275.
⁷⁵² Document JXS0198.
⁷⁵³ The description of Harrow School’s fee–setting process is taken from the answer to question 6 contained in Harrow School’s 8 March 2004 response (document JXS0151R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG017).
719. From 2002 onwards Harrow School’s fee–setting process has been as follows. In late January or early February Harrow School’s bursar prepares an outline budget for the financial year which begins the following September for submission to the GPC. The GPC then gives its approval for the main factors around which the outline budget is based. In March, budget holders are told in broad terms what their budget is and they then construct a detailed budget. The GPC is presented with a full draft budget in early or mid–May and the Governors of Harrow School then consider the revised and updated budget at their meeting in the middle of June. Harrow School’s fee increase is usually approved at this meeting.

**Timing of the Sevenoaks Survey in relation to the fee–setting process**

720. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Harrow School, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Harrow School, and Harrow School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

721. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Harrow School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
<th>Circulations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2001/2002</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Boarding</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Day</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>First main circulation of Sevenoaks Survey</strong></td>
<td>13 February</td>
<td>5 –</td>
</tr>
<tr>
<td>Other circulations:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 May</td>
<td></td>
<td>5 –</td>
</tr>
<tr>
<td>8 May</td>
<td></td>
<td>5 –</td>
</tr>
<tr>
<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
<td>14 May</td>
<td>5 –</td>
</tr>
</tbody>
</table>

754 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
| Other circulations: | 17 May | 5 | – |
|                   | 29 May | 5 | – |
|                   | 25 June | 5 | – |
| **2002/2003**      |        |   |   |
| First main        | 11 February | 6 | – |
| circulation of    |        |   |   |
| Sevenoaks Survey  |        |   |   |
| Other circulations: | 15 February | 6 | – |
| Second main       | 22 April | 5.7 | – |
| circulation of    |        |   |   |
| Sevenoaks Survey  |        |   |   |
| Other circulations: | 11 June | 5.7 | – |
| **2003/2004**      |        |   |   |
| First main        | 12 February | 7.5 | – |
| circulation of    |        |   |   |
| Sevenoaks Survey  |        |   |   |
| Other circulations: | 14 February | 7.5 | – |
|                   | 26 February | 7.5 | – |
|                   | 14 March | 8 – 8.5 | – |
|                   | 17 March | 8 – 8.5 | – |
| Second main       | 17 April | 8.5 | + |
| circulation of    |        |   |   |
| Sevenoaks Survey  |        |   |   |
| Other circulations: | – | – | – |

**Finalisation of fee increases**

722. The final fee increases for Harrow School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 6.5 per cent for boarding pupils. For the 2002/2003 academic year the final fee increase was 6.5 per cent for boarding pupils. For the 2003/2004
The final fee increase was 9.7 per cent for boarding pupils.

Conclusion regarding Harrow School's participation in the Sevenoaks Survey

In relation to the 2001/2002 academic year, the OFT considers that Harrow School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Harrow School and Harrow School has participated in the Sevenoaks Survey in two other relevant years;
- Harrow School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and
- the Sevenoaks bursar or his assistant sent Harrow School at least one circulation of the Sevenoaks Survey for this year.

In relation to the 2002/2003 academic year, the OFT considers that Harrow School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Harrow School and Harrow School has participated in the Sevenoaks Survey in two other relevant years;
- Harrow School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and
- the Sevenoaks bursar or his assistant sent Harrow School at least one circulation of the Sevenoaks Survey for this year.

In relation to the 2003/2004 academic year, the OFT considers that Harrow School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Harrow School and Harrow School has participated in the Sevenoaks Survey in two other relevant years;
- Harrow School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided

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755 See the answer to question 32 contained in Harrow School’s 8 March 2004 response (documents JXS0151R and JXS0165) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG017). It should be noted that for each of these academic years, 2001/2002 to 2003/2004, the OFT does not have specific documentation to show the date on which the fee increase was finalised but given Harrow School’s explanation that fee increases are likely to be approved in June of each year – see paragraph 719 above – the OFT considers that the fee increases for these academic years were finalised each June.

756 See paragraphs 710 to 717 above.
the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Harrow School at least one circulation of the Sevenoaks Survey for this year; and

- extracts from Harrow School’s internal documents are consistent with Harrow School’s participation in the Survey for this academic year, including one that had a copy of the Survey attached to it.

726. The OFT therefore considers that Harrow School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 712 and 722 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Harrow School will have received at least one circulation of the Sevenoaks Survey containing competitors' estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases757.

727. The OFT concludes that the evidence set out above demonstrates that Harrow School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

King’s School Canterbury

Evidence of participation in the Sevenoaks Survey758


729. First, the Sevenoaks Survey includes fee-increase estimates for King’s School Canterbury for each of the years 2001/2002, 2002/2003 and 2003/2004759.

757 Harrow School argued in the Schools’ Joint Factual Statement (document JM 01–a) that the Sevenoaks Survey was not considered when setting its fees for this year on the basis that none of its Governors were presented with, or shown, a copy of the Sevenoaks Survey at any stage in 2003. Harrow School’s bursar was involved in setting Harrow School’s budget, however, which was considered by the GPC and approved by the Governors (see paragraph 719 above). A copy of a circulation of the Sevenoaks Survey was attached to documents that he filed for use in preparation for the GPC and Governors meetings (see paragraph 714 above). Given this, irrespective of whether or not Harrow School’s Governors (who made the final decision on fees) themselves saw the Sevenoaks Survey, the OFT considers that it is entirely appropriate to take into account the fact that Harrow School received at least one circulation of the Survey before finalising its fee increase.

758 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.

759 See the table at paragraph 734 below.
Second, in its response to a question from the OFT regarding the years from January 2000 onward in which King’s School Canterbury contributed to the Sevenoaks Survey, King’s School Canterbury noted,'\(^{760}\) Enclosed with King’s School Canterbury’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of the year 2002/2003 that King’s School Canterbury received from the Sevenoaks bursar or his assistant.

Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, King’s School Canterbury was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools.\(^{761}\) The OFT considers that this demonstrates that King’s School Canterbury received at least one circulation of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 14 May 2001, 17 April 2002 and 11 March 2003.

Fee–setting process

King’s School Canterbury’s fee–setting process during the relevant period can, in essence, be described as follows.\(^{762}\) In February King’s School Canterbury’s bursar and finance bursar collate information and request budget bids from all departments in the school before meeting with the King’s School Canterbury’s Budget, Salaries and Conditions of Service Committee to discuss proposed budgets. This is followed by a meeting of King’s School Canterbury’s Finance Committee in early March to review preliminary budget proposals. The Finance Committee meets again in June to discuss financial issues which results in a recommendation to the June meeting of King’s School Canterbury’s full Board of Governors which ratifies the budget, salary increases and fee increases for the coming academic year. Parents are informed of the fee increases shortly after the increases have been ratified.

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\(^{760}\) The answer to question 15 contained in King’s School Canterbury’s 4 March 2004 response (document AXZ333) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG018).

\(^{761}\) Documents LXT2749, LXT4010 and LXT2542 show, respectively, that the electronic mail address bursar@kings–canterbury.demon.co.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. The OFT does not have specific evidence to demonstrate that this electronic mail address is one that is used by King’s School Canterbury but the OFT infers from the fact that the Sevenoaks bursar sent circulations of the Sevenoaks Survey to this address regularly over three years that it was a valid address for King’s School Canterbury. The OFT therefore considers that King’s School Canterbury received the electronic mails described above that were sent to the electronic mail address bursar@kings–canterbury.demon.co.uk.

\(^{762}\) The description of King’s School Canterbury’s fee–setting process is taken from the answer to question 6 contained in King’s School Canterbury’s 4 March 2004 (document AXZ333) response to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG018).
Timing of the Sevenoaks Survey in relation to the fee–setting process

733. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including King’s School Canterbury, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including King’s School Canterbury, and King’s School Canterbury would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

734. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for King’s School Canterbury in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boarding</td>
</tr>
<tr>
<td><strong>2001/2002</strong></td>
<td></td>
</tr>
<tr>
<td>Circulations</td>
<td></td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>13 February</td>
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<tr>
<td>Other circulations:</td>
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<td>Other circulations:</td>
<td>8 May</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>14 May</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>17 May</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>29 May</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>25 June</td>
</tr>
<tr>
<td><strong>2002/2003</strong></td>
<td></td>
</tr>
<tr>
<td>First main circulation of</td>
<td>11 February</td>
</tr>
</tbody>
</table>

763 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
Finalisation of fee increases

735. The final fee increases for King’s School Canterbury during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 7.05 per cent for boarding pupils and 7.29 per cent for day pupils. For the 2002/2003 academic year the final fee increase was 7.99 per cent for boarding pupils and 11.48 per cent for day pupils. For the 2003/2004 academic year the final fee increase was 9.5 per cent for boarding pupils and 8 per cent for day pupils⁷⁶⁴.

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⁷⁶⁴ See the letters provided in answer to question 32 contained in King’s School Canterbury’s 4 March 2004 response (document AXZ333) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG018). It should be noted that for each of these academic years, 2001/2002 to 2003/2004, the OFT does not have specific documentation to show the date on which the fee increase was finalised but given King’s School Canterbury’s explanation that fee increases are likely to be approved in June of each year – see paragraph 732 above – the OFT considers that the fee increases for these academic years were finalised each June.
Conclusion regarding King’s School Canterbury’s participation in the Sevenoaks Survey\textsuperscript{765}

736. In relation to the 2001/2002 academic year, the OFT considers that King’s School Canterbury participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for King’s School Canterbury and King’s School Canterbury has participated in the Sevenoaks Survey in two other relevant years;

- King’s School Canterbury has stated that it contributed to the Sevenoaks Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent King’s School Canterbury at least one circulation of the Sevenoaks Survey for this year.

737. In relation to the 2002/2003 academic year, the OFT considers that King’s School Canterbury participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for King’s School Canterbury and King’s School Canterbury has participated in the Sevenoaks Survey in two other relevant years;

- King’s School Canterbury has stated that it contributed to the Sevenoaks Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent King’s School Canterbury at least one circulation of the Sevenoaks Survey for this year.

738. In relation to the 2003/2004 academic year, the OFT considers that King’s School Canterbury participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for King’s School Canterbury and King’s School Canterbury has participated in the Sevenoaks Survey in two other relevant years;

- King’s School Canterbury has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

\textsuperscript{765} See paragraphs 729 to 735 above.
the Sevenoaks bursar or his assistant sent King’s School Canterbury least one circulation of the Sevenoaks Survey for this year.

739. The OFT therefore considers that King’s School Canterbury both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 731 and 735 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that King’s School Canterbury will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

740. The OFT concludes that the evidence set out above demonstrates that King’s School Canterbury participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

Lancing College

Evidence of participation in the Sevenoaks Survey


743. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Lancing College contributed to the Sevenoaks Survey, Lancing College noted,

‘Every year from January 2000.’

Enclosed with Lancing College’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the academic years from 2001/2002 to 2003/2004 that Lancing College received from the Sevenoaks bursar or his assistant.

744. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Lancing College was an addressee of at least one electronic mail that the Sevenoaks

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766 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.

767 See the table at paragraph 756 below.

768 The answer to question 7 contained in Lancing College’s 25 February 2004 response (document AXZ602R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG019).
bursar or his assistant sent to Participant schools. The OFT considers that this demonstrates that Lancing College received at least one circulation of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 14 May 2001, 17 April 2002 and 11 March 2003.

4. Fourth, the OFT notes that a number of Lancing College’s internal documents for the academic years 2001/2002 and 2002/2003 are consistent with and further evidence for the conclusion that Lancing College participated in the Sevenoaks Survey in respect of those academic years.

2001/2002 academic year

5. The OFT considers that the following extracts from Lancing College’s internal documents (one of which had a circulation of the Sevenoaks Survey attached to it) are consistent with and further evidence for the conclusion that Lancing College participated in the Survey for 2001/2002.

Agenda for a meeting of the Lancing College Finance and General Purposes Committee held on 24 May 2001 and Appendix E to the agenda

747. The agenda states,

7. School Fees for 2001/02 and IAPS Fee Reduction’.

A list of appendices attached to the agenda states,

Appendix E School Fees 2001/02’.

748. A copy of the circulation of the Sevenoaks Survey dated 14 May 2001 is attached to the document as Appendix E2.

Minutes of the 24 May 2001 meeting of Lancing College’s Finance and General Purposes Committee

749. Minute 99 states,

‘There was considerable discussion about the level of fee increase for 2001/02 and in particular with reference to the comparison of fees with

Documents LXT2749, LXT4010 and LXT2542 show, respectively, that the electronic mail address bursar.lancingcol@talk21.com was the recipient of electronic mails transmitting summaries of other schools’ fee-increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. Lancing College confirmed in its 12 October 2005 response (document MDB0112) to the OFT’s section 26 Notice to it dated 4 October 2005 (document MDB0045I) that the electronic mail address bursar.lancingcol@talk21.com was the personal electronic mail address of the bursar of Lancing College during the period January 2001 to December 2003 inclusive. Lancing College also noted that the bursar’s secretary has access to the mailbox for this electronic mail address when the bursar is absent from the school. The OFT therefore considers that the bursar of Lancing College received the electronic mails described above that were sent to the electronic mail address bursar.lancingcol@talk21.com.

Document AXZ463.

Document MDB0065B.
other schools. It was agreed that the Committee should recommend to the Governing Body the following increases...

2002/2003 academic year

750. The OFT considers that the following extracts from Lancing College’s internal documents (one of which had a circulation of the Sevenoaks Survey attached to it) are consistent with and further evidence for the conclusion that Lancing College participated in the Survey for 2002/2003.

Agenda for a meeting of the Lancing College Finance and General Purposes Committee held on 25 April 2002 and attachment

751. The agenda states 'Fee increases for 2002/03'. Attached to the agenda is a note from the bursar of Lancing College that states,

'Please find attached an e–mail from the Bursar of Sevenoaks (the full survey will be available at the meeting)... I have recently attended a number of Bursar’s meetings and as stated in the e–mail from the Bursar of Sevenoaks, a number of schools are increasing their fees by 8% to cover the new salary scales in the maintained sector...'

Agenda for a meeting of the Lancing College Governing Body held on 24 May 2002 and attachment

752. The agenda states,

8. Finance Committee’s Report...
   b) Fees for 2002/03

753. A copy of the circulation of the Sevenoaks Survey dated 22 April 2002 is attached to the document.

Fee–setting process

754. Lancing College’s fee–setting process during the relevant period can, in essence, be described as follows774. The bursar of Lancing College begins to form a view on the level of fee increases for the coming academic year when preliminary budgets for the school are prepared in the period January to March of an academic year, taking into account various factors such as the level of staff pay awards and anticipated pupil numbers. The Finance and General Purposes Committee meets in April or May and decides on the level of fee increase that it will recommend to Lancing College’s Governing Body for adoption. Lancing College’s Governing Body then meets in May or June to consider the recommendation of the Finance and General Purposes Committee and it approves the fee increase as it sees fit.

772 Document AXZ460.
773 Document AXZ475.
774 The description of Lancing College’s fee–setting process is taken from the answer to question 6 contained in Lancing College’s 25 February 2004 response (document AXZ602R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG019).
Timing of the Sevenoaks Survey in relation to the fee–setting process

755. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 315 to 317 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Lancing College, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Lancing College, and Lancing College would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

756. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Lancing College in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boarding</td>
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</tbody>
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<table>
<thead>
<tr>
<th>Circulations</th>
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<tbody>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
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<td>Second main circulation of Sevenoaks Survey</td>
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<tr>
<td>Other circulations:</td>
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<tr>
<td></td>
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<tr>
<td></td>
</tr>
</tbody>
</table>

| 2002/2003 | Fee increase estimate (%) | |
|-----------|---------------------------|
| Boarding | Day |
| First main circulation of | 11 February | – | – |

775 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
**Finalisation of fee increases**

The final fee increases for Lancing College during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 5.75 per cent for boarding pupils and 3.5 per cent for day pupils and they were finalised on 8 June 2001\textsuperscript{776}. For the 2002/2003 academic year the final fee increases were 7.6 per cent for boarding pupils and 2.5 per cent for day fees and they were finalised on 24 May 2002\textsuperscript{777}. For the 2003/2004 academic year the final fee increase was 9.5 per cent for both boarding and day pupils and they were finalised after 21 May 2003\textsuperscript{778}.

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\textsuperscript{776} See Minute 3844 in the Minutes of the meeting of the Governing Body of Lancing College held on 8 June 2001 (document MDB0065H).

\textsuperscript{777} See Minute 3899 of the minutes of the meeting of the Governing Body of Lancing College held on 24 May 2002 (document MDB0065J).

\textsuperscript{778} See the answer to question 24 contained in Lancing College’s 25 February 2004 response (document AXZ602R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG019); it should be noted that the OFT does not have specific documentation to show the date on which the fee increase was finalised but, given that minute 221 of the minutes of the 21 May 2003 meeting of Lancing College’s Finance and General Purposes Committee recommends
Conclusion regarding Lancing College’s participation in the Sevenoaks Survey\textsuperscript{779} 

758. In relation to the 2001/2002 academic year, the OFT considers that Lancing College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Lancing College and Lancing College has participated in the Sevenoaks Survey in two other relevant years;
- Lancing College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;
- the Sevenoaks bursar or his assistant sent Lancing College at least one circulation of the Sevenoaks Survey for this year; and
- extracts from Lancing College’s internal documents are consistent with Lancing College’s participation in the Survey for this academic year, including one that had a copy of the Survey attached to it.

759. In relation to the 2002/2003 academic year, the OFT considers that Lancing College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Lancing College and Lancing College has participated in the Sevenoaks Survey in two other relevant years;
- Lancing College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;
- the Sevenoaks bursar or his assistant sent Lancing College at least one circulation of the Sevenoaks Survey for this year; and
- extracts from Lancing College’s internal documents are consistent with Lancing College’s participation in the Survey for this academic year, including one that had a copy of the Survey attached to it.

760. In relation to the 2003/2004 academic year, the OFT considers that Lancing College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Lancing College and Lancing College has participated in the Sevenoaks Survey in two other relevant years;

\textsuperscript{779} See paragraphs 742 to 753 above.
Lancing College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

the Sevenoaks bursar or his assistant sent Lancing College at least one circulation of the Sevenoaks Survey for this year.

761. The OFT therefore considers that Lancing College both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 744 and 757 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Lancing College will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

762. The OFT concludes that the evidence set out above demonstrates that Lancing College participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

Malvern College

Evidence of participation in the Sevenoaks Survey


764. First, the Sevenoaks Survey includes fee-increase estimates for Malvern College for each of the years 2001/2002 and 2002/2003.

765. Second, Air Commodore David Charles Vass, the bursar at Malvern College from October 2001 to the present time, stated in relation to the Sevenoaks Survey,

'My predecessor contributed to the Sevenoaks’ survey in years 2000/01 and 2001/02. This information would have been put to the College’s trustees in the Summers of 2001 and 2002 respectively. I do not recall contributing to the Survey in 2003/4. I cannot say whether it was a conscious decision or whether I simply did not fill in the survey because of time constraints. As stated previously, copies of the Sevenoaks Survey were received in Years 2003 and 2004.'

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780 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
781 See the table at paragraph 774 below.
782 See paragraph 5.1 of Air Commodore David Charles Vass’ witness statement dated 12 April 2005 (document GCOR1035A).
Enclosed with Malvern College’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2001/2002 to 2003/2004 that Malvern College received from the Sevenoaks bursar or his assistant.

Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Malvern College was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools. The OFT considers that this demonstrates that Malvern College received at least one circulation of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 14 May 2001, 11 February 2002 and 11 March 2003. The OFT notes that the Sevenoaks Survey for 2003/2004 does not record figures for Malvern College. However, as already stated, Malvern College nonetheless appears to have received the Sevenoaks Survey for the academic year 2003/2004 and it has provided the OFT with copies of circulations of the Sevenoaks Survey for the academic year 2003/2004.

Fourth, the OFT notes that one of Malvern College’s internal documents for the academic year 2001/2002 is consistent with, and further evidence for, the conclusion that Malvern College participated in the Sevenoaks Survey in respect of this academic year.

2001/2002 academic year

The OFT considers that the following extract from Malvern College’s internal documents (which had a circulation of the Sevenoaks Survey attached to it) is consistent with, and further evidence for, the conclusion that Malvern College participated in the Survey for 2001/2002.

Malvern College’s Works and Finance Committee’s Financial Model

This document is dated 4 June 2001. The ‘Contents’ page of the document states,

‘Fee and salary increases other schools 7a & 7b’.

A copy of the circulation of the Sevenoaks Survey dated 14 May 2001 is attached to the document at page 7b.

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783 Documents LXT3405, LXT3412 and LXT2542 show, respectively, that the electronic mail address ME@malcol worcs sch.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. Malvern College confirmed in its 11 October 2005 response (document MDB0096) to the OFT’s section 26 Notice to it dated 4 October 2005 (document MDB0045J) that the electronic mail address ME@malcol worcs sch.uk was a valid electronic mail address during the period January 2001 to December 2003 inclusive. The OFT therefore considers that Malvern College received the electronic mails described above that were sent to the electronic mail address ME@malcol worcs sch.uk.

784 Document TXD3128.
Fee–setting process

772. Malvern College’s fee–setting process during the relevant period can, in essence, be described as follows785. Malvern College’s finances are based on an annually updated financial model that takes into account factors that affect Malvern College’s cost base, including teachers’ salaries, and also certain financial targets, such as a target surplus. The model is given to Malvern College’s Works and Finance Committee who consider the model and then make a recommendation to Malvern College’s trustees. Malvern College’s Treasurer and Malvern College’s full Council then consider the recommendations at a meeting in June before deciding on the final budget and fee increases.

Timing of the Sevenoaks Survey in relation to the fee–setting process

773. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Malvern College, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Malvern College, and Malvern College would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

774. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Malvern College in respect of each of the academic years 2001/2002 and 2002/2003 and 2003/2004786.

<table>
<thead>
<tr>
<th>Year</th>
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<td>2001/2002</td>
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</table>

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<th>Circulations</th>
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<th>4.9</th>
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</thead>
<tbody>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Other circulations: 1 May 4.9 4.9

785 The description of Malvern College’s fee–setting process is taken from paragraphs 2.1 to 2.3 and 3.4 of the 12 April 2005 witness statement of Air Commodore David Charles Vass (document GCOR1035A).

786 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
<table>
<thead>
<tr>
<th>Date</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
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<td>8 May</td>
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</tr>
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<td>Other circulations:</td>
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<tr>
<td></td>
<td>29 May</td>
<td>5.9</td>
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<td></td>
<td>25 June</td>
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<td><strong>2002/2003</strong></td>
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</tr>
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<td><strong>2003/2004</strong></td>
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<td></td>
</tr>
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</tr>
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<td>–</td>
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<tr>
<td>Other circulations:</td>
<td>–</td>
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</tr>
</tbody>
</table>
Finalisation of fee increases

775. The final fee increases for Malvern College during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 8.3 per cent for boarding pupils and 9.8 per cent for day pupils and it was finalised on 30 June 2001\textsuperscript{787}. For the 2002/2003 academic year the final fee increase was 8.5 per cent for boarding pupils and 12 per cent for day pupils and it was finalised on 29 June 2002\textsuperscript{788}. For the 2003/2004 academic year the final fee increase was 11.5 per cent for both boarding and day pupils and it was finalised on 28 June 2003\textsuperscript{789}.

Conclusion regarding Malvern College’s participation in the Sevenoaks Survey\textsuperscript{790}

776. In relation to the 2001/2002 academic year, the OFT considers that Malvern College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Malvern College and Malvern College has participated in the Sevenoaks Survey in two other relevant years;

- Malvern College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Malvern College at least one circulation of the Sevenoaks Survey for this year; and

- an extract from one of Malvern College’s internal documents is consistent with Malvern College’s participation in the Survey for this academic year, and, in addition, the document has a copy of the Survey attached to it.

777. In relation to the 2002/2003 academic year, the OFT considers that Malvern College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Malvern College and Malvern College has participated in the Sevenoaks Survey in two other relevant years;

- Malvern College provided the OFT with at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Malvern College at least one circulation of the Sevenoaks Survey for this year.

\textsuperscript{787} See page 2 of the minutes of Malvern College’s Council meeting held on 30 June 2001 (document TXD3127).

\textsuperscript{788} See page 5 of the minutes of Malvern College’s Council meeting held on 29 June 2002 (document TXD3125).

\textsuperscript{789} See page 6 of the minutes of Malvern College’s Council meeting held on 28 June 2003 (document TXD3123).

\textsuperscript{790} See paragraphs 764 to 768 above.
In relation to the 2003/2004 academic year, the OFT considers that Malvern College participated in the Sevenoaks Survey on the basis that:

- Malvern College stated that it received copies of the Sevenoaks Survey in this academic year and provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Malvern College at least one circulation of the Sevenoaks Survey for this year.

The OFT therefore considers that Malvern College both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 and 2002/2003 and received the Sevenoaks Survey in respect of the academic year 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 766 to 775 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Malvern College will have received at least one circulation of the Sevenoaks Survey containing competitors' estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

The OFT concludes that the evidence set out above demonstrates that Malvern College participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Marlborough College**

*Evidence of participation in the Sevenoaks Survey*791


First, the Sevenoaks Survey includes fee-increase estimates for Marlborough College for each of the years 2001/2002, 2002/2003 and 2003/2004792.

Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Marlborough College contributed to the Sevenoaks Survey, Marlborough College noted,

'Marlborough School contributed to the Sevenoaks Study from January 2000 onwards in successive years.'793

791 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.

792 See the table at paragraph 787 below.
Enclosed with Marlborough College’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2001/2002 to 2003/2004 that Marlborough College received from the Sevenoaks bursar or his assistant.

784. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Marlborough College was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools794. The OFT considers that this demonstrates that Marlborough College received at least one circulation of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 4 May 2001, 11 February 2002 and 11 March 2003.

785. Marlborough’s fee–setting process during the relevant period can, in essence, be described as follows795. Between January and April of each academic year Marlborough College calculates a provisional budget taking into account various factors such as the level of staff pay awards and anticipated pupil numbers and having regard to its rolling five year development plan. The May meeting of the Finance Committee considers the provisional budget and the recommended level of fees on which it is based. It makes a recommendation on the budget and fees to Marlborough’s Governing Council. The Governing Council considers this recommendation in its June meeting and makes a final decision on the budget and the level of fees. Parents are notified of the fee increase shortly after the Governing Council’s decision.

Timing of the Sevenoaks Survey in relation to the fee–setting process

786. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Marlborough College, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Marlborough College, and Marlborough College would have submitted an estimate to the Survey. The results of this first request for information would have been circulated

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793 The answer to question 7 contained in Marlborough College’s 27 February 2004 response (document AXZ603R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG020).

794 Documents AXZ629, LXT3412 and LXT2542 show, respectively, that the electronic mail address dsw@marlboroughcollege.wilts.sch.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. The OFT notes that this electronic mail address is the electronic mail address of the bursar of Marlborough College that is recorded on Marlborough College’s 27 February 2004 response (document AXZ603R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG020). The OFT therefore considers that the bursar of Marlborough College received the electronic mails described above that were sent to the electronic mail address dsw@marlboroughcollege.wilts.sch.uk.

795 The description of Marlborough’s fee–setting process is taken from the answer to question 6 contained in Marlborough’s 27 February 2004 response (document AXZ603R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG020).
in mid-February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

787. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Marlborough College in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

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<tr>
<th>Year</th>
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<td>7.5</td>
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796 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
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<td>Other circulations:</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
</tbody>
</table>

Finalisation of fee increases

788. The final fee increases for Marlborough College during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 6.9 per cent for both boarding and day pupils and it was finalised on 16 June 2001. For the 2002/2003 academic year the final fee increase was 7.7 per cent for both boarding and day pupils and it was finalised on 15 June 2002. For the 2003/2004 academic year the final fee increase was 9.5 per cent for both boarding and day pupils and it was finalised on 14 June 2003.

Conclusion regarding Marlborough College’s participation in the Sevenoaks Survey

789. In relation to the 2001/2002 academic year, the OFT considers that Marlborough College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Marlborough College and Marlborough College has participated in the Sevenoaks Survey in two other relevant years;

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797 See paragraph 33 in the Minutes of the meeting of the Council of Marlborough College held on 16 June 2001 (document AXZ617).
798 See page 5 of the minutes of the meeting of the Council of Marlborough College held on 15 June 2002 (document AXZ621), confirming the fee increase recommendation of the Finance Committee of Marlborough College set out at paragraph 34 of the minutes of the Finance Committee’s meeting held on 23 May 2002 (document AXZ616).
799 See page 6 of the minutes of the meeting of the Council of Marlborough College held on 14 June 2003 (document AXZ625).
800 See paragraphs 782 to 788 above.
Marlborough College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

the Sevenoaks bursar or his assistant sent Marlborough College at least one circulation of the Sevenoaks Survey for this year.

790. In relation to the 2002/2003 academic year, the OFT considers that Marlborough College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Marlborough College and Marlborough College has participated in the Sevenoaks Survey in two other relevant years;

- Marlborough College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Marlborough College at least one circulation of the Sevenoaks Survey for this year.

791. In relation to the 2003/2004 academic year, the OFT considers that Marlborough College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Marlborough College and Marlborough College has participated in the Sevenoaks Survey in two other relevant years;

- Marlborough College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Marlborough College at least one circulation of the Sevenoaks Survey for this year.

792. The OFT therefore considers that Marlborough College both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 784 and 788 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Marlborough College will have received at least one circulation of the Sevenoaks Survey containing competitors' estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.
The OFT concludes that the evidence set out above demonstrates that Marlborough College participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Millfield School**

**Evidence of participation in the Sevenoaks Survey**


796. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Millfield School contributed to the Sevenoaks Survey, Millfield School noted, ‘Each year.’

Enclosed with Millfield School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of the year 2001/2002 that Millfield School received from the Sevenoaks bursar or his assistant.

797. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004, Millfield School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools. The OFT considers that this demonstrates that Millfield School received at least one circulation of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004 by, respectively, 11 February 2002 and 11 March 2003.

798. Fourth, the OFT notes that a number of Millfield School’s internal documents for each of the academic years 2001/2002 and 2002/2003 are consistent with and further evidence for the conclusion that Millfield

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801 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
802 See the table at paragraph 806 below.
803 The answer to question 7 contained in Millfield School’s 26 February 2004 response (document TXD1507) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG021).
804 See document TXD1544 that Millfield School provided to the OFT.
805 Documents LXT3412 and LXT2542 show, respectively, that the electronic mail address pauloddie@millfield.somerset.sch.uk was the recipient of electronic mails transmitting summaries of other schools’ fee-increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic address – ‘millfield.somerset.sch.uk’ – corresponds with the domain name for Millfield School’s website address: see www.millfield.somerset.sch.uk. The OFT notes that Paul Oddie was at the relevant time, and still is, the bursar of Millfield School (see document TXD1507). The OFT therefore considers that the bursar of Millfield School received the electronic mails described above that were sent to the electronic mail address pauloddie@millfield.somerset.sch.uk.
School participated in the Sevenoaks Survey in respect of those academic years.

2001/2002 academic year

799. The OFT considers that the following extract from Millfield School’s internal documents (which has a circulation of the Sevenoaks Survey attached to it) is consistent with, and further evidence for, the conclusion that Millfield School participated in the Survey for 2001/2002.

Bursar’s report to the Governors of Millfield School – Spring term 2001

800. The report contains a heading, ‘BACKGROUND NOTES FOR THE B&F MEETING ON 8 MARCH 2001’ under which there are various items and paragraphs. Paragraph 10 of the report states,

'10. Item 9. School Fees Proposals for 2001/02. Enclosed are the following:

a. **Results of a Survey of top Independent Schools.** This shows that a 5% increase at Millfield would place us 7th in the fees’ league behind such schools as Bryanston and King’s Canterbury. The average increase being proposed to Governors in all the schools listed is about 6%...

11. You will see from the above that the Executive Group is recommending to Governors an increase of approximately 6% for day and boarding at Millfield... This may appear at first sight to be a high recommendation, but it is caused by the very large award to teachers (with more in the pipeline) and our agreed strategic objective of remaining within the top three in the schools’ league. Our pupil to teacher ratios, facilities and what we offer all justify our position at the top…’

A copy of the circulation of the Sevenoaks Survey dated 13 February 2001 is attached to the document.

2002/2003 academic year

801. The OFT considers that the following extract from the minutes of Millfield School’s Governing Body is consistent with, and further evidence for, the conclusion that Millfield School participated in the Survey for 2001/2002.

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806 Document TXD1543. Millfield School stated in the Schools’ Joint Factual Statement (document JM 01–a), ‘the Bursar’s report to Governors was dated 14 February 2001 and was prepared prior to that date and would therefore not be influenced by the 13 February circulation of the Sevenoaks Survey. The recommendation to Governors on 14 February 2001 was for a 6% increase which was accepted on 22 March 2001.’ Notwithstanding this statement, the OFT notes that the quotation in this paragraph from the bursar’s report demonstrates that the Governors were given the report and attached Survey before actually finalising the fees for Millfield School on 22 March 2001. Moreover, the report itself summarises the results of the Survey apparently contradicting the school’s submission that the report was prepared before the Survey’s circulation.

807 Document TXD1544.
Minutes of the meeting of the Governors of Millfield School held on 21 February 2002

802. Item 5, part n, of the minutes, headed ‘School Fees Proposals’, states,

'The Bursar referred Governors to his report as the basis of his recommendations. The figures in his report were based on an increase of 6%. That in turn was based on figures from other schools and the declared intention of the Governors to keep the school within the top three independent schools as far as fees were concerned...

The bursar referred the Governors to page 3 of his report for the comparisons with other schools; this showed that Millfield had slipped back over the last two years. On the basis of that information he now felt that an increase of 7.5% would ensure there was enough to cover the possible changes to teachers’ salaries and this was the EG’s recommendation to the Governors.

Governors APPROVED an increase of 7.5%'.

(Emphasis added).

Bursar’s report to the Governors of Millfield School – Spring term 2002

803. Paragraph 9 of the report states,

'9. Item 10. School Fees Proposals. The enclosed fees proposals and budgets are based on a 6% increase. The sensitivity analysis indicates the changes to the surplus that would result from 1% up or down on most major budgetary factors. Also enclosed is a list of competitor schools’ fees where it can be seen that our fee increase last year was 1% below the average. It also shows that we have slipped outside our strategic target of being among the top 3 most expensive schools. Soundings from other schools are that large fee increases are on the way again this year to cover additional teaching staff costs...'

(Emphasis added).

Millfield School stated in the Schools’ Joint Factual Statement that the above report was circulated to governors on 30 January 2002, before any circulation of the Sevenoaks Survey for this academic year, and that the data in the report was historic (based on actual fee levels for the previous year). The OFT notes that the report is marked ‘B&F Report 13/30.1.2002’. In view of this and the school’s representations, the OFT places no reliance on the above document for the purpose of this Decision and the extract from it is included for the sake of completeness.

Fee–setting process

804. Millfield School’s fee–setting process during the relevant period can, in essence, be described as follows. Millfield School produces a budget

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808 Document TXD1574.
809 Document TXD1556.
that takes into account certain financial targets, such as a target surplus, included in Millfield School’s five–year plan and other strategic and financial documents. In January of each academic year Millfield School considers the financial results of the first term of that academic year and considers what fee income is required in the next financial year to meet the target surplus. Millfield School’s bursar and Executive Group meet to discuss funding proposals and the bursar then produces a report which is circulated to all of Millfield School’s Governors. The Building and Finance Committee considers the report at a meeting which typically takes place in February before making recommendations to a meeting of the full Governing Body of Millfield School which typically takes place in March of an academic year. Parents are notified of the fee increases in the Easter holidays.

Timing of the Sevenoaks Survey in relation to the fee–setting process

805. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Millfield School, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Millfield School, and Millfield School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

806. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Millfield School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001/2002</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Boarding</td>
</tr>
<tr>
<td></td>
<td>Day</td>
</tr>
<tr>
<td>Circulations</td>
<td></td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>13 February</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May</td>
</tr>
</tbody>
</table>

810 The description of Millfield School’s fee–setting process is taken from the answer to question 6 contained in Millfield School’s 26 February 2004 response (document TXD1507) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG021).

811 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
### 2002/2003

<table>
<thead>
<tr>
<th>Date</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>8 May</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
<td>14 May</td>
<td>5</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>17 May</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>29 May</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>25 June</td>
<td>6</td>
</tr>
<tr>
<td><strong>First main circulation of Sevenoaks Survey</strong></td>
<td>11 February</td>
<td>7</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>15 February</td>
<td>7</td>
</tr>
<tr>
<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
<td>22 April</td>
<td>7.5</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>11 June</td>
<td>7.5</td>
</tr>
</tbody>
</table>

### 2003/2004

<table>
<thead>
<tr>
<th>Date</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>12 February</td>
<td>7.5</td>
<td>7.5</td>
</tr>
<tr>
<td><strong>First main circulation of Sevenoaks Survey</strong></td>
<td>14 February</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>26 February</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>14 March</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>17 March</td>
<td>8</td>
</tr>
<tr>
<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
<td>17 April</td>
<td>8</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>–</td>
<td>–</td>
</tr>
</tbody>
</table>

**Finalisation of fee increases**

807. The final fee increases for Millfield School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was
6.1 per cent for boarding fees and 6.3 per cent for day fees. For the 2002/2003 academic year the final fee increase was 7.5 per cent for boarding fees and 7.6 per cent for day fees. For the 2003/2004 academic year the final fee increase was 8 per cent for boarding fees and 8.7 per cent for day fees.

Conclusion regarding Millfield School’s participation in the Sevenoaks Survey

808. In relation to the 2001/2002 academic year, the OFT considers that Millfield School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Millfield School and Millfield School has participated in the Sevenoaks Survey in two other relevant years;

- Millfield School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- an extract from one of Millfield School’s internal documents is consistent with Millfield School’s participation in the Survey for this academic year, and, in addition, the document has a copy of the Survey attached to it.

809. In relation to the 2002/2003 academic year, the OFT considers that Millfield School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Millfield School and Millfield School has participated in the Sevenoaks Survey in two other relevant years;

- Millfield School has stated that it contributed to the Sevenoaks Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Millfield School at least one circulation of the Sevenoaks Survey for this year; and

- an extract from one of Millfield School’s internal documents is consistent with Millfield School’s participation in the Survey for this academic year.

810. In relation to the 2003/2004 academic year, the OFT considers that Millfield School participated in the Sevenoaks Survey on the basis that:

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[812] See the answer to question 24 contained in Millfield School’s 26 February 2004 response (document TXD1507) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG021). For each of these academic years, 2001/2002 to 2003/2004, the OFT does not have specific documentation to show the date on which the fee increase was finalised. However, given Millfield School’s explanation that fee increases are likely to be approved in March of each year – see paragraph 804 above – the OFT considers that the fee increases for these academic years were finalised by the end of March each year.

[813] See paragraphs 795 to 803 above.
• the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Millfield School and Millfield School has participated in the Sevenoaks Survey in two other relevant years;

• Millfield School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

• the Sevenoaks bursar or his assistant sent Millfield School at least one circulation of the Sevenoaks Survey for this year.

811. The OFT therefore considers that Millfield School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 796, 797 and 807 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Millfield School will have received at least one circulation of the Sevenoaks Survey containing competitors' estimated fee increases in respect of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

812. The OFT concludes that the evidence set out above demonstrates that Millfield School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Mill Hill School**

**Evidence of participation in the Sevenoaks Survey**


815. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Mill Hill School contributed to the Sevenoaks Survey, Mill Hill School noted,

'Mill Hill School contributed to the "Sevenoaks Survey" in the following years: 2000, 2001, 2002 and 2003.'

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814 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
815 See the table at paragraph 820 below.
816 The answer to question 15 contained in the Mill Hill School Foundation’s 8 March 2004 response (document AXZ001R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG022).
Enclosed with Mill Hill School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2001/2002 to 2003/2004 that Mill Hill School received from the Sevenoaks bursar or his assistant.

816. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004, Mill Hill School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools. The OFT considers that this demonstrates that Mill Hill School received at least one circulation of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004 by, respectively, 11 February 2002 and 11 March 2003.

Fee–setting process

817. Mill Hill School’s fee–setting process during the relevant period can, in essence, be described as follows. In June or July of each financial year (Mill Hill School’s financial year runs from January to December), the Mill Hill School Foundation seeks estimates of the financial needs for the following financial year from its budget holders and others who provide services to it. In September these estimates are returned. In September and October the Mill Hill School Foundation’s Director of Administration and Finance draws up a budget for the following financial year based on various factors that affect the Mill Hill School Foundation’s cost base, including teachers’ salaries, and taking into account certain financial targets, such as a target surplus.

818. In November the preliminary revenue and capital budgets are presented to the Mill Hill School Foundation’s Finance and General Purposes Committee which considers the budget and makes any amendments it considers appropriate. In December, the Finance and General Purposes Committee makes a recommendation to the Mill Hill School Foundation’s Court of Governors (the Mill Hill School Foundation’s governing body), which approves or amends the budget, including fee increases. Although the fee increase is agreed in December, in recent financial years it has been adjusted later than that to take into account certain economic factors that are determined outside the Mill Hill School Foundation. Parents are typically notified of the fee increase in March or May of the academic year.

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817 Documents LXT3412 and LXT2542 show, respectively, that the electronic mail address bmorgan@millhilladmin.freeserve.co.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2002/2003 and 2003/2004. The OFT notes that this electronic mail address is the electronic mail address of the bursar of Mill Hill School that is recorded on Mill Hill School’s 8 March 2004 response (document AXZ001R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG022). The OFT therefore considers that the bursar of Mill Hill School received the electronic mails described above that were sent to the electronic mail address bmorgan@millhilladmin.freeserve.co.uk.

818 The description of the Mill Hill School’s fee–setting process is taken from the answer to question 6 contained in the Mill Hill School’s 8 March 2004 response (document AXZ001R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG022).
Timing of the Sevenoaks Survey in relation to the fee–setting process

819. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Mill Hill School, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Mill Hill School, and Mill Hill School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

820. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Mill Hill School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boarding</td>
</tr>
<tr>
<td><strong>2001/2002</strong></td>
<td></td>
</tr>
<tr>
<td><strong>First main circulation of Sevenoaks Survey</strong></td>
<td></td>
</tr>
<tr>
<td>13 February</td>
<td>8</td>
</tr>
<tr>
<td>Other circulations:</td>
<td></td>
</tr>
<tr>
<td>1 May</td>
<td>8</td>
</tr>
<tr>
<td>8 May</td>
<td>8</td>
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<tr>
<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
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</tr>
<tr>
<td>14 May</td>
<td>8</td>
</tr>
<tr>
<td>Other circulations:</td>
<td></td>
</tr>
<tr>
<td>17 May</td>
<td>8</td>
</tr>
<tr>
<td>29 May</td>
<td>8</td>
</tr>
<tr>
<td>25 June</td>
<td>8</td>
</tr>
<tr>
<td><strong>2002/2003</strong></td>
<td></td>
</tr>
</tbody>
</table>

The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
**Finalisation of fee increases**

821. The final fee increases for Mill Hill School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 8 per cent for boarding pupils and 7 per cent for day pupils. For the 2002/2003 academic year the final fee increase was 6.5 per cent for both boarding and day pupils. For the 2003/2004 academic year the final fee increase was 9 per cent for boarding pupils and 7 per cent for day pupils

820 See the answer to question 24 contained in Mill Hill School’s 25 March 2004 response (document AXZ001R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG021). It should be noted that for each of these academic years, 2001/2002 to 2003/2004, the OFT does not have specific documentation to show the date on which the fee increase was finalised but given Mill Hill School’s explanation that fee increases are likely to be approved in the period December to March – see paragraph 818 above – the OFT considers that the fee increases for these academic years were finalised each March.
In relation to the 2001/2002 academic year, the OFT considers that Mill Hill School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Mill Hill School and Mill Hill School has participated in the Sevenoaks Survey in two other relevant years; and

- Mill Hill School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year.

In relation to the 2002/2003 academic year, the OFT considers that Mill Hill School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Mill Hill School and Mill Hill School has participated in the Sevenoaks Survey in two other relevant years;

- Mill Hill School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Mill Hill School at least one circulation of the Sevenoaks Survey for this year.

In relation to the 2003/2004 academic year, the OFT considers that Mill Hill School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Mill Hill School and Mill Hill School has participated in the Sevenoaks Survey in two other relevant years;

- Mill Hill School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Mill Hill School at least one circulation of the Sevenoaks Survey for this year.

Although the OFT does not have specific evidence to demonstrate that Mill Hill School received circulations of the Sevenoaks Survey before it finalised its own fee increase, the OFT considers that the fact that Mill Hill School contributed its own fee increase figures to the Sevenoaks Survey

\[821 \text{ See paragraphs 816 to 821 above.}\]
in those years (see paragraph 815 above) means that it nevertheless participated in the Sevenoaks Survey for those years.


Oakham School

Evidence of participation in the Sevenoaks Survey


829. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Oakham School contributed to the Sevenoaks Survey, Oakham School noted,

'Oakham has contributed annually in each year since 2000 to the request for a contribution to the Sevenoaks survey. No further contributions have been made, or will be made, by Oakham following its last submission in March/April 2003.'

Enclosed with Oakham School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2001/2002 to 2003/2004 that Oakham School received from the Sevenoaks bursar or his assistant.

830. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Oakham School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools. The OFT considers that this demonstrates that Oakham School received at least one circulation of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 14 May 2001, 17 April 2002 and 11 March 2003.

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822 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
823 See the table at paragraph 847 below.
824 The answer to question 7 contained in Oakham School’s 8 March 2004 response (document AXZ096R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG023).
825 Documents LXT2749, LXT4010 and LXT2542 show, respectively, that the electronic mail address JRT@oakham.rutland.sch.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘oakham.rutland.sch.uk’ – corresponds with the domain name for Oakham School’s website address and for the contact electronic mail addresses given for Oakham School on its website: see http://www.oakham.rutland.sch.uk/admissions/contact.htm. The OFT therefore considers that Oakham School received the electronic mails described above that were sent to the electronic mail address JRT@oakham.rutland.sch.uk.
831. Fourth, the OFT notes that Oakham School has stated, 

‘Trustees have traditionally received a survey in May and June based on the Sevenoaks results...’

832. Fifth, the OFT notes that a number of Oakham School’s internal documents for each of the academic years 2001/2002 to 2003/2004 are consistent with and further evidence for the conclusion that Oakham School participated in the Sevenoaks Survey in respect of these academic years.

2001/2002 academic year

833. The OFT considers that the following extracts from Oakham School’s internal documents are consistent with and further evidence for the conclusion that Oakham School participated in the Survey for 2001/2002.

Agenda item 6a for a May 2001 meeting of the trustees of Oakham School

834. Paragraphs 4.3 and 4.8 of the agenda item note,

‘4.3 Annex B provides comparisons of fee levels with other independent schools. This data is derived from various Bursar networks. ... 

4.8 As will be seen, the levels of proposed increase are not significantly out of line with market conditions in the sector...' (Emphasis added).

Annex B of the agenda item is a list of schools and fee information headed 'ESTIMATED OR FIXED FEES 2001/02' and dated 11 May 2001. All of the schools on the list are schools that participated in the Sevenoaks Survey and the figures in the table are the same as those recorded for the same schools in the 8 May 2001 circulation of the Sevenoaks Survey.

Agenda item 6c for a May 2001 meeting of the trustees of Oakham School

835. Paragraphs 2.5 and 2.6 of the agenda item note,

‘2.5 Fee levels have been set with an eye on general market rates, and the accompanying paper compares Oakham’s proposed fees with those of other Independent Schools across the country...

2.6 The Fees paper provides market analysis information that suggests that an 8% or 6% increase is not unreasonable in the context of what other schools are planning...' (Emphasis added).

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826 See the answer to question 6 at page 19 of Oakham School’s 8 March 2004 response (document AXZ096R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG023).

827 Document AXZ137.

2002/2003 academic year

836. The OFT considers that the following extracts from Oakham School’s internal documents are consistent with and further evidence for the conclusion that Oakham School participated in the Survey for 2002/2003.

Minutes of the meeting of the General Meeting of Oakham School’s trustees held on 28 February 2002

837. Paragraph 6 of the minutes states,

'Consideration was given to the level of sustainable fee increase by considering initial estimated fee increase comparisons from other schools. It was noted that a formal decision on the level of fee increase would not be made until June. However, for planning purposes, a fee increase of 7% was preferred…'

(Emphasis added).

Agenda item 6b for a May 2002 meeting of the trustees of Oakham School

838. A number of paragraphs in the agenda discuss fee increases of other schools as follows,

‘4.4 Annex B provides comparisons of fee levels with other independent schools. This data is derived from various Bursar networks…

4.9 As will be seen, the levels of proposed increase are not significantly out of line with market conditions in the sector…'

(Emphasis added).

Annex B of the agenda item is a list of schools and fee information headed ‘ESTIMATED OR FIXED FEES 2002/03’ and dated 8 May 2002. All of the schools in the list save for three831 are schools that participate in the Sevenoaks Survey. The figures on the list are the same as the figures recorded for the same schools in the 22 April 2002 circulation of the Sevenoaks Survey.

Agenda item 6c for a May 2002 meeting of the trustees of Oakham School

839. Paragraphs 2.6 and 2.7 of the agenda notes,

‘2.6 Fee levels have been set with an eye on general market rates, and the accompanying Fees paper compares Oakham’s proposed fees with those of other Independent Schools across the country…

2.7 The Fees paper provides market analysis information that suggests that a 7% increase is not unreasonable in the context of what other...

829 Document AXZ228.
830 Document AXZ153.
831 Schools recorded as ‘Loughboro’, ‘Loughboro Grammar’ and ‘Stamford’ are schools that do not participate in the Sevenoaks Survey.
832 Document AXZ154.
schools are planning... Indeed in Oakham’s case one might argue that a larger increase is justifiable... (b) to “catch up” ground on competitor schools whose base fees are already higher.’

(Emphasis added).

2003/2004 academic year

840. The OFT considers that the following extracts from Oakham School’s internal documents are consistent with and further evidence for the conclusion that Oakham School participated in the Survey for 2003/2004.

Minutes of the meeting of Oakham School’s Finance and General Purposes Committee held on 22 May 2003

833

841. Paragraph 6b of the minutes states,

'A comprehensive survey of likely fee increases across the independent school sector suggested that most schools would be considering fee increases of 8% or more...'

Agenda item 6c for a May 2003 meeting of the trustees of Oakham School

834

842. Paragraph 2.5 of the agenda states,

'Fee levels have been set with an eye on general market rates, and the accompanying Fees paper compares Oakham’s proposed fees with those of other Independent Schools across the country. A basic increase of 9% has therefore been applied.'

Minutes of the General Meeting of Oakham School’s trustees held on 6 March 2003

835

843. Paragraph 6 of the minutes states,

'Formal consideration of fee increases will be considered in the summer term. However, it was noted that a number of cost pressures, particularly from increased contribution to the teachers’ pension scheme could result in the need for the fees to increase by some 9%. An initial survey of other schools has suggested that this level of increase would not be out of line.'

(Emphasis added).

Fee–setting process

844. Oakham School’s fee–setting process during the relevant period can, in essence, be described as follows836. Oakham School’s school fees are set on an annual basis by reference to its budget and taking into account

833 Document AXZ175.
834 Document AXZ178.
835 Document AXZ234.
836 The description of Oakham School’s fee–setting process is taken from the answer to question 6 contained in Oakham School’s 8 March 2004 response (document AXZ096R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG023).
certain financial targets, such as a target surplus. In December or January of each academic year, departmental plans are submitted to Oakham School’s Financial Controller. These plans are considered and assembled into a consolidated set of cost estimates for members of Oakham School’s senior management team.

At the same time as the Financial Controller oversees this process, Oakham School’s bursar assembles a ‘First Cut Budget’ – including a likely level of fee increase – which is first considered by Oakham School’s trustees in January of the academic year. Following this, more detailed cost estimates are prepared, culminating in a draft budget that is presented to the May meeting of Oakham School’s Finance and General Purposes Committee. Comments from that meeting lead to revised figures that are submitted to the Annual General Meeting of Oakham School’s trustees in June at which the budget is formally adopted and fees are formally approved. Fee and salary increases are announced after this meeting and parents are advised of the following year’s fee levels in a formal letter sent to them by the Chairman of Oakham School’s trustees.

**Timing of the Sevenoaks Survey in relation to the fee-setting process**

846. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Oakham School, at distinct points in its fee-setting process. Towards the end of January or in early February, the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Oakham School, and Oakham School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid-February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

847. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Oakham School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004837.

<table>
<thead>
<tr>
<th>Circulations</th>
<th>Year</th>
<th>Fee increase estimate (%)</th>
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<tr>
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837 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
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<td>14 May</td>
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**2002/2003**

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**2003/2004**

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<td></td>
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<td>–</td>
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</tbody>
</table>
Finalisation of fee increases

848. The final fee increases for Oakham School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 8.05 per cent for boarding pupils and 8.08 per cent for day pupils and it was finalised on 14 June 2001.\footnote{See the minutes of the Annual General Meeting of Oakham’s School’s trustees held on 14 June 2001 (document AXZ223) and the answer to question 24 contained in Oakham School’s 8 March 2004 response (document AXZ096R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG023).} For the 2002/2003 academic year the final fee increase was 8.19 per cent for boarding pupils and 8.10 per cent for day pupils and it was finalised on 13 June 2002.\footnote{See the minutes of the Annual General Meeting of Oakham’s School’s trustees held on 13 June 2002 (document AXZ230) and the answer to question 24 contained in Oakham School’s 8 March 2004 response (document AXZ096R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG023).} For the 2003/2004 academic year the final fee increase was 8.89 per cent for boarding pupils and 8.93 per cent for day pupils and it was finalised on 12 June 2003.\footnote{See the minutes of the Annual General Meeting of Oakham’s School’s Trustees held on 12 June 2003 (document AXZ236) and the answer to question 24 contained in Oakham School’s 8 March 2004 response (document AXZ096R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG023).}

Conclusion regarding Oakham School’s participation in the Sevenoaks Survey

849. In relation to the 2001/2002 academic year, the OFT considers that Oakham School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Oakham School and Oakham School has participated in the Sevenoaks Survey in two other relevant years;

- Oakham School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Oakham School at least one circulation of the Sevenoaks Survey for this year;

- Oakham School has stated that ‘Trustees have traditionally received a survey in May and June based on the Sevenoaks results...’; and

- extracts from Oakham School’s internal documents are consistent with Oakham School’s participation in the Survey for this academic year, including one that had a copy of a slightly revised version of a circulation of the Sevenoaks Survey attached to it.

850. In relation to the 2002/2003 academic year, the OFT considers that Oakham School participated in the Sevenoaks Survey on the basis that:

\footnote{See paragraphs 828 to 843 above.}
the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Oakham School and Oakham School has participated in the Sevenoaks Survey in two other relevant years;

Oakham School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

Oakham School has stated that 'Trustees have traditionally received a survey in May and June based on the Sevenoaks results...';

the Sevenoaks bursar or his assistant sent Oakham School at least one circulation of the Sevenoaks Survey for this year; and

extracts from Oakham School’s internal documents are consistent with Oakham School’s participation in the Survey for this academic year, including one that had a copy of a slightly revised version of a circulation of the Sevenoaks Survey attached to it.

851. In relation to the 2003/2004 academic year, the OFT considers that Oakham School participated in the Sevenoaks Survey on the basis that:

the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Oakham School and Oakham School has participated in the Sevenoaks Survey in two other relevant years;

Oakham School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

Oakham School has stated ‘Trustees have traditionally received a survey in May and June based on the Sevenoaks results...’;

the Sevenoaks bursar or his assistant sent Oakham School at least one circulation of the Sevenoaks Survey for this year; and

extracts from Oakham School’s internal documents are consistent with Oakham School’s participation in the Survey for this academic year.

852. The OFT therefore considers that Oakham School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 830 and 848 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Oakham School will have received at least one circulation of the Sevenoaks Survey containing competitors' estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.
853. The OFT concludes that the evidence set out above demonstrates that Oakham School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Oundle School**

**Evidence of participation in the Sevenoaks Survey**[^309]


856. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Oundle School contributed to the Sevenoaks Survey, Oundle School noted,

> 'To the best of our knowledge Oundle participated in the Sevenoaks Survey each year from January 2000.'[^315]

857. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004, Oundle School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools[^316]. The OFT considers that this demonstrates that Oundle School received at least one circulation of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004 by, respectively, 11 February 2002 and 11 March 2003.

858. Fourth, the OFT notes that a number of Oundle School’s internal documents for each of the academic years 2001/2002 to 2003/2004 are consistent with and further evidence for the conclusion that Oundle School participated in the Sevenoaks Survey in respect of those academic years.

[^309]: See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
[^314]: See the table at paragraph 870 below.
[^315]: The answer to question 15 contained in Oundle School’s 5 March 2004 response (document AXZ742R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG024).
[^316]: Documents LXT3412 and LXT2542 show, respectively, that the electronic mail address cwebb@oundle.co.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘oundle.co.uk’ – corresponds with the domain name for the electronic mail address of the headmaster of Oundle School that is recorded in Oundle School’s 5 March 2004 response (document AXZ742R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG024). The OFT therefore considers that Oundle School received the electronic mails described above that were sent to the electronic mail address cwebb@oundle.co.uk.
2001/2002 academic year

859. The OFT considers that the following extract from Oundle School’s internal documents is consistent with, and further evidence for, the conclusion that Oundle School participated in the Sevenoaks Survey for 2001/2002.

Minutes of the meeting of Oundle School’s Governing Body held on 22 June 2001

860. Paragraph 6g of the minutes states,

>'The Bursar tabled a schedule of fees applicable across the Rugby Group of schools and Governors discussed the level of fees for 2001/02. Following discussion it was agreed that the main boarding fee should be increased by 6.5% and the day fee increase was confirmed at 10%...'

(Emphasis added).

In response to a request under section 26 of the Act from the OFT\textsuperscript{847} to provide copies of the Sevenoaks Survey, Oundle School provided various documents and stated that,

>'Those copies, or versions thereof as reformatted by the Bursar, are disclosed amongst the papers at tabs 5 to 26.'

(Emphasis added).

Oundle School provided the OFT with a number of documents, including the minutes quoted above, and an index. The index set out the documents that Oundle School had provided by describing categories of documents by reference to the numbered tab that the documents were provided under. On the basis of the statement above, the OFT considers that fee surveys included amongst the papers provided by Oundle School at tabs 5 to 26 are copies or versions of the Sevenoaks Survey as reformatted by the bursar of Oundle School. The minutes quoted above were provided by Oundle School as one of a number of documents at tab 20 referred to in the index. The index describes the documents at tab 20 as, ‘Papers related to meeting of The Governing Body of Oundle School, 22 June 2001’\textsuperscript{848}.

861. Another document in the bundle of related papers at tab 20 is a list of 18 schools headed ‘Rugby Group Statistics 2001/02’. All of the 18 schools, save one are participants in the Sevenoaks Survey. The document lists, among other things, estimated fee increases for the academic year 2001/2002. Given that the list was provided in response to the OFT’s request for copies of the Sevenoaks Survey and that Oundle School said that it was providing ‘copies, or versions thereof as reformatted by the Bursar’, and notwithstanding that this list of 18 schools is headed ‘Rugby Group Statistics 2001/2002’, the OFT considers that the figures for the schools on the list that are participants in the Sevenoaks Survey come, at least in part, from the Sevenoaks Survey.

\textsuperscript{846} Document TXD1311.
\textsuperscript{847} See the OFT’s section 26 Notice to Oundle School dated 9 February 2004 (document SMG024).
\textsuperscript{848} Document AXZ742.
2002/2003 academic year

862. The OFT considers that the following extract from Oundle School’s internal documents is consistent with, and further evidence for, the conclusion that Oundle School participated in the Survey for 2002/2003.

Minutes of the meeting of Oundle School’s Finance Committee held on 19 February 2002

863. Paragraph 8 of the minutes states,

'The Bursar presented a schedule of current and estimated fee levels of independent schools. The committee agreed that Oundle was in a satisfactory position in comparison to other similar schools and recommended an increase of 6% on boarding fees and 10% on day fees in the preparation of the 2002–03 budget.' (Emphasis added).

The minutes quoted above were provided by Oundle School as one of a number of documents at tab 18 referred to in the index. As set out in paragraph 860 above, the papers provided at tabs 5 to 26 are described by Oundle School as being copies or versions of the Sevenoaks Survey as reformatted by the bursar. The index describes the documents at tab 18 as 'Papers related to meeting of Oundle School Finance Committee, 19 February 2002'. Another document in the bundle of related papers also at tab 18 is a list of schools. The schools listed in the table, and the fee increase figures recorded against the name of each school, are exactly the same as those listed in the 15 February 2002 circulation of the Sevenoaks Survey, although they are listed in a different order.

2003/2004 academic year

864. The OFT considers that the following extracts from Oundle School’s internal documents are consistent with and further evidence for the conclusion that Oundle School participated in the Sevenoaks Survey for 2003/2004.

Agenda for a meeting of Oundle School’s Finance Committee held on 25 February 2003

865. The agenda states at item 6,

‘Budget assumptions for 2003–04

(i) Fees…’

866. Attached to the agenda for the meeting is a list of boarding school fees which lists, among other things, estimated fee increases for the academic year 2003/2004 for a number of Participant schools. The OFT notes that this agenda is one of the documents provided under tab 12 referred to in

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849 Document AXZ799.
850 Document AXZ776.
the index of documents provided by Oundle School as part of its response to the OFT’s request for copies of the Sevenoaks Survey (see paragraph 860 above). The index describes the documents at tab 12 as, 'Papers related to meeting of Oundle School Finance Committee, 25 February 2003'.

Minutes of the meeting of Oundle School’s Finance Committee held on 25 February 2003

867. Paragraph 6 of the minutes states,

'The Bursar presented a schedule of current and estimated fee levels of independent schools, which forecast September 2003 fee increases of between 5% and 9%. Mindful of relevant factors, the Committee recommended an increase of 6% on boarding fees and 10% on day fees for the purposes of the initial preparation of the 2003–04 budget.'

(Emphasis added).

Fee–setting process

868. Oundle School’s fee–setting process during the relevant period can, in essence, be described as follows. The process commences in February or March of each academic year with discussion between Oundle School’s bursar and finance bursar. The two bursars take into account factors that affect Oundle School’s cost base, including teachers’ salaries, and take into account certain financial targets, such as a target surplus. Initial budget assumptions as to percentage fee and salary increases are put to Oundle School’s Finance Committee and Oundle School’s Governing Body in the February or March meetings of those entities each academic year. The resulting budget is reviewed at a Finance Meeting held in May or June of each academic year before the budget and fees are finally approved by Oundle School’s Governing Body at its meeting in June or July.

Timing of the Sevenoaks Survey in relation to the fee–setting process

869. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Oundle School, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Oundle School, and Oundle School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

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851 Document AXZ775.
852 The description of Oundle School’s fee–setting process is taken from the answer to question 6 contained in Oundle School’s 5 March 2004 response (document AXZ742R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG024).
The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Oundle School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004. The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.

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<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
<th>Circulations</th>
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Other circulations:  

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<tr>
<td>14 February</td>
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<td>26 February</td>
<td>6</td>
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<tr>
<td>14 March</td>
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<tr>
<td>17 March</td>
<td>6</td>
<td>10</td>
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</table>

Second main circulation of Sevenoaks Survey  

<table>
<thead>
<tr>
<th></th>
<th>17 April</th>
<th>6</th>
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<tbody>
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<td>17 April</td>
<td>6</td>
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Other circulations:  

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<tbody>
<tr>
<td>17 April</td>
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</table>

Finalisation of fee increases

871. The final fee increases for Oundle School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 6.5 per cent for boarding pupils and 10 per cent for day pupils and it was finalised on 22 June 2001. For the 2002/2003 academic year the final fee increase was 6.7 per cent for boarding pupils and 10 per cent for day pupils and it was finalised on 21 June 2002. For the 2003/2004 academic year the final fee increase was 8 per cent for boarding pupils and 12 per cent for day pupils and it was finalised on 27 June 2003.

Conclusion regarding Oundle School’s participation in the Sevenoaks Survey

872. In relation to the 2001/2002 academic year, the OFT considers that Oundle School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Oundle School and Oundle School has participated in the Sevenoaks Survey in two other relevant years;

- Oundle School has stated that it contributed to the Sevenoaks Survey in respect of this academic year; and

- an extract from one of Oundle School’s internal documents (referring to a schedule of fees applicable across the Rugby Group of schools, which the OFT infers from Oundle School’s response to

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854 See section 6 g) in the Minutes of the meeting of the Oundle School Governing Body held on 22 June 2001 (document TXD1311).
855 See section 9 e) in the Minutes of the meeting of the Oundle School Governing Body held on 21 June 2002 (document AXZ783), approving the fee levels proposed by the 5 June 2002 meeting of Oundle School’s Finance Committee (document AXZ787).
856 See section 8 f) in the Minutes of the meeting of the Oundle School Governing Body held on 27 June 2003 (document AXZ766), approving the fee levels proposed by the 4 June 2003 meeting of Oundle School’s Finance Committee (document AXZ769).
857 See paragraphs 855 to 867 above.
an OFT request for information was based, at least in part, on the Sevenoaks Survey) is consistent with Oundle School’s participation in the Survey in respect of this academic year.

873. In relation to the 2002/2003 academic year, the OFT considers that Oundle School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Oundle School and Oundle School has participated in the Sevenoaks Survey in two other relevant years;

- Oundle School has stated that it contributed to the Sevenoaks Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Oundle School at least one circulation of the Sevenoaks Survey for this year; and

- an extract from one of Oundle School’s internal documents (referring to a schedule of current and estimated fee levels, which the OFT infers from Oundle School’s response to an OFT request for information was based, at least in part, on the Sevenoaks Survey) is consistent with Oundle School’s participation in the Survey in respect of this academic year.

874. In relation to the 2003/2004 academic year, the OFT considers that Oundle School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Oundle School and Oundle School has participated in the Sevenoaks Survey in two other relevant years;

- Oundle School has stated that it contributed to the Sevenoaks Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Oundle School at least one circulation of the Sevenoaks Survey for this year; and

- an extract from one of Oundle School’s internal documents (referring to a schedule of current and estimated fee levels, which the OFT infers from Oundle School’s response to an OFT request for information was based, at least in part, on the Sevenoaks Survey) is consistent with Oundle School’s participation in the Survey in respect of this academic year.

875. The OFT therefore considers that Oundle School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 857 and 871 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Oundle School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.
The OFT concludes that the evidence set out above demonstrates that Oundle School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Radley College**

*Evidence of participation in the Sevenoaks Survey*[^858]


First, the Sevenoaks Survey includes fee-increase estimates for Radley College for each of the years 2001/2002, 2002/2003 and 2003/2004.[^859]

Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Radley College contributed to the Sevenoaks Survey, Radley College noted,

> 'Radley has contributed to the Sevenoaks Survey, at least over the past 5 years.'[^860]

Enclosed with Radley College’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the year 2003/2004 that Radley College received from the Sevenoaks bursar or his assistant.

Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Radley College was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools[^861]. The OFT considers that this demonstrates that Radley College received at least one circulation of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 14 May 2001, 11 February 2002 and 11 March 2003.

[^858]: See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
[^859]: See the table at paragraph 890 below.
[^860]: The answer to question 15 contained in Radley College’s 8 March 2004 response (document SJN1111R) to the OFT’s section 26 Notice to it dated 9 February 2004.
[^861]: Documents LXT3405, LXT3412 and LXT2542 show, respectively, that the electronic mail address RPLB@radley.org.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘radley.org.uk’ – corresponds with the domain name for the electronic mail address of the bursar of Radley College that is recorded in Radley College’s 8 March 2004 response (document SJN1111R) to the OFT’s section 26 Notice to it dated 9 February 2004. The OFT therefore considers that Radley College received the electronic mails described above that were sent to the electronic mail address RPLB@radley.org.uk.
Fourth, the OFT notes that a number of Radley College’s internal documents for each of the academic years 2001/2002 and 2002/2003 are consistent with and further evidence for the conclusion that Radley College participated in the Sevenoaks Survey in respect of those academic years.

2001/2002 academic year

The OFT considers that the following extracts from Radley College’s internal documents are consistent with and further evidence for the conclusion that Radley College participated in the Sevenoaks Survey for 2001/2002.

Minutes of a meeting of Radley College’s Council held on 15 and 16 June 2001

Paragraph 15/01 of the minutes states,

'Mr Morris–Adams reported that, although the Bursar had recommended initially an increase in fees to £5,800 per term, the GPC felt, in the light of how other schools’ fees were being increased, it would recommend an increase of 6.9% to £5,850… it was agreed unanimously to increase fees to £5,850 per term with effect from September 2001…'

(Emphasis added).

Attached to these minutes is a document headed ‘Council Agenda Item 3(b)’, dated 6 June 2001, which is a copy of a memorandum to the members of Radley College’s Council from the bursar. This states, ‘I attach overleaf a recent survey of estimated fee increases for September 2001.

This information is correct at 6th June, although I suspect a few may increase their fees still further. There have been significant increases over the past two months as schools have seen what fee levels others have been setting. I proposed to the GPC an increase to £5,800 per term, but the GPC decided to recommend a larger increase to £5,850 per term (i.e. £17,550 per annum). In the light of movements by other schools this further increase looks entirely reasonable.’

(Emphasis added).

Attached to this memorandum is a list of the boarding fee increases for 44 schools that participated in the Sevenoaks Survey and fee information that relates to them. The list is headed ‘ESTIMATED OR FIXED FEES 2001/02’. The list also states,

‘As at 6 June 2001. Amendments since 14.5.2001 are shown in italics.’

The OFT notes that 14 May 2001 is the date that a circulation of the Sevenoaks Survey for the academic year 2001/2002 was issued by the Sevenoaks bursar.

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862 Document SJN1126.
863 Document SJN1127.
The OFT considers that the following extracts from Radley College’s internal documents are consistent with and further evidence for the conclusion that Radley College participated in the Sevenoaks Survey for 2002/2003.

Minutes of a meeting of Radley College’s General Purposes Committee held on 21 May 2002

A sub-heading, ‘Fees’, under paragraph 118/2 of the minutes states,

‘The Bursar had circulated a schedule showing the estimated fees for September 2002 for a number of similar schools. Many of these have yet to be agreed by their governing bodies and past experience suggests that most will increase their fees still further... the Bursar had proposed a termly fee of £6,300, which represents an increase of 7.7%. Following a discussion which also compared the relative merits of Radley to other schools levying higher fees, it was agreed to recommend to the Council an increase in the termly fees to £6,350 per term, or 8.5%.’

(Emphasis added).

Agenda Item 3b for a meeting of Radley College’s Council held on 14 and 15 June 2002

Attached to the minutes of the meeting of Radley College’s Council held on 14 and 15 June 2002 is a memorandum entitled ‘Re: Radley Fees for 2002/03’. The memorandum states,

‘I attach overleaf an up to date survey of estimated fee increases for September 2002. (Red indicates adjustments since the GPC meeting)’

(Emphasis added).

Attached to the memorandum is a list of the boarding fee increase figures for 46 schools that participated in the Sevenoaks Survey. The list is headed ‘ESTIMATED OR FIXED FEES 2002/03’. The list also states,

‘Red = Figures updated as at 10 June 2002
E = Estimated
F = Fixed
EG = Approved by GPC or F & GP but subject to confirmation by Governing Body.’

Given that the schools on the list are all participants in the Sevenoaks Survey and the other evidence of Radley College’s participation in the Survey in respect of the 2002/2003 academic year (see paragraphs 878 to 880 above), the OFT considers that

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864 Document SJN1150.
865 Document SJN1131.
the table of figures is an updated version of a circulation of the

Minutes of a meeting of Radley College's Council held on 14 and 15 June
2002

887. A sub-heading, 'Fees', under paragraph 14/02 of the minutes states,

'Mr Morris–Adams reported that, although the Bursar had recommended
initially an increase in fees to £6,300 per term, the GPC felt, in the light
of how other schools' fees were being increased, and the need to reduce
pressure on the budget surplus, it would recommend an increase of 8.5%
to £6,350 per term…'

(Emphasis added).

Fee–setting process

888. Radley College’s fee–setting process during the relevant period can, in
essence, be described as follows867. In early April of each academic year
budget holders at Radley College are asked to review their budget
requirement for the following financial year. At the same time that budget
holders review requirements, Radley College’s bursar carries out an
analysis of likely salary increases. Radley College also takes into account
certain financial targets, such as a target surplus. These exercises
culminate in the completion of a draft budget for Radley College. Once all
budget costs have been assembled the bursar proposes a recommended
fee increase to Radley College's General Purposes Committee ('the GPC').
On the basis of this recommendation the GPC agrees a fee level which
they then submit to the June meeting of Radley College’s Council. The
Council considers the recommendation and approves the final fee
increase. Shortly after the Council’s decision on fees, parents will receive
a letter from Radley College notifying them of fee increases.

Timing of the Sevenoaks Survey in relation to the fee–setting process

889. The OFT notes that according to the Sevenoaks bursar’s witness
statement, as set out at paragraphs 316 to 321 above, the circulations of
the results of the Sevenoaks Survey would have been sent to the
Participant schools, including Radley College, at distinct points in its fee–
setting process. Towards the end of January or in early February the
Sevenoaks bursar's request for prospective fee increases would have been
sent to the Participant schools, including Radley College, and Radley
College would have submitted an estimate to the Survey. The results of
this first request for information would have been circulated in mid–
February and the results of the second request for information would
have been circulated in May. After each of the two main circulations, the
Sevenoaks bursar would have sent out a number of circulations, the
precise number of which varied from year to year.

866 Document SJN1130.
867 The description of Radley College’s fee–setting process is taken from the answer to question 6
contained in Radley College’s 8 March 2004 response (document SJN1111R) to the OFT’s
The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Radley College in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004. The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2001/2002</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Circulations</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>13 February</td>
<td>4.5</td>
<td>–</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May</td>
<td>4.5</td>
<td>–</td>
</tr>
<tr>
<td></td>
<td>8 May</td>
<td>5.6</td>
<td>–</td>
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<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>14 May</td>
<td>5.6</td>
<td>–</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>17 May</td>
<td>5.6</td>
<td>–</td>
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<tr>
<td></td>
<td>29 May</td>
<td>5.6</td>
<td>–</td>
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<tr>
<td></td>
<td>25 June</td>
<td>5.6</td>
<td>–</td>
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<tr>
<td><strong>2002/2003</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>11 February</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>15 February</td>
<td>4.8</td>
<td>–</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>22 April</td>
<td>6</td>
<td>–</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>11 June</td>
<td>6</td>
<td>–</td>
</tr>
<tr>
<td><strong>2003/2004</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>12 February</td>
<td>–</td>
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</tr>
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</table>

868 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
891. The final fee increases for Radley College during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 6.9 per cent for boarding pupils and it was finalised on 15 June 2001. For the 2002/2003 academic year the final fee increase was 8.5 per cent for boarding pupils and it was finalised on 14 and 15 June 2002. For the 2003/2004 academic year the final fee increase was 7.95 per cent for boarding pupils and it was finalised on 13 and 14 June 2003.

892. In relation to the 2001/2002 academic year, the OFT considers that Radley College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Radley College and Radley College has participated in the Sevenoaks Survey in two other relevant years;
- Radley College has stated that it contributed to the Sevenoaks Survey in respect of this academic year;
- the Sevenoaks bursar or his assistant sent Radley College at least one circulation of the Sevenoaks Survey for this year; and
- extracts from a number of Radley College’s internal documents are consistent with Radley College’s participation in the Sevenoaks Survey for this academic year, including one that had what would

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869 See page 4 of the minutes of the meeting of the Radley College Council held on 15 June 2001 (document SJN1126).
870 See page 4 of the minutes of the meeting of the Radley College Council held on 14 and 15 June 2002 (document SJN1130).
871 See section 121/03 of the minutes of the meeting of the Radley College Council Governors held on 13 and 14 June 2003 (document SJN1135).
872 See paragraphs 878 to 887 above.
appear to be a slightly revised version of a circulation of the Sevenoaks Survey attached to it.

893. In relation to the 2002/2003 academic year, the OFT considers that Radley College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Radley College and Radley College has participated in the Sevenoaks Survey in two other relevant years;

- Radley College has stated that it contributed to the Sevenoaks Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Radley College at least one circulation of the Sevenoaks Survey for this year; and

- extracts from a number of Radley College’s internal documents are consistent with Radley College’s participation in the Sevenoaks Survey for this academic year, including one that had what would appear to be a slightly revised version of a circulation of the Sevenoaks Survey attached to it.

894. In relation to the 2003/2004 academic year, the OFT considers that Radley College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Radley College and Radley College has participated in the Sevenoaks Survey in two other relevant years;

- Radley College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Radley College at least one circulation of the Sevenoaks Survey for this year.

895. The OFT therefore considers that Radley College both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 880 and 891 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Radley College will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

896. The OFT concludes that the evidence set out above demonstrates that Radley College participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.
Repton School

Evidence of participation in the Sevenoaks Survey


898. First, the Sevenoaks Survey includes fee-increase estimates for Repton School for each of the years 2001/2002, 2002/2003 and 2003/2004.\(^\text{874}\)

899. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Repton School contributed to the Sevenoaks Survey, Repton School noted,

'Repton School contributed to the Sevenoaks survey in each year from 2000 to 2003.'\(^\text{875}\)

Enclosed with Repton School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2001/2002 to 2003/2004 that Repton School received from the Sevenoaks bursar or his assistant.

900. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Repton School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools.\(^\text{876}\) The OFT considers that this demonstrates that Repton School received at least one circulation of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 14 May 2001, 11 February 2002 and 11 March 2003.

Fee–setting process

901. Repton School’s fee–setting process during the relevant period can, in essence, be described as follows.\(^\text{877}\) In January, Repton School’s bursar sends a note to all budget holders asking them to submit requests for budgets for the coming academic year. These requests are returned to the bursar in February and the bursar then asks Repton School’s headmaster

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\(^{873}\) See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.

\(^{874}\) See the table at paragraph 904 below.

\(^{875}\) The answer to question 6 contained in Repton’s 12 March 2004 response (document LXT461R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG025).

\(^{876}\) Documents LXT3405, LXT3412 and LXT2542 show, respectively, that the electronic mail address bursar@repton.org.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘repton.org.uk’ – corresponds with the domain name for the Repton School’s website, www.repton.org.uk. The OFT therefore considers that Repton School received the electronic mails described above that were sent to the electronic mail address bursar@repton.org.uk.

\(^{877}\) The description of Repton’s fee–setting process is taken from the answer to question 6 contained in Repton’s 12 March 2004 response (document LXT461R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG025).
for his views on various budgeting issues, including prospective fee increases. In February, Repton School also considers the budget requests submitted to the bursar through two screening committees each of which comprises senior members of staff. In March, the outcome of the screening committees is provided to the finance bursar who feeds this and other information into Repton School’s budget model. Informal meetings between the Chairman of the Finance committee, the finance bursar and the bursar take place in April to refine draft budgets. A formal meeting of the Finance Committee in May scrutinises Repton School’s draft budgets and makes recommendations to Repton School’s Standing Committee, including recommendations on fee increases based on detailed expenditure budgets.

902. Repton School’s Standing Committee and Remuneration Committee both meet in June to consider, respectively, the draft budgets resulting from the recommendations of the Finance Committee and the remuneration of senior staff. The decisions resulting from this meeting are fed into Repton School’s budget model. Later in June, the budgets and recommendations based on this process are submitted to Repton School’s full Governing Body. Remuneration, fees and the budgets are considered and approved, although some aspects of the budget may not receive final confirmation until later in the year. Fee increases are notified to parents in early July.

Timing of the Sevenoaks Survey in relation to the fee–setting process

903. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Repton School, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Repton School, and Repton School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

904. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Repton School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

878 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
<table>
<thead>
<tr>
<th>Year</th>
<th>Circulations</th>
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</thead>
<tbody>
<tr>
<td><strong>2001/2002</strong></td>
<td></td>
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<tr>
<td><strong>Boarding Day</strong></td>
<td></td>
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<tr>
<td><strong>First main circulation of Sevenoaks Survey</strong></td>
<td>13 February</td>
</tr>
<tr>
<td><strong>Other circulations:</strong></td>
<td>1 May</td>
</tr>
<tr>
<td></td>
<td>8 May</td>
</tr>
<tr>
<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
<td>14 May</td>
</tr>
<tr>
<td><strong>Other circulations:</strong></td>
<td>17 May</td>
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<tr>
<td></td>
<td>29 May</td>
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<tr>
<td></td>
<td>25 June</td>
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<tr>
<td><strong>2002/2003</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Boarding Day</strong></td>
<td></td>
</tr>
<tr>
<td><strong>First main circulation of Sevenoaks Survey</strong></td>
<td>11 February</td>
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<tr>
<td><strong>Other circulations:</strong></td>
<td>15 February</td>
</tr>
<tr>
<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
<td>22 April</td>
</tr>
<tr>
<td><strong>Other circulations:</strong></td>
<td>11 June</td>
</tr>
<tr>
<td><strong>2003/2004</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Boarding Day</strong></td>
<td></td>
</tr>
<tr>
<td><strong>First main circulation of Sevenoaks Survey</strong></td>
<td>12 February</td>
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<tr>
<td><strong>Other circulations:</strong></td>
<td>14 February</td>
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<tr>
<td></td>
<td>26 February</td>
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<tr>
<td></td>
<td>14 March</td>
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</tbody>
</table>
Finalisation of fee increases

905. The final fee increases for Repton School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 6.57 per cent for boarding pupils and 6.58 per cent. For the 2002/2003 academic year the final fee increase was 8.50 per cent for boarding pupils and 8.56 per cent for day pupils. For the 2003/2004 academic year the final fee increase was 9.47 per cent for boarding pupils and 9.51 per cent for day pupils879.

Conclusion regarding Repton School’s participation in the Sevenoaks Survey880

906. In relation to the 2001/2002 academic year, the OFT considers that Repton School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Repton School and Repton School has participated in the Sevenoaks Survey in two other relevant years;

- Repton School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Repton School at least one circulation of the Sevenoaks Survey for this year.

907. In relation to the 2002/2003 academic year, the OFT considers that Repton School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Repton School and Repton School has participated in the Sevenoaks Survey in two other relevant years;

- Repton School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided

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879 See the answer to question 24 contained in Repton School’s 12 March 2004 response (documents LXT605 and LXT461R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG025). It should be noted that for each of these academic years, 2001/2002 to 2003/2004, the OFT does not have specific documentation to show the date on which the fee increase was finalised but given Repton School’s explanation that fee increases are likely to be approved each June – see paragraph 902 above – the OFT considers that the fee increases for these academic years were finalised each June.

880 See paragraphs 898 to 905 above.
the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Repton School at least one circulation of the Sevenoaks Survey for this year.

908. In relation to the 2003/2004 academic year, the OFT considers that Repton School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Repton School and Repton School has participated in the Sevenoaks Survey in two other relevant years;

- Repton School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Repton School at least one circulation of the Sevenoaks Survey for this year.

909. The OFT therefore considers that Repton School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 900 and 905 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Repton School will have received at least one circulation of the Sevenoaks Survey containing competitors' estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

910. The OFT concludes that the evidence set out above demonstrates that Repton School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Royal Hospital School**

*Evidence of participation in the Sevenoaks Survey*


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881 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
913. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Royal Hospital School contributed to the Sevenoaks Survey, Royal Hospital School stated,


Enclosed with Royal Hospital School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of the years 2001/2002 to 2003/2004 that Royal Hospital School received from the Sevenoaks bursar or his assistant.

914. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004, Royal Hospital School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools\textsuperscript{884}. The OFT considers that this demonstrates that Royal Hospital School received at least one circulation of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004 by, respectively, 11 February 2002 and 11 March 2003.

\textit{Fee–setting process}

915. Royal Hospital School’s fee–setting process during the time period that the OFT is considering in this Decision can, in essence, be described as follows\textsuperscript{885}. In the autumn term of an academic year the bursar and the senior management team of Royal Hospital School meet to consider a draft budget and to agree priorities regarding expenditure. The draft budget was sent to Greenwich Hospital in early January. As a separate exercise, the Clerk in Charge at Greenwich Hospital, on behalf of the Director of Greenwich Hospital, reviewed the draft budget sent to it by Royal Hospital School and produced a note in mid–January of each year, containing proposals as to what Greenwich Hospital considered were appropriate prospective fee increases (‘the Note’). Greenwich Hospital does not consult formally with Royal Hospital School in the preparation of this Note.

916. Greenwich Hospital sends the Note to Royal Hospital School and the Note is considered by the Finance Sub Committee of Royal Hospital School’s Board of Governors in late January or in early February each year. Subject

\textsuperscript{882} See the table at paragraph 919 below.
\textsuperscript{883} The answer to question 7 contained in Royal Hospital School’s 19 March 2004 response (document JXS0088A) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG026).
\textsuperscript{884} Documents LXT3412 and LXT2542 show, respectively, that the electronic mail address bursar@royalhospitalschool.org was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘royalhospitalschool.org’ – corresponds with the domain name for the Royal Hospital School’s website and contact details for the school given on its website: see http://www.royalhospitalschool.org/contacts.asp?MENU=PAR. The OFT therefore considers that Royal Hospital School received the electronic mails described above that were sent to the electronic mail address bursar@royalhospitalschool.org.
\textsuperscript{885} The description of Royal Hospital School’s fee–setting process is taken from the answer to question 6 contained in Royal Hospital School’s 19 March 2004 response (document JXS0088A) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG026).
to any alterations by this committee, the proposals are formally submitted to a full meeting of Royal Hospital School’s Board of Governors at the end of February or in early March each year. The Board of Governors considers the proposals and then determines the fees for the coming academic year.

917. The OFT notes that Royal Hospital School has a number of different fees that apply to different categories of pupils. However, the OFT also notes that the figures for Royal Hospital School in the Sevenoaks Survey circulations and circulation updates for the years 2001/2002 to 2003/2004 record only a single boarding and a single day fee for Royal Hospital School. The OFT takes the view that it was the submission of these figures that was the subject of the infringements considered in this Decision and that, therefore, the fact that Royal Hospital School had a number of other fees and fee categories is irrelevant to the establishment of the infringement.

Timing of the Sevenoaks Survey in relation to the fee–setting process

918. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Royal Hospital School, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Royal Hospital School, and Royal Hospital School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

919. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Royal Hospital School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boarding</td>
</tr>
<tr>
<td>2001 / 2002</td>
<td></td>
</tr>
<tr>
<td>First circulation of Sevenoaks Survey</td>
<td>13 February</td>
</tr>
<tr>
<td>Sevenoaks circulation Updates:</td>
<td>1 May</td>
</tr>
<tr>
<td></td>
<td>8 May</td>
</tr>
</tbody>
</table>

886 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
| **Second circulation of Sevenoaks Survey** | 14 May | 8.6 | 8 |
| | | | |
| **Other circulations:** | 17 May | 8.6 | 8 |
| | 29 May | 8.6 | 8 |
| | 25 June | 8.6 | 8 |

| **2002 / 2003** | **Boarding** | **Day** |
| | | |
| **First circulation of Sevenoaks Survey** | 11 February | 7 | 7 |
| **Other circulations** | 15 February | 7 | 7 |
| **Second circulation of Sevenoaks Survey** | 22 April | 8 | 8 |
| **Other circulations:** | 11 June | 8 | 8 |

| **2003 / 2004** | **Boarding** | **Day** |
| | | |
| **First circulation of Sevenoaks Survey** | 12 February | 11.6 | 10 |
| **Other circulations:** | 14 February | 11.6 | 10 |
| | 26 February | 11.6 | 10 |
| | 14 March | 11.6 | 10 |
| | 17 March | 11.6 | 10 |
| **Second circulation of Sevenoaks Survey** | 17 April | 11.6 | 10 |
| **Other circulations:** | – | – | – |

**Finalisation of fee increases**

920. The final fee increases for Royal Hospital School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 8.6 per cent for boarding pupils and 8 per cent for day pupils and it
was finalised on 1 March 2001\textsuperscript{887}. For the 2002/2003 academic year the final fee increase was 8 per cent for boarding pupils and it was finalised on 28 February 2002\textsuperscript{888}. For the 2003/2004 academic year the final fee increase was 11.6 per cent for boarding pupils and it was finalised on 27 February 2003\textsuperscript{889}.

Conclusion regarding Royal Hospital School’s participation in the Sevenoaks Survey\textsuperscript{890}

921. In relation to the 2001/2002 academic year, the OFT considers that Royal Hospital School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Royal Hospital School and Royal Hospital School has participated in the Sevenoaks Survey in two other relevant years; and

- Royal Hospital School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year.

922. In relation to the 2002/2003 academic year, the OFT considers that Royal Hospital School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Royal Hospital School and Royal Hospital School has participated in the Sevenoaks Survey in two other relevant years;

- Royal Hospital School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Royal Hospital School least one circulation of the Sevenoaks Survey for this year.

\textsuperscript{887} See paragraph 18 and Annex A of the 31 January 2001 Note of the Director of Greenwich Hospital (document JXS0012); paragraphs 15 to 27 of the minutes of the meeting of Royal Hospital School's Finance sub–committee held on 7 February 2001 (document JXS0013); paragraphs 18, 19 and Annex A of the 22 February 2001 Note of the Director of Greenwich Hospital (document JXS0014); and paragraph 18 of the Minutes of the meeting of the Board of Governors of Royal Hospital School held on 1 March 2001 (document JXS0015).

\textsuperscript{888} See paragraphs 14 and 15 of the minutes of Royal Hospital School’s Finance sub–committee held on 6 February 2002 (document JXS0021); paragraphs 12, 13b and Annex A of the 21 February 2002 Note of the Director of Greenwich Hospital (document JXS0022); and paragraph 15 of the Minutes of the meeting of the Board of Governors of Royal Hospital School held on 28 February 2002 (document JXS0023).

\textsuperscript{889} See paragraphs 9 (d) and (e) of the minutes of Royal Hospital School’s Finance sub–committee held on 5 February 2003 (document JXS0028); paragraph 5 of the 20 February 2003 Note of the Director of Greenwich Hospital (document JXS0029); and paragraph 19 of the Minutes of the meeting of the Board of Governors of Royal Hospital School held on 27 February 2003 (document JXS0030).

\textsuperscript{890} See paragraphs 912 to 914 above.
923. In relation to the 2003/2004 academic year, the OFT considers that Royal Hospital School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Royal Hospital School and Royal Hospital School has participated in the Sevenoaks Survey in two other relevant years;

- Royal Hospital School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Royal Hospital School at least one circulation of the Sevenoaks Survey for this year.

924. The OFT therefore considers that Royal Hospital School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 913, 914 and 920 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Royal Hospital School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases. The OFT also notes that the school did not increase its fees from the original recommendation made by the Director of Greenwich Hospital produced by the Clerk in Charge (for 2001/2002 and 2003/2004) or the Finance Sub-Committee recommendation (for 2002/2003), each of which is dated before the first circulation of the Sevenoaks Survey in the respective years.

925. The OFT concludes that the evidence set out above demonstrates that Royal Hospital School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Rugby School**

**Evidence of participation in the Sevenoaks Survey**


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891 The OFT notes that Royal Hospital School stated in the Schools’ Joint Factual Statement (document JM 01–a) in relation to this paragraph, ‘The second sentence of this paragraph is factually correct, but it should be set in context by noting that the school did not increase its fees from the original recommendation by the Director Greenwich Hospital produced by the Clerk in Charge (for 2001/2002 and 2003/2004) or the Finance Sub–Committee recommendation (for 2002/2003), each of which is dated before the receipt of the Sevenoaks Survey circulation.’

892 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
927. First, the Sevenoaks Survey includes fee-increase estimates for Rugby School for the year academic year 2001/2002.893

928. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Rugby contributed to the Sevenoaks Survey, Rugby School noted,

'The Bursar has not retained copies of the surveys of all of these years... However, he believes that he contributed input in each of these years; usually around May. During this period, the Bursar believes that he was also invited to contribute input in February but that he usually (and perhaps always) declined to do so at that time. Whether or not the Bursar actually contributed data from Rugby School, the Sevenoaks Bursar consistently sent him copies of the survey throughout this period, although this was not solicited.'894

Enclosed with Rugby School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of the academic year 2003/2004 that Rugby School received from the Sevenoaks bursar or his assistant.

929. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Rugby School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools. The OFT considers that this demonstrates that Rugby School received at least one circulation of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003.

893 See the table at paragraph 935 below.
894 The answer to question 15 contained in Rugby School’s 5 March 2004 response (document TXD1378R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG027).
895 Documents LXT2749 and AXZ518 show, respectively, that the electronic mail address gmr@rugby–school.warwks.sch.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002 and 2002/2003. The OFT does not have specific evidence to demonstrate that the electronic mail address gmr@rugby–school.warwks.sch.uk was used by Rugby School but the OFT notes that the domain name for this electronic mail address – ‘rugby–school.warwks.sch.uk’ – was previously the domain name for Rugby School’s website: see http://www.rugby–school.warwks.sch.uk/. The OFT infers from this fact and from the fact that the Sevenoaks bursar sent circulations of the Sevenoaks Survey to this address regularly over two years that, at the time the electronic mails shown in documents LXT2749 and AXZ518 were sent, the electronic mail address gmr@rugby–school.warwks.sch.uk was a valid address for Rugby School. The OFT therefore considers that Rugby School received the electronic mails described above that were sent to the electronic mail address gmr@rugby–school.warwks.sch.uk. Document LXT2542 shows that the electronic mail address gmr@rugbyschool.net was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic year 2003/2004. The OFT notes that the domain name in the electronic mail address – ‘rugbyschool.net’ – corresponds with the domain name for the electronic mail address of the bursar of Rugby School that is recorded on Rugby School’s 5 March 2004 response (document TXD1387R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG027). The OFT therefore considers that Rugby School received the electronic mails described above that were sent to the electronic mail address gmr@rugbyschool.net. The OFT also notes that Rugby School confirmed in its 6 October 2005 response (document MDB0070L) to the OFT’s section 26 Notice to it dated 4 October 2005 (document MDB0045F) that the electronic mail address gmr@rugbyschool.net was a valid electronic mail address for an individual who was the bursar and Clerk to the Governors of Rugby School from 23 March 2001 to December 2003.
930. Fourth, the OFT notes that one of Rugby School’s internal documents for the academic years 2001/2002 (which includes an express reference to a survey of 49 schools undertaken by Sevenoaks) is consistent with, and further evidence for, the conclusion that Rugby School participated in the Sevenoaks Survey in respect of this academic year.

2001/2002 academic year

931. The OFT considers that the following extract from Rugby School’s internal documents is consistent with, and further evidence for, the conclusion that Rugby School participated in the Sevenoaks Survey for 2001/2002.

Budget Proposal: 2001/02, attachment 8 to the agenda for the meeting of Rugby School’s Finance Committee held on 5 June 2001

932. Paragraph 3, ‘Fees’, on page 2 of the Budget Proposal states,

‘The first draft budget assumed a 5.8% increase in the year’s boarding fee to £17,325 with other fees following pro-rata. The Senior Management Team resolved to recommend that the increase be lifted to 6.2% (£17,400 p.a.) and also that Marshall House fees be increased by 7.1% to £6,300 p.a… In making these decisions, the Management Team took note of the latest estimates from other independent schools. While the figures are in most cases subject to final Governing Body decisions, a survey of 49 schools undertaken by Sevenoaks projects average fee increases of 6.6%… Past experience suggests that the actual level of increases tends to creep up a little from the estimates that are made at this stage.’

(Emphasis added).

Fee–setting process

933. Rugby School’s fee–setting process during the relevant period can, in essence, be described as follows897. Rugby School’s fee–setting procedure takes place within the context of a full review of the proposed annual budget and against the backdrop of factors that affect its cost base, including teachers’ salaries, and also certain financial targets, such as a target surplus and Rugby School’s five year financial forecast (using broad assumptions relating to income and expenditure) that is updated each year. Rugby School’s bursar commences the annual budget process by updating the five year forecast and then discussing it with Rugby School’s Finance Committee – this usually takes place in February of each year. The bursar begins preparation of the detailed budget in approximately March of each year by considering bids for funds from budget holders at Rugby School and considering various cost increases. Rugby School’s

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896 Document TXD1414.
897 The description of Rugby’s fee–setting process is taken from the answer to question 6 contained in Rugby’s 5 March 2004 response (document TXD1378R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG027).
Governing Body considers the draft budget and approves it, including fee increases, if it sees fit. Following this, the Chairman of Governors writes to parents in June to inform them of the amount of the fee increase for the coming academic year.

**Timing of the Sevenoaks Survey in relation to the fee-setting process**

934. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Rugby School, at distinct points in its fee-setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Rugby School, and Rugby School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid-February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

935. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Rugby School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.  

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boarding</td>
</tr>
<tr>
<td><strong>2001/2002</strong></td>
<td></td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>13 February</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May</td>
</tr>
<tr>
<td></td>
<td>8 May</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>14 May</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>17 May</td>
</tr>
<tr>
<td></td>
<td>29 May</td>
</tr>
<tr>
<td></td>
<td>25 June</td>
</tr>
</tbody>
</table>

898 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
### Finalisation of fee increases

936. The final fee increases for Rugby School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 6.84 per cent for boarding pupils and 7.01 per cent for day pupils and it was finalised in March 2001936. For the 2002/2003 academic year the final fee increase was 7.7 per cent for both boarding pupils and day pupils and it was finalised on 20 June 2002900. For the 2003/2004 academic

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### Table: Circulation dates of the Sevenoaks Survey

<table>
<thead>
<tr>
<th>Year</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002/2003</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First main</td>
<td>11 February</td>
<td>–</td>
</tr>
<tr>
<td>circulation of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sevenoaks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Survey</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>15 February</td>
<td>–</td>
</tr>
<tr>
<td>circulations:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>22 April</td>
<td>–</td>
</tr>
<tr>
<td></td>
<td>11 June</td>
<td>–</td>
</tr>
<tr>
<td>2003/2004</td>
<td></td>
<td></td>
</tr>
<tr>
<td>First main</td>
<td>12 February</td>
<td>–</td>
</tr>
<tr>
<td>circulation of</td>
<td></td>
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<tr>
<td>Sevenoaks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Survey</td>
<td></td>
<td></td>
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<tr>
<td>Other</td>
<td>14 February</td>
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</tr>
<tr>
<td></td>
<td>26 February</td>
<td>–</td>
</tr>
<tr>
<td></td>
<td>14 March</td>
<td>–</td>
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<tr>
<td></td>
<td>17 March</td>
<td>–</td>
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<tr>
<td>Second main</td>
<td>17 April</td>
<td>–</td>
</tr>
<tr>
<td>circulation of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sevenoaks</td>
<td></td>
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<tr>
<td>Survey</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td>–</td>
</tr>
<tr>
<td>circulations:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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936 See paragraph 5.2 of the minutes of Rugby School’s Governing Body held on 21 June 2001 (document TXD1413) and the answer to question 32 contained in Rugby School’s 5 March 2004 response (document TXD1378R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG027).

900 See paragraph 5.2 of the minutes of Rugby School’s Governing Body held on 20 June 2002 (document TXD1405).
year the final fee increase was 9 per cent for boarding pupils and 12.7 per cent for day pupils and it was finalised on 25 June 2003\textsuperscript{901}.

Conclusion regarding Rugby School’s participation in the Sevenoaks Survey\textsuperscript{902}

937. In relation to the 2001/2002 academic year, the OFT considers that Rugby School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Rugby School and Rugby School has participated in the Sevenoaks Survey in two other relevant years;
- Rugby School has stated that it received the Sevenoaks Survey in respect of this academic year;
- the Sevenoaks bursar or his assistant sent Rugby School at least one circulation of the Sevenoaks Survey for this year; and
- an extract from one of Rugby School’s internal documents is consistent with Rugby School’s participation in the Survey in respect of this academic year.

938. In relation to the 2002/2003 academic year, the OFT considers that Rugby School participated in the Sevenoaks Survey on the basis that:

- Rugby School has stated that it received the Sevenoaks Survey in respect of this academic year; and
- the Sevenoaks bursar or his assistant sent Rugby School at least one circulation of the Sevenoaks Survey for this year.

939. In relation to the 2003/2004 academic year, the OFT considers that Rugby School participated in the Sevenoaks Survey on the basis that:

- Rugby School has stated that it received the Sevenoaks Survey in respect of this academic year; and
- the Sevenoaks bursar or his assistant sent Rugby School at least one circulation of the Sevenoaks Survey for this year.

940. The OFT therefore considers that Rugby School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 929 and 936 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Rugby School will have received at least one circulation of the Sevenoaks Survey containing competitors' estimated fee increases in

\textsuperscript{901} See section 5.3 of the minutes of the meeting of the Governing Body of Rugby School held on 25 June 2003 (document TXD1397).

\textsuperscript{902} See paragraphs 927 to 931 above.
respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

941. The OFT concludes that the evidence set out above demonstrates that Rugby School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Sedbergh School**

*Evidence of participation in the Sevenoaks Survey*[^903]

942. The OFT relies on the following evidence in support of its finding that Sedbergh School participated in the Sevenoaks Survey for each of the years 2002/2003 and 2003/2004.

943. First, the Sevenoaks Survey includes fee-increase estimates for Sedbergh School for each of the years 2002/2003 and 2003/2004.[^904]

944. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Sedbergh School contributed to the Sevenoaks Survey, Sedbergh School noted,

> '2002 and 2003.'[^905]

Enclosed with Sedbergh School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2002/2003 and 2003/2004 that Sedbergh School received from the Sevenoaks bursar or his assistant.

945. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004, Sedbergh School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools[^906]. The OFT considers that this demonstrates that Sedbergh School received at least one circulation of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004 by, respectively, 11 February 2002 and 11 March 2003.

[^903]: See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.

[^904]: See the table at paragraph 951 below.

[^905]: The answer to question 7 contained in Sedbergh School’s 18 March 2004 response (document TXD1235) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG028).

[^906]: Documents SJN0910 and LXT2542 show, respectively, that the electronic mail address sedbursary@aol.com was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2002/2003 and 2003/2004. The OFT notes that this electronic mail address is the electronic mail address of the bursar of Sedbergh School that is recorded on Sedbergh School’s 18 March 2004 response (document TXD1235) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG028). The OFT therefore considers that the bursar of Sedbergh School received the electronic mails described above that were sent to the electronic mail address sedbursary@aol.com.
Fourth, the OFT notes that a number of Sedbergh School’s internal documents for each of the academic years 2002/2003 and 2003/2004 are consistent with and further evidence for the conclusion that Sedbergh School participated in the Sevenoaks Survey in respect of that academic year.

**2002/2003 academic year**

947. The OFT considers that the following extract from Sedbergh School’s internal documents (which has a circulation of the Sevenoaks Survey attached to it) is consistent with, and further evidence for, the conclusion that Sedbergh School participated in the Survey for 2002/2003.

**Paper on Sedbergh School’s draft budget for 2002/2003**

948. The paper is headed 'DRAFT BUDGET 2002/03 FEE INCREASES'. Handwritten script at the top of the page states 'Full Board Paper 22 June 2002'. Paragraph 4 of the paper states at Agenda item 7b, 'Sedbergh School:
The fee increases recommended by the Executive Committee were as follows –

<table>
<thead>
<tr>
<th></th>
<th>Day</th>
<th>Boarding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term</td>
<td>4,325</td>
<td>5,800</td>
</tr>
<tr>
<td>Annual</td>
<td>12,975</td>
<td>17,400</td>
</tr>
<tr>
<td></td>
<td>+6.4%</td>
<td>5.5%</td>
</tr>
</tbody>
</table>

E Fee Comparison – Senior School'

A copy of the circulation of the Sevenoaks Survey dated 11 June 2002 is attached at Annex E of the document.

**Fee–setting process**

949. Sedbergh School’s fee–setting process during the relevant period can, in essence, be described as follows. Sedbergh’s fee–setting procedure takes into account various factors that affect its cost base, including teachers’ salaries, and also certain financial targets, such as a target surplus, and Sedbergh’s three–year plan that is updated each year. In March, each budget holder is requested to forecast revenue and capital expenditure for the following two years. These budgets are then consolidated at the end of April into a draft budget. Up to 2002, fee increase proposals were made to Sedbergh’s Executive Committee in May for ratification at the meeting of Sedbergh’s Board of Governors in June.

**Footnotes**

907 Document TXD1259.

908 The description of Sedbergh School’s fee–setting process is taken from the answer to question 6 contained in Sedbergh School’s 18 March 2004 response (document TXD1235) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG028).
Parents were notified of fee increases in June. After 2002, the timetable moved forward slightly and fee increase proposals are currently made to the Executive Committee in February for ratification by Sedbergh’s Board of Governors in June. The Chairman of Governors notifies parents of fee increases in March.

**Timing of the Sevenoaks Survey in relation to the fee–setting process**

950. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Sedbergh School, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Sedbergh School, and Sedbergh School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

951. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Sedbergh School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

<table>
<thead>
<tr>
<th>Circulations</th>
<th>2001/2002</th>
</tr>
</thead>
<tbody>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>13 February – –</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May – –</td>
</tr>
<tr>
<td></td>
<td>8 May – –</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>14 May – –</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>17 May – –</td>
</tr>
<tr>
<td></td>
<td>29 May – –</td>
</tr>
</tbody>
</table>

909 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
25 June – –

<table>
<thead>
<tr>
<th>2002/2003</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>11 February</td>
<td>–</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>15 February</td>
<td>–</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>22 April</td>
<td>–</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>11 June</td>
<td>5.5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2003/2004</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>12 February</td>
<td>8</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>14 February</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>26 February</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>14 March</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>17 March</td>
<td>8</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>17 April</td>
<td>8</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>–</td>
<td>–</td>
</tr>
</tbody>
</table>

Finalisation of fee increases

952. The final fee increases for Sedbergh School during the relevant period were as follows. For the 2001/2002 academic year the final fee increases were 6.48 per cent for boarding pupils and 6.4 per cent for day pupils and they were finalised on 23 June 2001\(^{910}\). For the 2002/2003 academic year the final fee increases were 5.5 per cent for boarding pupils and 6.4 per cent for day pupils and they were finalised on 25 May 2002\(^{911}\). For

\(^{910}\) See section 8569 of the Minutes of the meeting of the Sedbergh School Board of Governors held on 23 June 2001 (document TXD1256). See also Sedbergh School’s statement in the Schools’ Joint Factual Statement (document JM 01–a).

\(^{911}\) See paragraph 3.1 of the minutes of the meeting of Sedbergh School’s Executive Committee of Governors held on 25 May 2002 (document TXD1258) and the answer to question 24 contained
the 2003/2004 academic year the final fee increase was 8 per cent for both boarding and day fees and it was finalised on 15 March 2003\textsuperscript{912}.

**Conclusion regarding Sedbergh School’s participation in the Sevenoaks Survey**\textsuperscript{913}

953. In relation to the 2002/2003 academic year, the OFT considers that Sedbergh School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Sedbergh School and Sedbergh School has participated in the Sevenoaks Survey in one other relevant year;

- Sedbergh School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Sedbergh School at least one circulation of the Sevenoaks Survey for this year; and

- an extract from one of Sedbergh School’s internal documents, to which was attached a copy of the Sevenoaks Survey, is consistent with Sedbergh School’s participation in the Survey in respect of this academic year.

954. In relation to the 2003/2004 academic year, the OFT considers that Sedbergh School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Sedbergh School and Sedbergh School has participated in the Sevenoaks Survey in one other relevant year;

- Sedbergh School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Sedbergh School at least one circulation of the Sevenoaks Survey for this year.

955. The OFT therefore considers that Sedbergh School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2002/2003 and 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 945 and 952 above demonstrates that the timing of the circulation of the

\textsuperscript{912} See section 8746 of the minutes of the meeting of Sedbergh School’s Board of Governors held on 15 March 2003 (document TXD1262).

\textsuperscript{913} See paragraphs 943 to 947 above.
Sevenoaks Survey was such that Sedbergh School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

956. The OFT concludes that the evidence set out above demonstrates that Sedbergh School participated in the Sevenoaks Survey in respect of each of the academic years 2002/2003 and 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Sevenoaks School**

*Evidence of participation in the Sevenoaks Survey*


959. As established at paragraphs 309 to 322 above, the Sevenoaks bursar orchestrated the operation of the Sevenoaks Survey during the relevant period: he sent questionnaires to the Participant schools requesting their proposed fee increases, collated the Participant schools’ proposed fee increases that he received in response to his request and circulated summaries of those responses to the Participant schools. Julian Patrick stated in relation to the Sevenoaks Survey,

‘... I resurrected it in 1997...

Once I had received the replies from the schools, I collated the information, including Sevenoaks’ predicted fee increase...

The annual exchange of prospective fee increases through the survey continued up to and including proposed school fees for 2003/04.’

(Emphasis added).

The OFT considers that this together with Julian Patrick’s statement that the exchange of fees continued up to and including proposed fees for 2003/04 shows that Sevenoaks School participated in the Sevenoaks Survey in each of the years from 2001/02 to 2003/04. The OFT notes that Sevenoaks School provided the OFT with copies of at least one circulation of the Sevenoaks Survey in respect of each of the years 2001/2002 to 2003/2004.

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914 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
915 See the table at paragraph 965 below.
916 See paragraphs 5 to 10 of Julian Patrick’s witness statement dated 24 March 2005 (document GCOR1034C).
960. Also, the OFT notes that one of Sevenoaks School’s internal documents for the academic year 2001/2002 is consistent with, and further evidence for, the conclusion that Sevenoaks School participated in the Sevenoaks Survey in respect of that academic year.

2001/2002 academic year

961. The OFT considers that the following extract from Sevenoaks School’s internal documents is consistent with, and further evidence for, the conclusion that Sevenoaks School participated in the Sevenoaks Survey for 2001/2002.

Minutes of a meeting of Sevenoaks School’s Finance and General Purposes Committee held on 11 June 2001

962. The section of the minutes headed ‘BURSAR’S REPORT’ states,

5. In accordance with the resolution passed at the full Board Meeting on 12 March, the Headmaster had announced to parents in April that the fees would have to increase in September by approximately 6%. The average increase for the 49 schools who had responded to the survey was:

   |   |   |
---|---|---|
Day | 7.10%  |   |
Boarder | 6.62%  |   |

6. Based on the figures provided, the Governors AGREED and RESOLVED that the fees for 2001/02 the tuition element of the fees be increased by 6.5% and the boarding element be 6.25%...'

Fee–setting process

963. Sevenoaks School’s fee–setting process during the relevant period can, in essence, be described as follows. In January of the academic year Sevenoaks School starts to work on its budget. The Sevenoaks bursar would produce a budget including a fee increase recommendation to the Finance Committee of Sevenoaks School in late February or in early March. The budget, including proposed fee increases, would then be presented again to the Board of Governors and ratified by them in March.

Timing of the Sevenoaks Survey in relation to the fee–setting process

964. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Sevenoaks School, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar would have sent out his request for prospective fee increases to the Participant schools and included its fee-increase estimates with those received from other schools. The results of this first request for

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917 Document TXD0512.
918 This description of Sevenoaks School’s fee–setting process is taken from the 24 March 2005 witness statement of Julian Patrick (document GCOR1034C).
information would have been circulated in mid-February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

965. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Sevenoaks School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004\(^919\).

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2001/2002</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Circulations</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>13 February</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>8 May</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>14 May</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>17 May</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>29 May</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>25 June</td>
<td>6.4</td>
<td>6.5</td>
</tr>
<tr>
<td><strong>2002/2003</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>11 February</td>
<td>6.5</td>
<td>6.5</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>15 February</td>
<td>6.5</td>
<td>6.5</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>22 April</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>11 June</td>
<td>8</td>
<td>8</td>
</tr>
</tbody>
</table>

\(^919\) The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
### Finalisation of fee increases

966. The final fee increases for Sevenoaks School during the relevant period were as follows. For the 2001/2002 academic year the final fee increases were 6.41 per cent for boarding pupils and 6.5 per cent for day pupils and they were finalised on 28 June 2001920. For the 2002/2003 academic year the final fee increase was 8 per cent for boarding pupils and 7.99 per cent for day pupils and they were finalised on 11 March 2002921. For the 2003/2004 academic year the final fee increases were 8.99 per cent for boarding pupils and 10.95 per cent for day pupils and day fees and they were finalised on 17 March 2003922.

### Conclusion regarding Sevenoaks School's participation in the Sevenoaks Survey

967. As stated at paragraph 959 above, the OFT considers that because the Sevenoaks bursar orchestrated the operation of the Sevenoaks Survey during the relevant period, including in the Survey Sevenoaks School’s own fee-increase estimates and receiving the fee-increase estimates of the other Participant schools, Sevenoaks School participated in the Survey throughout the relevant period. In addition, as regards the 2001/2002 academic year, an extract from one of Sevenoaks School’s internal documents (referring to ‘the average [fee] increase for the 49 schools who

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920 See paragraph 47 of the minutes of Sevenoaks School’s Governors’ meeting held on 28 June 2001 (document TXD0513).
921 See paragraph 12 of the minutes of Sevenoaks School’s Governors meeting held on 11 March 2002 (document TXD0517) and the circulation of the Sevenoaks Survey dated 11 June 2002 (document TXD1288) which shows that Sevenoaks’ fee increase was fixed at 8 per cent.
922 See paragraph 14 of the minutes of Sevenoaks School’s Governors meeting held on 17 March 2003 (document TXD0529).
had responded to the survey’) is consistent with Sevenoaks School’s participation in the Survey in respect of that academic year.

968. The OFT concludes that the evidence set out above demonstrates that Sevenoaks School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

Sherborne School

Evidence of participation in the Sevenoaks Survey923

969. The OFT relies on the following evidence in support of its finding that Sherborne School participated in the Sevenoaks Survey for each of the years 2001/2002, 2002/2003 and 2003/2004924.


971. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Sherborne School contributed to the Sevenoaks Survey, Sherborne School noted,

'The School contributed to the Survey in the years 2000, 2001, 2002 and 2003.'925

Enclosed with Sherborne School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of the academic years 2001/2002 to 2003/2004 that Sherborne School received from the Sevenoaks bursar or his assistant.

972. Third, the OFT notes that, in respect of the Sevenoaks Surveys for each of the academic years 2001/2002 to 2003/2004, Sherborne School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools926. The OFT considers that this demonstrates that Sherborne School received at least one circulation of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003

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923 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
924 See the table at paragraph 986 below.
925 The answer to question 7 contained in Sherborne School’s March response (document TXD0258R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG029).
926 Documents LXT2749, LXT4010 and LXT2542 show, respectively, that the electronic mail address bursar@sherborne.org was the recipient of electronic mails transmitting summaries of other schools’ fee-increase estimates contained in the Sevenoaks Surveys in respect of each of the academic years 2001/2002 to 2003/2004. The OFT notes that the domain name in this electronic address – ‘sherborne.org’ – corresponds with the domain name for Sherborne School’s website address and for the contact electronic mail addresses given for Sherborne School on its website: see http://www.sherborne.org/contacts.htm. The OFT therefore considers that Sherborne School received the electronic mails described above that were sent to the electronic mail address bursar@sherborne.org.

Fourth, the OFT notes that a number of Sherborne School’s internal documents for each of the academic years 2001/2002 to 2003/2004 are consistent with and further evidence for the conclusion that Sherborne School participated in the Sevenoaks Survey in respect of those academic years.

**2001/2002 academic year**

974. The OFT considers that the following extracts from Sherborne School’s internal documents are consistent with and further evidence for the conclusion that Sherborne School participated in the Survey for 2001/2002.

**Minutes of a meeting of Sherborne School’s Finance and General Purposes Committee held on 23 February 2001**

975. A paragraph under a section headed 'School' states,

'A review of provisional fee increases at other schools showed Sherborne’s proposed 5% to be slightly below average and an additional half percent would keep Sherborne in roughly its traditional place in the fee table, particularly as the provisional estimates are more likely to increase rather than decrease.'

Attached to the minutes is a table entitled 'Boarding Fee comparisons'. The table lists 26 schools – 25 of which are participants in the Sevenoaks Survey – and records, among other things, ‘indicated’ boarding fee increases for the academic year 2001/2002. The fee increase figures for 23 of the 25 schools listed that are participants in the Sevenoaks Survey are identical to the fee increase figures listed in the circulation of the Sevenoaks Survey dated 13 February 2001, the nearest circulation in time that precedes the 23 February 2001 meeting of Sherborne School’s Finance and General Purposes Committee.

**Budget proposals for Sherborne School for the financial year ending 30 June 2002**

976. The first page of the budget proposals document has handwritten script on it that states ‘Gov MEET JUN '01'. A paragraph headed 'Fee Income' states,

'Updated provisional fee increases at 26 schools are at Annex B. This shows Sherborne to be potentially at 8th place in the fees table, one of the seven higher places being occupied by Benenden, a girls school. There is, however, only £150 separating Sherborne and Marlborough in twelfth

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927 Document TXD0290.
928 The figure for Harrow School is 5.4% on the table compared to the 5% that is listed in the Sevenoaks Survey. The figure for Stowe School is 5.4% on the table compared to the 5.5% that is listed in the Sevenoaks Survey.
929 Document TXD0298.
place. An 8.2% increase has been assumed in the budget, and would mean a rise in the termly boarding fee from £5,450 to £5,900 (£17,700 per annum), and the day fee from £4,085 to £4,420, as notified to parents at the end of last term.'

Attached to the document at Annex B is a table entitled 'ESTIMATED BOARDING FEE INCREASES SEPTEMBER 2001'. At the bottom of the table is written '8 May 2001'. The table lists 26 schools – 25 of which are participants in the Sevenoaks Survey – and records, among other things, estimated boarding fee increases for the academic year 2001/2002. The fee increase figures for 18 of the 25 schools listed that are participants in the Sevenoaks Survey are identical to the fee increase figures listed in the circulation of the Sevenoaks Survey dated 29 May 2001, the nearest circulation in time that precedes the March 2001 date that is written on the sketch budget.

Minutes of a meeting of Sherborne School's Governors held on 17 March 2001

977. A paragraph headed 'Sketch Budgets for the School Financial Year Ending 30 June 2002' states,

'The Governors reviewed the Sketch budget for the financial year ending 30 June 2002. The major assumptions underpinning the budget were the fee and salary increases.

The fee assumption was for an increase in the School of 5.5%. Since this assumption was made, it had become apparent that other schools were considering significantly higher increases, certainly in the range 6–8%, this largely engendered by above inflation increases in the State sector coupled to the introduction of performance related pay...

...Decisions. It was agreed that:

a. The budget for 2001/2002 must be referred back to the F&GPC at their meeting on 18 May but in the meantime, the Chairman should write to parents to say that the termly boarding fee for the next academic year would be of the order of £5,900, i.e 8.2%. This would give the F&GPC some room for manoeuvre when addressing the budget...'

(Emphasis added).

2002/2003 academic year

978. The OFT considers that the following extract from Sherborne School’s internal documents is consistent with, and further evidence for, the conclusion that Sherborne School participated in the Survey for 2002/2003.

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930 The figure for Benenden School is 7% on the table compared to the 7.9% that is listed in the Sevenoaks Survey. The figure for Bryanston School is 7% on the table compared to the 5.5% that is listed in the Sevenoaks Survey. The figure for King’s School Canterbury is 7% on the table compared to the 6% that is listed in the Sevenoaks Survey. The figure for Millfield School is 5% on the table compared to the 6% that is listed in the Sevenoaks Survey. The figure for Canford School is 7.5% on the table compared to the 7.3% that is listed in the Sevenoaks Survey. The figure for Rugby School is 5.3% on the table compared to the 6.2% that is listed in the Sevenoaks Survey. The figure for Shrewsbury School is 5.2% on the table compared to the 6.1% that is listed in the Sevenoaks Survey.

931 Document TXD0293.
Budget proposals for Sherborne School for the financial year ending 30 June 2003

979. The first page of the budget proposals document has handwritten script on it that states 'F&GPC MAY ’02'. The document is dated May 2002. A paragraph on the first page of the document headed 'Fee Income' states,

‘...The fee increase is assumed to be 6.5% for boarders and 8% for day boys. The Chairman’s letter to parents gave fees for 2002/3 based on a 7% increase for boarders, thus giving some flexibility in agreeing the final budget. Provisional fee increases at 26 schools are shown at Annex B. This shows Sherborne, assuming a 7% fee increase, in eighth place in the table, ahead of Eton, Marlborough and Westminster by less than 1/2%.’

Attached to the document at Annex B is a table entitled ‘ESTIMATED ANNUAL BOARDING FEE INCREASES SEPTEMBER 2002’. At the bottom of the table is written ‘1 May 02’. The table lists 26 schools – 25 of which are participants in the Sevenoaks Survey – and records, among other things, estimated boarding fee increases for the academic year 2002/2003. The fee increase figures for 19 of the 25 schools listed that are participants in the Sevenoaks Survey are identical to the fee increase figures listed in the circulation of the Sevenoaks Survey dated 22 April 2002, the nearest circulation in time that precedes the May 2001 date that is written on the budget proposals document. The OFT notes also that Sherborne School provided the OFT with another copy of the same document with different handwritten script on it that stated, ‘GOV MEET JUN ’02’.

2003/2004 academic year

980. The OFT considers that the following extracts from Sherborne School’s internal documents (one of which had a circulation of the Sevenoaks Survey attached to it) are consistent with and further evidence for the conclusion that Sherborne School participated in the Survey for 2003/2004.

Sketch budget for Sherborne School’s financial year ending 30 June 2004

981. The first page of the sketch budget has handwritten script on it that states 'F&GPC FEB ‘03'. The document is dated February 2003. A paragraph headed 'Fee Income' at the beginning of the document states,

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932 Document TXD0313.
933 The figure for Bryanston School is 7.5% on the table while the Sevenoaks Survey dated 22 April 2002, the nearest update in time that precedes the May 2001 date that is written on the budget proposals document, does not contain a boarding fee increase figure for Bryanston School. The figure for Tonbridge School is 7.1% on the table compared to the 7.2% that is listed in the Sevenoaks Survey. The figure for Radley College is 7.25% on the table compared to the 6% that is listed in the Sevenoaks Survey. The figure for Charterhouse School is 6% on the table compared to the 5% that is listed in the Sevenoaks Survey. The figure for Wycombe Abbey School is 6.9% on the table compared to the 6.89% that is listed in the Sevenoaks Survey. The figure for Oundle School is 6.5% on the table compared to the 6% that is listed in the Sevenoaks Survey.
934 Document TXD0322.
...It is assumed that fees will increase by 10% and that the day fee will be 77% of the boarding fee (75% 2001, 76% 2002). Other schools are mostly planning fee increases in the range 7–10%. A copy of the early fee information for other schools is attached at Annex A1...

Attached at Annex A to the sketch budget is a copy of the 14 February 2003 circulation of the Sevenoaks Survey. The OFT notes also that Sherborne School provided the OFT with a slightly revised version of the same document that had handwritten script on it that stated ‘GOV MEET MAR '02’ which also had attached to it a copy of the 14 February 2003 circulation of the Sevenoaks Survey.

Minutes of a meeting of Sherborne School’s Governors held on 22 March 2003

982. A paragraph under the heading 'Sketch Budget for the School Financial Year ending 30 June 04' on page 7 of the minutes states,

'The fee increase assumption in the sketch budget was 10%... and was at the upper end of estimated fee increases at other schools in the range 7–10%, although there tended to be upward creep before final decisions were made. There was a lengthy discussion on how the desired cash generation could be achieved in the budget by manipulating the fee level and budgeted boys numbers. On the one hand, there was the obligation to parents to keep the fee increase within reasonable bounds and, on the other, the imperative to maximise income whilst economic circumstances remained favourable. For the purposes of the Chairman’s forthcoming letter to parents a compromise was reached of a 9% fee increase...'.

Budget for Sherborne School for the financial year ending 30 June 2004

983. The first page of the budget proposals document has handwritten script on it that states 'F&GPC MAY '03'. A paragraph on the first page of the document headed 'Fee levels' states,

'...The basic assumption is that the boarding fee will increase by 9.26% to £6,900 per term and the day fee will be 77% of the boarding fee (75% 2001, 76% 2002). It would seem that this will leave Sherborne in roughly the same position as before in comparison to similar schools, but following recent concerns collusion between schools in setting fees, the latest comparative figures are not available.'

The OFT notes also that Sherborne School provided the OFT with a slightly revised version of the same document that had handwritten script on it that stated, ‘GOV MEET JUN '03’ which noted a 9.98% increase in boarding fee rather than a 9.26% increase.

Fee–setting process

984. Sherborne School’s fee–setting process during the relevant period can, in essence, be described as follows. Sherborne School’s fee–setting

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935 Document TXD0326.
936 Document TXD0328.
procedure takes into account various factors that affect its cost base, including teachers’ salaries, and also certain financial targets, such as a target surplus, and Sherborne School’s five–year plan that is updated each year. In January of each academic year the bursar and the Chairman of the Finance and General Purposes Committee meet to discuss Sherborne School’s budget for the following financial year. After that meeting, Sherborne School’s financial model is used to produce a ‘sketch’ budget for the following year which is presented to and considered by the February meeting of the Finance and General Purposes Committee which makes any amendments it sees fit and then submits a revised draft budget to Sherborne School’s Governors in March. The Chairman of Governors writes to parents in March to inform them of likely fee increases although the Finance and General Purposes Committee meets again in May to finalise the budget and fee levels before the two receive final approval from Sherborne School’s Governors in June.

Timing of the Sevenoaks Survey in relation to the fee–setting process

985. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Sherborne School, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Sherborne School, and Sherborne School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

986. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Sherborne School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001/2002</td>
<td></td>
</tr>
<tr>
<td>Boarding</td>
<td>5</td>
</tr>
<tr>
<td>Day</td>
<td>5</td>
</tr>
</tbody>
</table>

First main circulation of Sevenoaks Survey

937 The description of Sherborne School’s fee–setting process is taken from the answer to question 6 contained in Sherborne School’s March 2004 response (document TXD0258R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG029).

938 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
<table>
<thead>
<tr>
<th>Other circulations:</th>
<th>1 May</th>
<th>8 May</th>
<th>14 May</th>
<th>17 May</th>
<th>29 May</th>
<th>25 June</th>
</tr>
</thead>
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<td><strong>Second main</strong></td>
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<td><strong>circulation of</strong></td>
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<td><strong>Sevenoaks Survey</strong></td>
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<td><strong>2002/2003</strong></td>
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<td><strong>Boarding</strong></td>
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<td><strong>Day</strong></td>
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<tr>
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<td>circulation of</td>
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<td><strong>2003/2004</strong></td>
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<td><strong>Boarding</strong></td>
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<td><strong>Day</strong></td>
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<td>First main</td>
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<tr>
<td>Second main</td>
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Finalisation of fee increases

The final fee increases for Sherborne School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 8.2 per cent for both boarding and day pupils and it was finalised on 9 June 2001. For the 2002/2003 academic year the final fee increase was 7 per cent for boarding fees and 8.6 per cent for day fees and it was finalised on 8 June 2002. For the 2003/2004 academic year the final fee increase was 9.98% for boarding fees (day fees were calculated as a percentage of the increased level of boarding fees) and it was finalised on 21 June 2003.

Conclusion regarding Sherborne School’s participation in the Sevenoaks Survey

In relation to the 2001/2002 academic year, the OFT considers that Sherborne School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Sherborne School and Sherborne School has participated in the Sevenoaks Survey in two other relevant years;
- Sherborne School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;
- the Sevenoaks bursar or his assistant sent Sherborne School at least one circulation of the Sevenoaks Survey for this year; and
- extracts from a number of Sherborne School’s internal documents are consistent with Sherborne School’s participation in the Sevenoaks Survey for this academic year, including lists of ‘indicated’ boarding fee increases for other Participant schools.

In relation to the 2002/2003 academic year, the OFT considers that Sherborne School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Sherborne School and Sherborne School has participated in the Sevenoaks Survey in two other relevant years;
- Sherborne School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided

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939 See section 1138 of the minutes of the meeting of Sherborne School’s Governors held on 9 June 2001 (document TXD0299).
940 See section 1187 of the minutes of the meeting of Sherborne School’s Governors held on 8 June 2002 (document TXD0314).
941 See section 1235 of the minutes of Governors meeting held on 21 June 2003 (document TXD0332).
942 See paragraphs 970 to 983 above.
the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Sherborne School at least one circulation of the Sevenoaks Survey for this year; and

- an extract from Sherborne School’s internal documents is consistent with Sherborne School’s participation in the Survey for this academic year, including a list of estimated boarding fee increases for other Participant schools.

990. In relation to the 2003/2004 academic year, the OFT considers that Sherborne School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Sherborne School and Sherborne School has participated in the Sevenoaks Survey in two other relevant years;

- Sherborne School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Sherborne School at least one circulation of the Sevenoaks Survey for this year; and

- extracts from a number of Sherborne School’s internal documents are consistent with Sherborne School’s participation in the Sevenoaks Survey for this academic year, including one that had a copy of the Survey attached to it.

991. The OFT therefore considers that Sherborne School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 972 and 987 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Sherborne School will have received at least one circulation of the Sevenoaks Survey containing competitors' estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

992. The OFT concludes that the evidence set out above demonstrates that Sherborne School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.
Shrewsbury School

Evidence of participation in the Sevenoaks Survey\textsuperscript{943}


994. First, the Sevenoaks Survey includes fee-increase estimates for Shrewsbury School for each of the years 2001/2002, 2002/2003 and 2003/2004\textsuperscript{944}.

995. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Shrewsbury School contributed to the Sevenoaks Survey, Shrewsbury School noted,

\begin{quote}
'The School contributed to the Sevenoaks Survey in 2000, 2001, 2002 and 2003,'\textsuperscript{945}
\end{quote}

Enclosed with Shrewsbury School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2001/2002 to 2003/2004 that Shrewsbury School received from the Sevenoaks bursar or his assistant.

996. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Shrewsbury School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools\textsuperscript{946}. The OFT considers that this demonstrates that Shrewsbury School received at least one circulation of the Sevenoaks Survey for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 14 May 2001, 17 April 2002 and 11 March 2003.

997. Fourth, the OFT notes that a number of Shrewsbury School’s internal documents for each of the academic years 2001/2002 and 2002/2003 are consistent with and further evidence for the conclusion that Shrewsbury School participated in the Sevenoaks Survey in respect of those academic years.

\textsuperscript{943} See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
\textsuperscript{944} See the table at paragraph 1006 below.
\textsuperscript{945} The answer to question 15 contained in Shrewsbury’s 10 March 2004 response (document TXD0189R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG030).
\textsuperscript{946} Documents LXT2749 and LXT4010 show, respectively, that the electronic mail address ips@shrewsbury.org.uk was the recipient of electronic mails transmitting summaries of other schools’ fee-increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002 and 2002/2003. Document LXT2542 shows that the electronic mail address sjd@shrewsbury.org.uk was the recipient of electronic mails transmitting summaries of other schools’ fee-increase estimates contained in the Sevenoaks Surveys in respect of the academic year 2003/2004. The OFT notes that the domain name of both electronic mail addresses – ‘shrewsbury.org.uk’ – corresponds with the domain name for Shrewsbury School’s website: see http://www.shrewsbury.org.uk/. The OFT therefore considers that Shrewsbury School received the electronic mails described above that were sent to the electronic mail address ips@shrewsbury.org.uk and to sjd@shrewsbury.org.uk.
The OFT considers that the following extract from Shrewsbury School’s internal documents is consistent with, and further evidence for, the conclusion that Shrewsbury School participated in the Survey for 2001/2002.

Agenda item 8 for the 18 May 2001 meeting of the Executive Committee of the Governing Body of Shrewsbury School

A section of this agenda item headed ‘Comparative Schools’ states,

'... a recent survey of a wider group of 49 schools, carried out by Sevenoaks, suggests an average increase of at least 6.4%.'

The OFT notes that agenda item 8 is also attached to the minutes of the 16 June 2001 meeting of the Governing Body of Shrewsbury School.

The OFT considers that the following extract from Shrewsbury School’s internal documents is consistent with, and further evidence for, the conclusion that Shrewsbury School participated in the Survey for 2002/2003.

Paper entitled ‘School Fees 2002/03’, attached to the minutes of the 17 May 2002 meeting of the Executive Committee of the Governing Body of Shrewsbury School

A section of the agenda item headed ‘Comparative Schools’ states :

'... A survey of a wider group of 49 schools, carried out by Sevenoaks immediately after the Budget, reveals an average increase among schools that have already set their fees for September 2002 of 7.4%, and for those yet to set fees of 6.4%.'

Fee–setting process

Shrewsbury School’s fee–setting process during the relevant period can, in essence, be described as follows. In January or February of an academic year Shrewsbury School’s bursar would start to consider fee increases for the following academic year, taking into account a number of factors that may affect Shrewsbury School’s cost base, such as increased teaching salaries and likely increases in the school’s overheads and general costs. In March the school’s headmaster, Chairman of the Board and bursar would meet with representatives of the school’s teachers and give more detailed consideration to discuss proposed increases in teaching salaries. Next, in April, the school’s ‘spending’ departments would submit expenditure requests for the next academic
year. The bursar would then prepare a likely budget and commence work on a paper, including proposed fee increases, that would be submitted to Shrewsbury School’s Executive Committee in the middle of May.

1003. After further meetings with representatives of the school’s teachers, which led to a clearer figure for teaching salary increases, the bursar would carry out further work to ensure that the proposed fee increases would cover the school’s estimated costs and leave the school with a target surplus of about 5 per cent (which would be used to cover the cost of future capital projects). The bursar would then submit his paper on the budget and proposed fee increases to the school’s Executive Committee in the middle of May. The bursar would also submit selected information relating to other schools’ prospective fee increases that originated from, among other sources, the Sevenoaks Survey. The May Executive Committee meeting, in practice, would take the final decision on the amount of increase in the school’s fees, using delegated authority from the school’s Board. Finally, in June, the Board would be informed of the Executive Committee’s decision on fee increases and would be given that committee’s report on school fees. Parents were informed of fee increases for the following academic year by a letter from the Chairman of the school’s Board.

*Timing of the Sevenoaks Survey in relation to the fee-setting process*

1004. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Shrewsbury School, at distinct points in its fee-setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Shrewsbury School, and Shrewsbury School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid-February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

1005. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Shrewsbury School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.950

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950 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boarding</td>
</tr>
<tr>
<td><strong>2001/2002</strong></td>
<td></td>
</tr>
<tr>
<td>Circulations</td>
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<td><em>First main circulation of Sevenoaks Survey</em></td>
<td>13 February</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May</td>
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<tr>
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<td>8 May</td>
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<tr>
<td><em>Second main circulation of Sevenoaks Survey</em></td>
<td>14 May</td>
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<tr>
<td>Other circulations:</td>
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<td>25 June</td>
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<td><strong>2002/2003</strong></td>
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<td><em>First main circulation of Sevenoaks Survey</em></td>
<td>11 February</td>
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<tr>
<td>Other circulations:</td>
<td>15 February</td>
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<tr>
<td><em>Second main circulation of Sevenoaks Survey</em></td>
<td>22 April</td>
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<tr>
<td>Other circulations:</td>
<td>11 June</td>
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<td><strong>2003/2004</strong></td>
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<tr>
<td><em>First main circulation of Sevenoaks Survey</em></td>
<td>12 February</td>
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<tr>
<td>Other circulations:</td>
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<td>26 February</td>
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<td></td>
<td>14 March</td>
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<tr>
<td></td>
<td>17 March</td>
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</table>
Finalisation of fee increases

The final fee increases for Shrewsbury School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 6.9 per cent for boarding pupils and 6.5 per cent for day pupils and it was finalised on 18 May 2001. For the 2002/2003 academic year the final fee increase was 7.6 per cent for boarding pupils and 7.5 per cent for day pupils and it was finalised on 17 May 2002. For the 2003/2004 academic year the final fee increase was 9.6 per cent for boarding pupils and 9.8 per cent for day pupils and it was finalised on 16 May 2003.

Conclusion regarding Shrewsbury School’s participation in the Sevenoaks Survey

In relation to the 2001/2002 academic year, the OFT considers that Shrewsbury School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Shrewsbury School and Shrewsbury School has participated in the Sevenoaks Survey in two other relevant years;

- Shrewsbury School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Shrewsbury School at least one circulation of the Sevenoaks Survey for this year; and

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951 See the minutes of the meeting of Shrewsbury School’s Executive Committee of the Governing Body held on 18 May 2001 (document TXD0240) and the answer to question 24 contained in Shrewsbury School’s 10 March 2004 response (document TXD0189R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG030). It should be noted that Shrewsbury School’s Executive Committee of the Governing Body sets the fee increases for Shrewsbury School under delegated authority from the Governing Body of Shrewsbury School.

952 See the minutes of the meeting of Shrewsbury School’s Executive Committee of the Governing Body held on 17 May 2002 (document TXD0241) and the answer to question 24 contained in Shrewsbury School’s 10 March 2004 response (document TXD0189R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG030).

953 See the minutes of the meeting of Shrewsbury School’s Executive Committee of the Governing Body held on 16 May 2003 (document TXD0242) and the answer to question 24 contained in Shrewsbury School’s 10 March 2004 response (document TXD0189R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG030).

954 See paragraphs 994 to 1000 above.
an extract from Shrewsbury School’s internal documents, which refers expressly to ‘a recent survey of a wider group of 49 schools, carried out by Sevenoaks’, is consistent with Shrewsbury School’s participation in the Survey for this academic year.

1008. In relation to the 2002/2003 academic year, the OFT considers that Shrewsbury School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Shrewsbury School and Shrewsbury School has participated in the Sevenoaks Survey in two other relevant years;
- Shrewsbury School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;
- the Sevenoaks bursar or his assistant sent Shrewsbury School at least one circulation of the Sevenoaks Survey for this year; and
- an extract from Shrewsbury School’s internal documents, which refers expressly to ‘A survey of a wider group of 49 schools, carried out by Sevenoaks’ is consistent with Shrewsbury School’s participation in the Survey for this academic year.

1009. In relation to the 2003/2004 academic year, the OFT considers that Shrewsbury School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Shrewsbury School and Shrewsbury School has participated in the Sevenoaks Survey in two other relevant years;
- Shrewsbury School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and
- the Sevenoaks bursar or his assistant sent Shrewsbury School at least one circulation of the Sevenoaks Survey for this year.

1010. The OFT therefore considers that Shrewsbury School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 996 and 1006 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Shrewsbury School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.
1011. The OFT concludes that the evidence set out above demonstrates that Shrewsbury School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

St Edward’s School

Evidence of participation in the Sevenoaks Survey


1014. Second, in its response to a question from the OFT regarding the years from January 2000 onwards in which St Edward’s School contributed to the Sevenoaks Survey, St Edward’s School noted,

   ‘We have contributed to the nationwide survey known as the Sevenoaks Survey in every year from 2000/01, but have never attended any meeting regarding the Survey.’

Enclosed with St Edward’s School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of the academic year 2001/2002 that St Edward’s School received from the Sevenoaks bursar or his assistant.

1015. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004, St Edward’s School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools. The OFT considers that this demonstrates that St Edward’s School received at least one circulation of the Sevenoaks Survey for the academic years 2002/2003 and 2003/2004 by, respectively, 11 February 2002 and 11 March 2003.

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955 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
956 The answer to question 15 contained in St Edward’s School’s 8 March 2004 response (document TXD1681R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG031).
958 Documents LXT3412 and LXT2542 show, respectively, that the electronic mail address bursar@st.edwards.oxon.sch.uk was the recipient of electronic mails transmitting summaries of other schools’ fee-increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘st.edwards.oxon.sch.uk’ – corresponds with the domain name for St Edward’s School that is recorded on St Edward’s School’s website address and contact details given on its website: see http://www.stedwards.oxon.sch.uk/master_contact.html. The OFT therefore considers that St Edward’s School received the electronic mails described above that were sent to the electronic mail address bursar@st.edwards.oxon.sch.uk.
Fee–setting process

1016. St Edward’s School’s fee–setting process during the relevant period can, in essence, be described as follows\(^{959}\). St Edward’s School takes into account factors that affect its cost base, including teachers’ salaries, and certain financial targets, such as a target surplus. At the beginning of the summer term (April to June), St Edward’s School begins its budget process. The school’s General Purposes Committee meets in May or June, near the end of the summer term, and makes a recommendation of fee increases to St Edward’s School’s Governing Body. The Governing Body considers the recommendation and then sets the fee increase levels as it sees fit at its meeting at the end of the summer term, which is typically in June. The Chairman of Governors of St Edward’s School notifies parents of the fee increases by letter at the start of the summer holidays.

Timing of the Sevenoaks Survey in relation to the fee–setting process

1017. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including St Edward’s School, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including St Edward’s School, and St Edward’s School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

1018. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for St Edward’s School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004\(^ {960}\).

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boarding</td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>13 February</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May</td>
</tr>
</tbody>
</table>

\(^{959}\) The description of St Edward’s School’s fee–setting process is taken from the answer to question 6 contained in St Edward’s School’s 8 March 2004 response (document TXD1681R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG031).

\(^{960}\) The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
<table>
<thead>
<tr>
<th>Date</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8 May</td>
<td>5</td>
<td>6.6</td>
</tr>
<tr>
<td>14 May</td>
<td>5</td>
<td>6.6</td>
</tr>
<tr>
<td>Other circulations:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>17 May</td>
<td>5</td>
<td>6.6</td>
</tr>
<tr>
<td>29 May</td>
<td>5</td>
<td>6.6</td>
</tr>
<tr>
<td>25 June</td>
<td>5</td>
<td>6.6</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Date</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2002/2003</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>11 February</td>
<td>5</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>15 February</td>
<td>5</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>22 April</td>
<td>5</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>11 June</td>
<td>5</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2003/2004</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>12 February</td>
<td>5</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>14 February</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>26 February</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>14 March</td>
<td>5</td>
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<tr>
<td></td>
<td>17 March</td>
<td>5</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>17 April</td>
<td>5</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>–</td>
<td>–</td>
</tr>
</tbody>
</table>

**Finalisation of fee increases**

1019. The final fee increases for St Edward’s School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase
was 7.8 per cent for boarding pupils and 9.5 per cent for day pupils and it was finalised in March 2001. For the 2002/2003 academic year the final fee increase was 7.2 per cent for boarding pupils and 9.5 per cent for day pupils and it was finalised on 28 June 2002. For the 2003/2004 academic year the final fee increase was 8.8 per cent for boarding pupils and 11.1 per cent for day pupils and it was finalised on 27 June 2003.

Conclusion regarding St Edward’s School’s participation in the Sevenoaks Survey

1020. In relation to the 2001/2002 academic year, the OFT considers that St Edward’s School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for St Edward’s School and St Edward’s School has participated in the Sevenoaks Survey in two other relevant years; and

- St Edward’s School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year.

1021. In relation to the 2002/2003 academic year, the OFT considers that St Edward’s School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for St Edward’s School and St Edward’s School has participated in the Sevenoaks Survey in two other relevant years;

- St Edward’s School has stated that it contributed to the Sevenoaks Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent St Edward’s School at least one circulation of the Sevenoaks Survey for this year.

1022. In relation to the 2003/2004 academic year, the OFT considers that St Edward’s School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for St Edward’s School and St Edward’s School has participated in the Sevenoaks Survey in two other relevant years;

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961 See section 4.2 of the minutes of the meeting of St. Edward’s School’s Governing Body held on 22 June 2001 (document TXD1705).
962 See section 4.2 of the minutes of the meeting of St. Edward’s School’s Governing Body held on 28 June 2002 (document TXD1696).
963 See section 5/3 of the minutes of the meeting of the Governing Body held on 27 June 2003 (document TXD1687).
964 See paragraphs 1013 to 1019 above.
• St Edward’s School has stated that it contributed to the Sevenoaks Survey in respect of this academic year; and

• the Sevenoaks bursar or his assistant sent St Edward’s School at least one circulation of the Sevenoaks Survey for this year.

1023. The OFT therefore considers that St Edward’s School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 1015 and 1019 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that St Edward’s School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

1024. The OFT concludes that the evidence set out above demonstrates that St Edward’s School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

St Leonards–Mayfield School

Evidence of participation in the Sevenoaks Survey


1027. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which St Leonards–Mayfield School contributed to the Sevenoaks Survey, St Leonards–Mayfield School noted, '2000 to 2003.' Enclosed with St Leonards–Mayfield School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2002/2003 and 2003/2004 that St Leonards–Mayfield School received from the Sevenoaks bursar or his assistant.

\[965\] See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.

[966] See the table at paragraph 1037.

1028. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004, St Leonards–Mayfield School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools. The OFT considers that this demonstrates that St Leonards–Mayfield School received at least one circulation of the Sevenoaks Survey for the academic years 2002/2003 and 2003/2004 by, respectively, 17 April 2002 and 11 March 2003.

1029. Fourth, the OFT notes that a number of St Leonards–Mayfield School’s internal documents for each of the academic years 2002/2003 and 2003/2004 are consistent with and further evidence for the conclusion that St Leonards–Mayfield School participated in the Sevenoaks Survey in respect of those academic years.

2002/2003 academic year

1030. The OFT considers that the following extract from St Leonards–Mayfield School’s internal documents (which had a circulation of the Sevenoaks Survey attached to it) is consistent with, and further evidence for, the conclusion that St Leonards–Mayfield School participated in the Survey for 2002/2003.

Notes of the Meeting of the Finance and Maintenance Committee of St Leonards–Mayfield School held on 7 March 2002 and attachments

1031. The notes of the meeting state,

’In the light of the budget figures, the comparables obtained by the bursar and Sr Christina Kenworthy–Browne… the Committee recommends to the Governors a fee increase of 6% from September 2002 for both boarding and day pupils.’

A copy of the circulation of the Sevenoaks Survey dated 15 February 2002 is attached to the document.

2003/2004 academic year

1032. The OFT considers that the following extracts from St Leonards–Mayfield School’s internal documents are consistent with and further evidence for the conclusion that St Leonards–Mayfield School participated in the Survey for 2003/2004.

Documents LXT4010 and LXT2542 show, respectively, that the electronic mail address leigh@hadlow69.fsnet.co.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2002/2003 and 2003/2004. St. Leonards–Mayfield School confirmed in its 7 October 2005 response (document MDB0081F) to the OFT’s section 26 Notice to it dated 4 October 2005 (document MDB0045D) that the electronic mail address leigh@hadlow69.fsnet.co.uk was the valid home electronic mail address for the bursar of St. Leonards–Mayfield School for the period January 2001 to December 2003. The OFT therefore considers that the bursar of St Leonards–Mayfield School received the electronic mails described above that were sent to the electronic mail address leigh@hadlow69.fsnet.co.uk.

Documents TXD0795 and TXD0796.
1033. The agenda states,

'5. Fees…

Fee increase for September, 2003 to be recommended to the
March Governors’ meeting.'

Attached to the agenda is a single page document headed 'Workings
for 2003/04 increase' which states,

'…I also attach the usual schedule sent out by Sevenoaks School
showing the estimated increases for a number of competitors for
information.'

Minutes of a meeting of the Finance and Maintenance Committee of St
Leonards–Mayfield School held on 28 February 2003

1034. Paragraph 4 of the minutes states,

'The schedule showing the estimated fee increase of some 51 schools
was noted, the average increase of all these working out at 8%... it was
agreed that a 9% increase be recommended to the Governing body at
their meeting next month. This was in line with many schools and not
more than our immediate competitors.'

Fee–setting process

1035. St Leonards–Mayfield School’s fee–setting process during the relevant
period can, in essence, be described as follows. In January or February,
the bursar of St Leonards–Mayfield School prepares management
accounts for the previous school term and notes any additional
expenditure foreseen in the next two terms. He then produces a first draft
budget for the following school year, estimating increases in expenditure.
The bursar submits to St Leonards–Mayfield School’s Finance Committee
a document based on these figures indicating the surplus that various
percentages of fee increases will produce. The Finance Committee
considers these figures in a meeting in February or March and then makes
a recommendation on fee increases to St Leonards–Mayfield School’s
Governing Body. In February or March, the Governing Body considers the
recommended fee increases, debates them and then sets the actual fees.
Notice of the fee increases is given to parents prior to the start of the
summer term in March or April.

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970 Documents TXD0791 and TXD0792.
971 Document TXD0790.
972 The description of St Leonards–Mayfield School’s fee–setting process is taken from the answer
to question 6 contained in St Leonards–Mayfield School’s 11 March 2004 response (document
TXD0772) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG032).
Timing of the Sevenoaks Survey in relation to the fee–setting process

1036. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including St Leonards–Mayfield School, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including St Leonards–Mayfield School, and St Leonards–Mayfield School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

1037. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for St Leonards–Mayfield School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.\(^\text{973}\)

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boarding</td>
</tr>
<tr>
<td>2001/2002</td>
<td></td>
</tr>
<tr>
<td>Circulations</td>
<td></td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>13 February</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May</td>
</tr>
<tr>
<td></td>
<td>8 May</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>14 May</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>17 May</td>
</tr>
<tr>
<td></td>
<td>29 May</td>
</tr>
<tr>
<td></td>
<td>25 June</td>
</tr>
<tr>
<td>2002/2003</td>
<td></td>
</tr>
<tr>
<td>First main</td>
<td>11 February</td>
</tr>
</tbody>
</table>

\(^{973}\) The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
### Table: Circulation of Sevenoaks Survey

<table>
<thead>
<tr>
<th>Date</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>First main circulation of Sevenoaks Survey</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12 February</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>Other circulations:</td>
<td></td>
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<tr>
<td>14 February</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>26 February</td>
<td>8</td>
<td>8</td>
</tr>
<tr>
<td>14 March</td>
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<td>17 March</td>
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<td></td>
<td></td>
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<tr>
<td>17 April</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>Other circulations:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Finalisation of fee increases**

1038. The final fee increases for St Leonards–Mayfield School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 7.5 per cent for boarding pupils and 5 per cent for day pupils and it was finalised in March 2001. For the 2002/2003 academic year the final fee increase was 6 per cent for both boarding and day pupils and it was finalised on 13 March 2002. For the 2003/2004 academic year...

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974 See document TXD0847. It should be noted that the OFT does not have specific documentation to show the date on which the increase was finalised but given St Leonards–Mayfield School's explanation that fee increases are likely to be approved in February or March – see paragraph 1035 above – the OFT considers that the fee increase for this academic year was finalised in February or March 2001.

975 See section 6 of minutes of the meeting of the Governing Body of St Leonards–Mayfield School held on 13 March 2002 (document TXD0784).
academic year the final fee increase was 9 per cent for both boarding and
day pupils and it was finalised on 26 March 2003\textsuperscript{976}.

Conclusion regarding St Leonards–Mayfield School’s participation in the
Sevenoaks Survey\textsuperscript{977}

1039. In relation to the 2001/2002 academic year, the OFT considers that St
Leonards–Mayfield School participated in the Sevenoaks Survey on the
basis that:

- the Sevenoaks Survey in respect of this academic year included
fee-increase estimates for St Leonards–Mayfield School and St
Leonards–Mayfield School has participated in the Sevenoaks
Survey in two other relevant years; and

- St Leonards–Mayfield School has stated that it contributed to the
Sevenoaks Survey in respect of this academic year.

1040. In relation to the 2002/2003 academic year, the OFT considers that St
Leonards–Mayfield School participated in the Sevenoaks Survey on the
basis that:

- the Sevenoaks Survey in respect of this academic year included
fee-increase estimates for St Leonards–Mayfield School and St
Leonards–Mayfield School has participated in the Sevenoaks
Survey in two other relevant years;

- St Leonards–Mayfield School has stated that it contributed to the
Sevenoaks Survey in respect of this academic year and, moreover,
it provided the OFT with a copy of at least one circulation of the
Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent St Leonards–Mayfield
School at least one circulation of the Sevenoaks Survey for this
year; and

- an extract from St Leonards–Mayfield School’s internal documents
to which was attached a copy of the Sevenoaks Survey is
consistent with St Leonards–Mayfield School’s participation in the
Survey for this academic year.

1041. In relation to the 2003/2004 academic year, the OFT considers that St
Leonards–Mayfield School participated in the Sevenoaks Survey on the
basis that:

- the Sevenoaks Survey in respect of this academic year included
fee-increase estimates for St Leonards–Mayfield School and St

\textsuperscript{976} See section 8 of the minutes of the meeting of the Governing Body of St Leonards–Mayfield
School held on 26 March 2003 (document TXD0783).

\textsuperscript{977} See paragraphs 1026 to 1034 above.
Leonards–Mayfield School has participated in the Sevenoaks Survey in two other relevant years;

- St Leonards–Mayfield School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent St Leonards–Mayfield School at least one circulation of the Sevenoaks Survey for this year; and

- extracts from a number of St Leonards–Mayfield School’s internal documents, in one case referring expressly to ‘the usual schedule sent out by Sevenoaks School showing the estimated increases for a number of competitors’, are consistent with St Leonards–Mayfield School’s participation in the Sevenoaks Survey for this academic year.

1042. Although the OFT does not have specific evidence to demonstrate that St Leonards–Mayfield School received circulations of the Sevenoaks Survey before it finalised its own fee increase, the OFT considers that the fact that St Leonards–Mayfield School contributed its own fee increase figures to the Sevenoaks Survey in those years (see paragraph 1027 above) means that it nevertheless participated in the Sevenoaks Survey for those years.

1043. The OFT therefore considers that St Leonards–Mayfield School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 1038 to 1032 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that St Leonards–Mayfield School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2002/2003 and 2003/2004 before it finalised its own fee increases.

1044. The OFT concludes that the evidence set out above demonstrates that St Leonards–Mayfield School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of the 2002/2003 and 2003/2004 academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on its fee increases for those years.


1047. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Stowe School contributed to the Sevenoaks Survey, Stowe School noted,


Enclosed with Stowe School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2001/2002 to 2003/2004 that Stowe School received from the Sevenoaks bursar or his assistant.

1048. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Stowe School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools981. The OFT considers that this demonstrates that Stowe School received at least one circulation of the Sevenoaks Survey for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 14 May 2001, 11 February 2002 and 11 March 2003.

1049. Fourth, the OFT notes that one of Stowe School’s internal documents for the academic year 2003/2004 is consistent with, and further evidence for, the conclusion that Stowe School participated in the Sevenoaks Survey in respect of that academic year.

2003/2004 academic year

1050. The OFT considers that the following extract from Stowe School’s internal documents is consistent with, and further evidence for, the conclusion that Stowe School participated in the Survey for 2003/2004.

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978 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
979 See the table at paragraph 1055 below.
980 The answer to question 15 contained in Stowe’s 19 March 2004 response (document SJN0382R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG033).
981 Documents LXT3405, LXT3412 and LXT2542 show, respectively, that the electronic mail address R.Litherland@stowe.co.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘stowe.co.uk’ – corresponds with the domain name for Stowe School’s website address and the contact details that are given there for Stowe School: see http://www.stowe.co.uk/. The OFT therefore considers that Stowe School received the electronic mails described above that were sent to the electronic mail address R.Litherland@stowe.co.uk.
Paragraph 7 on page 4 of the minutes states,

'...Results of forthcoming Rugby Group and Sevenoaks Group surveys
would be reported to Governors...'

**Fee–setting process**

1052. Stowe School's fee–setting process during the relevant period can, in
essence, be described as follows\(^\text{983}\). In January of an academic year,
departments within Stowe School are asked to submit budget proposals
for the following year. Once those bids are received, they are reviewed by
the bursar and assistant bursar (Finance) before the preparation of the first
draft of an overall budget. At the same time, the two bursars take into
account factors that affect Stowe School’s cost base, including teachers’
salaries and costs relating to Stowe School’s building infrastructure.

1053. Stowe School’s Finance Committee meets at the beginning of the spring
term and considers the first draft budget. In March and April, Stowe
School’s two bursars consider again the various cost factors and revise
the figures in the budget and receive more detailed information on the
anticipated number of pupils for the following year. The bursars then
produce the first detailed draft budget to the May meeting of the Finance
Committee. The Finance Committee considers the budget, including the
proposed fee increases, and makes a recommendation to Stowe School’s
Executive Committee on the budget and fee increase. Stowe School’s
Executive Committee considers the Finance Committee’s
recommendations and, in turn, makes its own recommendations to Stowe
School’s Governing Body. The Governing Body considers the
recommendation and makes a final decision on the budget and fee
increases at the end of the summer term before notifying parents of the
fee increases.

**Timing of the Sevenoaks Survey in relation to the fee–setting process**

1054. The OFT notes that according to the Sevenoaks bursar’s witness
statement, as set out at paragraphs 316 to 321 above, the circulations of
the results of the Sevenoaks Survey would have been sent to the
Participant schools, including Stowe School, at distinct points in its fee–
setting process. Towards the end of January or in early February the
Sevenoaks bursar’s request for prospective fee increases would have been
sent to the Participant schools, including Stowe School, and Stowe School
would have submitted an estimate to the Survey. The results of this first
request for information would have been circulated in mid–February and
the results of the second request for information would have been
circulated in May. After each of the two main circulations, the Sevenoaks

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\(^{982}\) Document TXD2853.
\(^{983}\) The description of Stowe’s fee–setting process is taken from the answer to question 6
contained in Stowe’s 19 March 2004 response (document SJN0382R) to the OFT’s section 26
Notice to it dated 9 February 2004 (document SMG033).
bursar would have sent out a number of circulations, the precise number of which varied from year to year.

1055. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Stowe School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.984

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2001/2002</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>13 February</td>
<td>5.5</td>
<td>5.5</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May</td>
<td>5.5</td>
<td>5.5</td>
</tr>
<tr>
<td></td>
<td>8 May</td>
<td>6.2</td>
<td>6.2</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>14 May</td>
<td>6.2</td>
<td>6.2</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>17 May</td>
<td>6.2</td>
<td>6.2</td>
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<tr>
<td></td>
<td>29 May</td>
<td>6.2</td>
<td>6.2</td>
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<tr>
<td></td>
<td>25 June</td>
<td>6.2</td>
<td>6.2</td>
</tr>
<tr>
<td><strong>2002/2003</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>11 February</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>15 February</td>
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<td>6.5</td>
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<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>22 April</td>
<td>6.5</td>
<td>6.5</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>11 June</td>
<td>6.5</td>
<td>6.5</td>
</tr>
</tbody>
</table>

984 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
<table>
<thead>
<tr>
<th></th>
<th>2003/2004</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>12 February</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>14 February</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>26 February</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>14 March</td>
<td>7</td>
<td>7</td>
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<td></td>
<td>17 March</td>
<td>7</td>
<td>7</td>
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<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>17 April</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>–</td>
<td>–</td>
<td>–</td>
</tr>
</tbody>
</table>

**Finalisation of fee increases**

1056. The final fee increases for Stowe School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 6.25 per cent for both boarding and day pupils and it was finalised on 9 June 2001. For the 2002/2003 academic year the final fee increase was 6.9 per cent for both boarding and day pupils and it was finalised on 7 June 2002. For the 2003/2004 academic year the final fee increase was 9.42 per cent for boarding pupils and 9.47 per cent for day pupils and it was finalised on 6 June 2003.

**Conclusion regarding Stowe School’s participation in the Sevenoaks Survey**

1057. In relation to the 2001/2002 academic year, the OFT considers that Stowe School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Stowe School and Stowe School has participated in the Sevenoaks Survey in two other relevant years;
- Stowe School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided

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1 See section 3868 of the minutes of the meeting of the Governing Body held on 9 June 2001 (document SJN0875).
2 See section 3911 of the minutes of the meeting of the Governing Body held on 7 June 2002 (document SJN0585).
3 See section 3959 of the minutes of the meeting of the Governing Body held on 6 June 2003 (document TXD2880).
4 See paragraphs 1046 to 1050 above.
the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Stowe School at least one circulation of the Sevenoaks Survey for this year.

1058. In relation to the 2002/2003 academic year, the OFT considers that Stowe School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Stowe School and Stowe School has participated in the Sevenoaks Survey in two other relevant years;

- Stowe School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Stowe School at least one circulation of the Sevenoaks Survey for this year.

1059. In relation to the 2003/2004 academic year, the OFT considers that Stowe School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Stowe School and Stowe School has participated in the Sevenoaks Survey in two other relevant years;

- Stowe School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Stowe School at least one circulation of the Sevenoaks Survey for this year; and

- an extract from Stowe School’s internal documents, which refers expressly to ‘Results of forthcoming … Sevenoaks Group surveys’ is consistent with Stowe School’s participation in the Survey for this academic year.

1060. The OFT therefore considers that Stowe School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 1048 and 1056 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Stowe School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

1061. The OFT concludes that the evidence set out above demonstrates that Stowe School participated in the Sevenoaks Survey in respect of each of
the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Strathallan School**

*Evidence of participation in the Sevenoaks Survey*[^5]


1064. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Strathallan School contributed to the Sevenoaks Survey, Strathallan School noted,

> 'We have enclosed copies of the Sevenoaks survey for the years 2002 and 2003. Whilst we believe that the school participated in 2000 and 2001, we do not have any documents relating to surveys for those years.'[^7]

Enclosed with Strathallan School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of the years 2002/2003 and 2003/2004 that Strathallan School received from the Sevenoaks bursar or his assistant.

1065. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004, Strathallan School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools[^8]. The OFT considers that this demonstrates that Strathallan School received at least one circulation of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004 by, respectively, 11 February 2002 and 11 March 2003.

1066. Fourth, the OFT notes that one of Strathallan School’s internal documents for the academic year 2001/2002 is consistent with, and further evidence

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[^5]: See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
[^6]: See the table at paragraph 1071 below.
[^7]: The answer to question 15 contained in Strathallan School’s 17 March 2004 response (document SJN0079) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG034).
[^8]: Documents LXT3412 and LXT2542 show, respectively, that the electronic mail address bursar@strathallan.co.uk was the recipient of electronic mails transmitting summaries of other schools’ fee-increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic address – 'strathallan.co.uk' – corresponds with the domain name for the electronic mail address of the bursar of Strathallan School that is recorded on Strathallan School’s 17 March 2004 letter (document SJN0079) responding to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG034). The OFT therefore considers that the bursar of Strathallan School received the electronic mails described above that were sent to the electronic mail address bursar@strathallan.co.uk.
for, the conclusion that Strathallan School participated in the Sevenoaks Survey in respect of that academic year.

2001/2002 academic year

1067. The OFT considers that the following extract from Strathallan School’s internal documents is consistent with, and further evidence for, the conclusion that Strathallan School participated in the Survey for 2001/2002.

Minutes of the meeting of Strathallan School’s Governors held on 16 June 2001

1068. A section headed 'Competitor School Fees' on page 4 of the minutes states,

'\textbf{The Board studied the schedule prepared by the Bursar outlining competitor school fees, and proposed increases for the forthcoming academic year.} In general competitor day school fees were increasing in the region of 10\% to 12\% and boarding fees were between 7\% and 9\%, following the implications of the McCrone recommendations. Mr Gray reported on the Finance Committee’s proposal that Senior boarding, Senior day and Junior boarding fees should be increased by 8\% and that the Junior day fee should be increased by 7\%. After a lengthy discussion and consideration of the competitor fee increases as well as the desire to encourage Junior day pupils in Riley, it was agreed that Senior boarding, Senior day and Junior boarding fees should be increased by 9\% and Junior day fees should be increased by 2.5\%.}'

(Emphasis added).

Fee–setting process

1069. Strathallan School’s fee–setting process during the relevant period can, in essence, be described as follows\textsuperscript{10}. In February or March of an academic year, Strathallan School’s bursar starts forming a view on fee increases either before or after a meeting of Strathallan School’s Finance Committee which takes place at this time of year. The bursar takes into account a number of factors that affect Strathallan School’s cost base, including teachers’ salaries. This process is repeated and updated by the bursar to produce various financial ‘scenarios’ for consideration by Strathallan School’s Finance Committee at its meeting in May. The Finance Committee then makes a recommendation to Strathallan School’s Board of Governors at their meeting in June. The Board of Governors consider the recommendation and set Strathallan School’s fees for the coming academic year at this June meeting and the Chairman of Governors sends a letter to parents to notify them of the fee increases.

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\textsuperscript{9} Document SJN0022.

\textsuperscript{10} The description of Strathallan School’s fee–setting process is taken from the answer to question 6 contained in Strathallan School’s 17 March 2004 response (document SJN0079) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG034).
Timing of the Sevenoaks Survey in relation to the fee–setting process

1070. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Strathallan School, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Strathallan School, and Strathallan School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

1071. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Strathallan School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.\(^1\)

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boarding</td>
</tr>
<tr>
<td>2001/2002</td>
<td></td>
</tr>
<tr>
<td>Circulations</td>
<td></td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>13 February</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May</td>
</tr>
<tr>
<td></td>
<td>8 May</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>14 May</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>17 May</td>
</tr>
<tr>
<td></td>
<td>29 May</td>
</tr>
<tr>
<td></td>
<td>25 June</td>
</tr>
<tr>
<td>2002/2003</td>
<td></td>
</tr>
<tr>
<td>First main circulation of</td>
<td>11 February</td>
</tr>
</tbody>
</table>

\(^1\) The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
Sevenoaks Survey

Other circulations: 15 February 5 3

Other circulations: 22 April 6 4

Other circulations: 11 June 6 4

<table>
<thead>
<tr>
<th>2003/2004</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>12 February</td>
<td>6</td>
</tr>
<tr>
<td>Other circulations:</td>
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<td>6</td>
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<tr>
<td></td>
<td>26 February</td>
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<td></td>
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<td>6</td>
</tr>
<tr>
<td></td>
<td>17 March</td>
<td>6</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>17 April</td>
<td>7</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>–</td>
<td>–</td>
</tr>
</tbody>
</table>

**Finalisation of fee increases**

1072. The final fee increases for Strathallan School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 9 per cent for both boarding and day pupils and it was finalised on 16 June 2001\(^{(12)}\). For the 2002/2003 academic year the final fee increase was 7 per cent for boarding fees and 5 per cent for day fees and it was finalised on 22 June 2002\(^{(13)}\). For the 2003/2004 academic year the final fee increase was 7 per cent for both boarding and day pupils and it was finalised on 14 June 2003\(^{(14)}\).

**Conclusion regarding Strathallan School’s participation in the Sevenoaks Survey**\(^{(15)}\)

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\(^{(12)}\) See the minutes of the meeting of the Board of Governors of Strathallan School held on 16 June 2001 (document SJN0022).

\(^{(13)}\) See the minutes of the meeting of the Board of Governors of Strathallan School held on 22 June 2002 (document SJN0019).

\(^{(14)}\) See the minutes of the meeting of the Board of Governors of Strathallan School held on 14 June 2003 (document SJN0016).

\(^{(15)}\) See paragraphs 1063 to 1068 above.
1073. In relation to the 2001/2002 academic year, the OFT considers that Strathallan School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Strathallan School and Strathallan School has participated in the Sevenoaks Survey in two other relevant years;
- Strathallan School has stated that it probably participated in the Sevenoaks Survey in respect of this academic year; and
- An extract from Strathallan School’s internal documents (which includes a reference to a ‘schedule… outlining competitor school fees, and proposed increases for the forthcoming year’) is consistent with Strathallan School’s participation in the Survey for this academic year.

1074. In relation to the 2002/2003 academic year, the OFT considers that Strathallan School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Strathallan School and Strathallan School has participated in the Sevenoaks Survey in two other relevant years;
- Strathallan School has stated that it participated in the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and
- the Sevenoaks bursar or his assistant sent Strathallan School at least one circulation of the Sevenoaks Survey for this year.

1075. In relation to the 2003/2004 academic year, the OFT considers that Strathallan School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Strathallan School and Strathallan School has participated in the Sevenoaks Survey in two other relevant years;
- Strathallan School has stated that it participated in the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and
- the Sevenoaks bursar or his assistant sent Strathallan School at least one circulation of the Sevenoaks Survey for this year.

1076. The OFT therefore considers that Strathallan School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 1065 and 1072
above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Strathallan School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

1077. The OFT concludes that the evidence set out above demonstrates that Strathallan School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Tonbridge School**

**Evidence of participation in the Sevenoaks Survey**


1080. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Tonbridge School contributed to the Sevenoaks Survey, Tonbridge School noted,

'Tonbridge has contributed to each Sevenoaks survey since 2000.'

Enclosed with Tonbridge School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2001/2002 and 2003/2004 that Tonbridge School received from the Sevenoaks bursar or his assistant.

1081. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004, Tonbridge School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools. The OFT considers that this demonstrates that Tonbridge School received at least one circulation of

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16 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
17 See the table at paragraph 1090 below.
18 The answer to question 15 contained in Tonbridge School’s 4 March 2004 response (document LXT632R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG035).
19 Documents LXT3412 and LXT2542 show, respectively, that the electronic mail address reeh@tonbridge-school.org was the recipient of electronic mails transmitting summaries of other schools’ fee-increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘tonbridge–school.org’ – corresponds with the domain name for the electronic mail address of the bursar of Tonbridge School that is recorded in Tonbridge School’s 4 March 2004 response (document LXT632R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG035). The OFT therefore considers that the bursar of Tonbridge School received the electronic mails described above that were sent to the electronic mail address reeh@tonbridge-school.org.

1082. Fourth, the OFT notes that a number of Tonbridge School’s internal documents for each of the academic years 2001/2002 and 2002/2003 are consistent with and further evidence for the conclusion that Tonbridge School participated in the Sevenoaks Survey in respect of those academic years.

2001/2002 academic year

1083. The OFT considers that the following extract from Tonbridge School’s internal documents is consistent with, and further evidence for, the conclusion that Tonbridge School participated in the Survey for 2001/2002.

Minutes of the meeting of the Tonbridge School Committee held on 24 May 2001

1084. Paragraph 135 of the minutes states,

'Finally, the consolidated revised budget for the financial year 2001/2002, attached to these minutes, was endorsed by the committee. Also attached is a comparison of fee levels with other schools and the proposed new levels for Tonbridge.'

2002/2003 academic year

1085. The OFT considers that the following extract from Tonbridge School’s internal documents is consistent with, and further evidence for, the conclusion that Tonbridge School participated in the Survey for 2002/2003.

Minutes of the meeting of the Tonbridge School Committee held on 23 May 2002

1086. Paragraph 176 of the minutes states,

'Mr Crosthwaite spoke about fee levels and said that his committee had proposed a 7.1% for 2003, considering the need to break even in the budget and comparing fee levels of other schools. He tabled a list of schools showing their fee increases in relation to Tonbridge, which is attached…'

Fee–setting process

1087. Tonbridge School’s fee–setting process during the relevant period can, in essence, be described as follows.

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20 Document LXT659.
21 Document LXT666.
1088. The process commences in February or March of each academic year with discussion between Tonbridge School’s bursar and finance bursar. The two bursars take into account factors that affect Tonbridge School’s cost base, including teachers’ salaries, and taking into account certain financial targets, such as a target surplus. Initial budget assumptions as to percentage fee and salary increases are put to Tonbridge School’s Finance Committee and Tonbridge School’s Governing Body in the February or March meetings of those entities each academic year. The resulting budget is reviewed at a Finance Meeting held in May or June of each academic year before the budget and fees are finally approved by Tonbridge School’s Governing Body at its meeting in June or July.

_**Timing of the Sevenoaks Survey in relation to the fee-setting process**_

1089. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Tonbridge School, at distinct points in its fee-setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Tonbridge School, and Tonbridge School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid-February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

1090. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Tonbridge School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.\(^2^3\)

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
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<td><em>Other circulations:</em></td>
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<td>8 May</td>
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\(^{22}\) The description of Tonbridge School’s fee-setting process is taken from the answer to question 6 contained in Tonbridge School’s 4 March 2004 response (document LXT632R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG035).

\(^{23}\) The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
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</table>
Finalisation of fee increases

1091. The final fee increases for Tonbridge School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 6.6 per cent for both boarding and day pupils and it was finalised on 24 May 2001. For the 2002/2003 academic year the final fee increase was 7.1 per cent for both boarding and day pupils and it was finalised on 23 May 2002. For the 2003/2004 academic year the final fee increase was 9 per cent for both boarding and day pupils and it was finalised on 22 May 2003.

Conclusion regarding Tonbridge School’s participation in the Sevenoaks Survey

1092. In relation to the 2001/2002 academic year, the OFT considers that Tonbridge School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Tonbridge School and Tonbridge School has participated in the Sevenoaks Survey in two other relevant years;
- Tonbridge School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and
- an extract from Tonbridge School’s internal documents (referring to an attached ‘comparison of fee levels’) is consistent with Tonbridge School’s participation in the Survey for this academic year.

1093. In relation to the 2002/2003 academic year, the OFT considers that Tonbridge School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Tonbridge School and Tonbridge School has participated in the Sevenoaks Survey in two other relevant years;
- Tonbridge School has stated that it contributed to the Sevenoaks Survey in respect of this academic year;
- the Sevenoaks bursar or his assistant sent Tonbridge School at least one circulation of the Sevenoaks Survey for this year; and

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24 See section 135 of the minutes of the meeting of the Tonbridge School Committee held on 24 May 2001 (document LXT659).
25 See section 176 of the minutes of the meeting of the Tonbridge School Committee held on 23 May 2002 (document LXT666).
26 See section 224 of the minutes of the meeting of the Tonbridge School Committee held on 22 May 2003 (document LXT673).
27 See paragraphs 1079 to 1086 above.
an extract from Tonbridge School’s internal documents (referring to an attached ‘list of schools showing their fee increases’) is consistent with Tonbridge School’s participation in the Survey for this academic year.

1094. In relation to the 2003/2004 academic year, the OFT considers that Tonbridge School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Tonbridge School and Tonbridge School has participated in the Sevenoaks Survey in two other relevant years;

- Tonbridge School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Tonbridge School at least one circulation of the Sevenoaks Survey for this year.

1095. The OFT therefore considers that Tonbridge School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 1081 and 1091 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Tonbridge School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

1096. The OFT concludes that the evidence set out above demonstrates that Tonbridge School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

Truro School

Evidence of participation in the Sevenoaks Survey

1097. The OFT relies on the following evidence in support of its finding that Truro School participated in the Sevenoaks Survey for each of the years 2001/2002 and 2003/2004.


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28 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
29 See the table at paragraph 1102 below.
1099. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Truro School contributed to the Sevenoaks Survey, Truro School stated,

'This is not known. Whilst the School accepts that it has contributed in the past [for a number of years and certainly before Jan 2000] it can trace no specific record of when it did so – and can only vaguely remember doing so in an informal way [say in response to a telephone call, fax or similar]. A check of our documents and, in particular, the Bursar’s e–mail can find no record of the Sevenoak Survey results.'

Fee-setting process

1100. Truro School's fee–setting process during the relevant period can, in essence, be described as follows.\(^{31}\) The process commences early in the spring term (January to March) of the academic year, in January or February, when budget bids are sought by departments within Truro School. In approximately the middle of the spring term Truro School’s senior management team evaluate the bids and decide on provisional allocation of funds. These provisional allocations are collated and discussed by Truro School’s senior management team and bursar before proposals to give to Truro School’s Governors are agreed. Once various decisions are taken regarding salaries at Truro School, the budget is revised and presented to the Truro School Governors’ Finance Meeting that takes place in March (but which took place in May until 2004) for them to make recommendations regarding the proposed budget – and the fees necessary to support the budget – to give to Truro School’s full Board of Governors at their meeting that takes place in late March (but which took place in early June until 2004). The full Board of Governors considers the recommendations and decides the level of the fee increase.

Timing of the Sevenoaks Survey in relation to the fee–setting process

1101. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Truro School, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Truro School, and Truro School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

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30 The answer to question 15 contained in Truro School’s 4 March 2004 response (document SJN0081R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG036).

31 The description of Truro School’s fee–setting process is taken from the answer to question 6 contained in Truro’s 4 March 2004 response (document SJN0081R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG036).
1102. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Truro School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004\textsuperscript{32}.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
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<tbody>
<tr>
<td></td>
<td>Boarding</td>
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<td>2001/2002</td>
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<tr>
<td>Circulations</td>
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<td><em>First main circulation of Sevenoaks Survey</em></td>
<td>13 February</td>
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<td>Other circulations:</td>
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<td>8 May</td>
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<tr>
<td><em>Second main circulation of Sevenoaks Survey</em></td>
<td>14 May</td>
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<td>Other circulations:</td>
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<td>2002/2003</td>
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<td><em>First main circulation of Sevenoaks Survey</em></td>
<td>11 February</td>
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<td>Other circulations:</td>
<td>15 February</td>
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<td>22 April</td>
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<td><em>First main circulation of Sevenoaks Survey</em></td>
<td>12 February</td>
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<tr>
<td>Other circulations:</td>
<td>14 February</td>
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</tbody>
</table>

\textsuperscript{32} The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
Finalisation of fee increases

1103. The final fee increases for Truro School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 7 per cent for boarding pupils and 6 per cent for day pupils and it was finalised 12 June 2001. For the 2002/2003 academic year the final fee increase was 9 per cent for both boarding and day pupils and it was finalised on 11 June 2002. For the 2003/2004 academic year the final fee increase was 10 per cent for both boarding and day pupils and it was finalised on 10 June 2003.

Conclusion regarding Truro School’s participation in the Sevenoaks Survey

1104. In relation to the 2001/2002 academic year, the OFT considers that Truro School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Truro School; given that the last fee increase figures recorded in this year’s Sevenoaks Survey for Truro School are almost the same (the figures in the Survey are one per cent less than the finalised fee increases) as Truro School’s finalised fee increase figures for this academic year, the OFT infers that the figures contained in the Survey must have come from Truro School; and

- Truro School has stated that it contributed to the Sevenoaks Survey in a number of academic years.

1105. In relation to the 2003/2004 academic year, the OFT considers that Truro School participated in the Sevenoaks Survey on the basis that:

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33 See section 6.3 of the minutes of the meeting of Truro School’s Governors held on 12 June 2001 (document SJN0127).
34 See section 8.0 of the minutes of the meeting of Truro School’s Governors held on 11 June 2002 (document SJN0164).
35 See section 7.1 of the minutes of the meeting of Truro School’s Governors held on 10 June 2003 (document SJN0180).
36 See paragraphs 1097 to 1099 above.
• the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Truro School; given that the last fee increase figures recorded in this year’s Sevenoaks Survey for Truro School are the same as Truro School’s finalised fee increase figures for this academic year, the OFT infers that the figures contained in the Survey must have come from Truro School; and

• Truro School has stated that it contributed to the Sevenoaks Survey in a number of academic years.

1106. Although the OFT does not have specific evidence to demonstrate that Truro School received circulations of the Sevenoaks Survey before it finalised its own fee increase, the OFT considers that the fact that Truro School contributed its own fee increase figures to the Sevenoaks Survey in those years (see paragraph 1102 above) means that it nevertheless participated in the Sevenoaks Survey for those years.


Uppingham School

Evidence of participation in the Sevenoaks Survey


1110. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Uppingham School contributed to the Sevenoaks Survey, Uppingham School noted,


Enclosed with Uppingham School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2001/2002 to 2003/2004 that Uppingham School received from the Sevenoaks bursar or his assistant.

1111. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004, Uppingham School was an addressee of at least one electronic mail that the Sevenoaks bursar or his

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37 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
38 See the table at paragraph 1123 below.
39 The answer to question 15 contained in Uppingham’s 3 March 2004 response (document TXD0920R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG037).
assistant sent to Participant schools. The OFT considers that this demonstrates that Uppingham School received at least one circulation of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004 by, respectively, 11 February 2002 and 11 March 2003.

1112. Fourth, the OFT notes that a number of Uppingham School’s internal documents for each of the academic years 2002/2003 and 2003/2004 are consistent with and further evidence for the conclusion that Uppingham School participated in the Sevenoaks Survey in respect of these academic years.

2002/2003 academic year

1113. The OFT considers that the following extracts from Uppingham School’s internal documents (one of which had a slightly revised version of a circulation of the Sevenoaks Survey attached to it) are consistent with and further evidence for the conclusion that Uppingham School participated in the Survey for 2002/2003.

Agenda Item 5 for a meeting of Uppingham School’s Finance and General Purposes Committee held on 23 February 2002

1114. This agenda item is headed '2002/2003 BUDGET PREPARATION' and it states on page 2,

'iv) Fee increase

Attached are the summarised results of the preliminary Sevenoaks survey of fee increases...'.

The agenda item encloses a slightly revised version of a circulation of the Sevenoaks Survey in respect of the academic year 2002/2003.

Agenda Item 5 for a meeting of Uppingham School’s Finance and General Purposes Committee held on 25 May 2002

1115. This agenda item headed '2002/2003 DRAFT BUDGET' states,

'A recent Survey of proposed fee increases for the coming academic year is attached which shows that the level of fee increases is likely to be much higher than original estimates indicated, and that the 49 schools surveyed showed an average increase of 6.6%.'
In percentage terms, Uppingham at 5.5% is in the lower quartile. In overall fee level, at £18,459, Uppingham is in the middle of the table.

Trustees are invited to review the statistics and consider whether there is an opportunity to increase the rate of percentage increase.'

Minutes of the meeting of Uppingham School’s Finance and General Purposes Committee held on 25 May 2002

1116. The section of the minutes headed 'FGP/02/39' on page 3 of the minutes states,

'Fee Increase: The Bursar advised that the originally budgeted fee increase of 5.0% had been increased to 5.5% to incorporate the cost of providing afternoon cover to each boarding house... The Committee then considered the recent survey of proposed fee increases, prepared by Sevenoaks School, and noted that the 49 schools surveyed showed an average increase of 6.6%...

DECISION:

Following a detailed discussion on the level of the fee increase to put to the main trustee body, it was decided that this should be 6.5%.'

(Emphasis added).

Minutes of a meeting of Uppingham School’s trustees held on 15 June 2002

1117. Section T/02/47 on page 3 of the minutes states,

'Budget (FGP/02/44) The Chairman of the Finance and General Purposes Committee advised that the originally budgeted fee increase of 5% had been increased to 6.5% for three reasons:...

...In addition, it was noted that a survey of 49 schools had shown an average increase of 6.6%.'

2003/2004 academic year

1118. The OFT considers that the following extracts from Uppingham School’s internal documents (one of which had two revised circulations of the Sevenoaks Survey attached to it) are consistent with and further evidence for the conclusion that Uppingham School participated in the Survey for 2003/2004.

Minutes of a meeting of Uppingham School’s Finance and General Purposes Committee held on 17 May 2003

1119. Section FGP/03/51 on page 4 of the minutes states,

'Fee increase The Bursar advised that, although the recent Sevenoaks survey on fee increases had shown an average 8% increase, the School had continued to use 7%...
In addition, it was noted that, in the event of an economic downturn and a subsequent need to reduce the size of fee increases, Uppingham would start from a lower base than many of its competitors who were proposing a higher increase.'

Minutes of a meeting of Uppingham School’s trustees held on 14 June 2003

1120. Section T/03/72 on page 6 of the minutes states,

'The trustees received the Sevenoaks School’s April survey which gave estimated fees – this had not been updated following media interest in an alleged Independent Schools’ fees cartel. The estimated figures showed an average 8.1% increase.'

Two slightly revised versions of the 17 April 2003 circulation of the Sevenoaks Survey – arranged, respectively, in decreasing level of boarding fee and in decreasing level of fee increase – are attached to the minutes.

Fee–setting process

1121. Uppingham School’s fee–setting process during the relevant period can, in essence, be described as follows. Uppingham School’s bursar prepares a Budget Parameters paper – which outlines the factors being considered in the budget process – for discussion at the February meeting of Uppingham School’s Finance and General Purposes Committee. After this meeting, the bursar and the Budget Committee meet to discuss departmental budgets before Uppingham School’s Finance Department produces a draft budget to present to the Budget Committee in early May. The draft budget is then presented, also in May, to the Finance and General Purposes Committee, who make a recommendation, including the fee increase, to the full meeting of Uppingham School’s Board of Trustees in June. The June meeting of the full Board of Trustees considers the Finance and General Purposes Committee’s recommendation and accepts or revises the recommendations as it sees fit. Parents are notified of the new fee structure immediately after the June meeting of the full Board of Trustees. The

Timing of the Sevenoaks Survey in relation to the fee–setting process

1122. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Uppingham School, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Uppingham School, and Uppingham School would have submitted an estimate to the Survey. The

46 Document TXD0904.
47 The description of Uppingham’s fee–setting process is taken from the answer to question 6 contained in Uppingham’s 3 March 2004 response (document TXD0920R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG037).
The results of this first request for information would have been circulated in mid-February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

1123. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Uppingham School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
<th>Boarding</th>
<th>Day</th>
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<td>22 April</td>
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<td>2003/2004</td>
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The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
### Finalisation of fee increases

1124. The final fee increases for Uppingham School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 7.5 per cent for boarding fees (day fees were calculated as a percentage of the increased level of boarding fees) and it was finalised on 16 June 2001⁴⁹. For the 2002/2003 academic year the final fee increase was 6.5 per cent for boarding fees (day fees were calculated as a percentage of the increased level of boarding fees) and it was finalised on 15 June 2002⁵⁰. For the 2003/2004 academic year the final fee increase was 7.87 per cent for boarding fees (day fees were calculated as a percentage of the increased level of boarding fees) and it was finalised on 14 June 2003⁵¹.

### Conclusion regarding Uppingham School's participation in the Sevenoaks Survey⁵²

1125. In relation to the 2001/2002 academic year, the OFT considers that Uppingham School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Uppingham School and Uppingham School has participated in the Sevenoaks Survey in two other relevant years; and

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⁴⁹ See the minutes of the meeting of the Trustees of Uppingham School held on 16 June 2001 (document TXD0916).
⁵⁰ See the minutes of the meeting of the Trustees of Uppingham School held on 15 June 2002 (document TXD0910).
⁵¹ See the minutes of the meeting of the Trustees of Uppingham School held on 14 June 2003 (document TXD0904).
⁵² See paragraphs 1109 to 1120 above.
• Uppingham School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year.

1126. In relation to the 2002/2003 academic year, the OFT considers that Uppingham School participated in the Sevenoaks Survey on the basis that:

• the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Uppingham School and Uppingham School has participated in the Sevenoaks Survey in two other relevant years;

• Uppingham School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

• the Sevenoaks bursar or his assistant sent Uppingham School at least one circulation of the Sevenoaks Survey for this year; and

• extracts from a number of Uppingham School’s internal documents, two of which referred expressly to ‘the summarised results of the preliminary Sevenoaks survey of fee increases’ and ‘the recent survey of proposed fee increases, prepared by Sevenoaks School’, are consistent with Uppingham School’s participation in the Sevenoaks Survey for this academic year; one extract came from a document that had a slightly revised version of a circulation of the Sevenoaks Survey attached to it.

1127. In relation to the 2003/2004 academic year, the OFT considers that Uppingham School participated in the Sevenoaks Survey on the basis that:

• the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Uppingham School and Uppingham School has participated in the Sevenoaks Survey in two other relevant years;

• Uppingham School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

• the Sevenoaks bursar or his assistant sent Uppingham School at least one circulation of the Sevenoaks Survey for this year; and

• extracts from a number of Uppingham School’s internal documents, two of which referred expressly to ‘the recent Sevenoaks survey on fee increases’ and ‘the Sevenoaks School’s April survey which gave estimated fees’, are consistent with Uppingham School’s participation in the Sevenoaks Survey for this academic year; one extract came from a document that had two slightly revised versions of a circulation of the Survey attached to it.
1128. The OFT therefore considers that Uppingham School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 1111 and 1124 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Uppingham School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

1129. The OFT concludes that the evidence set out above demonstrates that Uppingham School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

Wellington College

Evidence of participation in the Sevenoaks Survey53


1131. First, the Sevenoaks Survey includes fee-increase estimates for Wellington College for each of the years 2001/2002, 2002/2003 and 2003/2004.54

1132. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Wellington College contributed to the Sevenoaks Survey, Wellington College noted,

'Each year up to the time that Sevenoaks stopped issuing the survey; last survey was March 2003.'55

Enclosed with Wellington College’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of the years 2001/2002 and 2003/2004 that Wellington College received from the Sevenoaks bursar or his assistant.

1133. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004, Wellington College was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools56. The OFT considers that this

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53 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
54 See the table at paragraph 1152 below.
55 The answer to question 15 contained in Wellington College’s 9 March 2004 response (document TXD1979R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG038).
56 Documents LXT3412 and LXT2542 show, respectively, that the electronic mail address mps@wellington–college.berks.sch.uk was the recipient of electronic mails transmitting summaries of other schools’ fee-increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic address – ‘wellington–college.berks.sch.uk’ – corresponds with the domain
demonstrates that Wellington College received at least one circulation of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004 by, respectively, 11 February 2002 and 11 March 2003.

1134. Fourth, the OFT notes that a number of Wellington College’s internal documents for each of the academic years 2001/2002 to 2003/2004 are consistent with and further evidence for the conclusion that Wellington College participated in the Sevenoaks Survey in respect of those academic years.

2001/2002 academic year

1135. The OFT considers that the following extracts from Wellington College’s internal documents are consistent with and further evidence for the conclusion that Wellington College participated in the Survey for 2001/2002.

**Agenda and Annex C to the meeting of the Executive and Finance Committee of the Governors of Wellington College held on 28 February 2001**

1136. Annex C is entitled 'An Outline Budget for 2001/2002'. Section D of the outline budget states,

>'Fees

A recent survey of 39 schools shows that expectations of fee increases are in the range 4.0% to 9.0%, though I would caution against reading too much into these figures at this early stage. For the Rugby Group Schools within the survey the average is 5.25%. Experience leads one to believe that actual increases will be a percentage point or two above current estimates.'

The OFT notes that a slightly revised version of the outline budget annexed containing the same paragraph quoted above is also included as Annex C to the meeting of Wellington College's Governors held on 17 March 2001.

**Annex C to the agenda for a meeting of the Executive and Finance Committee of the Governors of Wellington College held on 6 June 2001**

1137. Annex C is entitled 'Draft Budget for 2001/2002'. A paragraph headed 'Fees', on the first page of the draft budget notes,

>'In March Governors reviewed information on the intention of other schools in respect of fee increases and being mindful of the likely economic environment in the coming year, indicated that the budget should be prepared assuming a boarding fee increase of around 5.0%. A

name for Wellington College’s website address: see [http://www.wellington-college.berks.sch.uk/](http://www.wellington-college.berks.sch.uk/). The OFT therefore considers that Wellington College received the electronic mails described above that were sent to the electronic mail address mps@wellington-college.berks.sch.uk.

57 Documents TXD2117 and TXD2118 respectively.

58 Document TXD2120.

59 Document TXD2122.
rider to this indication was that Wellington should maintain its fee position relative to its competitor schools...

Since March it has become clear that many schools have raised their thoughts on fees as the full impact of the DfEE’s salary award has been evaluated. Fee increases in the range 6.0% to 10.0% are being discussed across a range of school; May estimates are shown in Appendix 2; more up to date information will be tabled at the meeting following a Bursars meeting on 5th June...

For the draft budget it was decided to include for a 7.5% increase in the Boarding fee...'

Minutes of a meeting of the Executive and Finance Committee of the Governors of Wellington College held on 6 June 2001

1138. Paragraph 11 of the minutes states,

'The Committee reviewed the proposed fee levels for 2001/2002 taking into account the latest information available for the 22 other schools that we monitor and in particular the 11 schools with which we aim to compete. The Bursar mentioned that at this stage last year Governors had set Wellington’s fees in the expectation that we would be 9th in the table of 22; as a result of late moves by some other schools our actual position was 12th. Therefore, whilst the proposal before the Committee would place us 6th this year it was likely that others would still overtake us... the Committee agreed to recommend to the full Governing body that the fees for 2001/2002 should be:

Boarding £5,870 per term (+7.5%)'.

Annex C to the agenda for a meeting of the Governors of Wellington College held on 20 June 2001

1139. As stated above, Annex C to the agenda for the meeting of Wellington College’s Governors, which is entitled ‘Draft Budget for 2001/2002’, states,

'In March Governors reviewed information on the intention of other schools in respect of fee increases and being mindful of the likely economic environment in the coming year, indicated that the budget should be prepared assuming a boarding fee increase of around 5.0%. A rider to this indication was that Wellington should maintain its fee position relative to its competitor schools...

Since March it has become clear that many schools have raised their thoughts on fees as the full impact of the DfEE’s salary award has been evaluated. Fee increases in the range 6.0% to 10.0% are being discussed across a range of schools; May estimates are shown in Appendix 2; more up to date information will be tabled at the meeting following a Bursars meeting on 5th June...

For the draft budget it was decided to include for a 7.5% increase in the Boarding fee...'

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60 Document TXD2121.
61 Document TXD2128.
2002/2003 academic year

1140. The OFT considers that the following extracts from Wellington College’s internal documents are consistent with and further evidence for the conclusion that Wellington College participated in the Survey for 2002/2003.

Annex C to the agenda for a meeting of the Executive and Finance Committee of the Governors of Wellington College held on 27 February 2002


'...A recent survey of 39 schools shows that the expectation is that fee increases will be in the range of 5 – 7%, with perhaps surprisingly a number of senior schools once again at the higher end of this range. Furthermore, experience from previous years leads one to believe that actual increases will on average be higher than estimates made at this time of year...’

1142. The OFT notes that a slightly revised version of the outline budget annexed containing the same paragraph quoted above is also included as Annex C to the agenda for the meeting of Wellington College’s Governors held on 16 March 2002.

Annex D to the agenda for a meeting of the Executive and Finance Committee of the Governors of Wellington College held on 5 June 2002

1143. Annex D is entitled 'Draft Budget for 2002/2003'. A paragraph headed 'Fees', on the second page of the draft budget notes,

'...The two pages of Annex D, Appendix 1 show these new figures for Wellington in comparison with the fees other schools expected to set as at 20th May 2002... even on today’s information, it is evident that at the level suggested by Governors last term, Wellington’s position in the boarding fees’ league table will drop next year, both in the overall ranking and in the more selective geographical ranking. Indeed, to maintain our current positions it would be necessary to increase our boarding fee at least 7.5% to £6,310 per term (Day Fee: £5,048, a 11.68% increase).'

Minutes of a meeting of the Executive and Finance Committee of the Governors of Wellington College held on 5 June 2002

1144. Paragraph 9c) on page 4 of the minutes states,

'Fees

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62 Document TXD2137.
63 See documents TXD2138 and TXD2139.
64 Document TXD2141.
65 Document TXD2140.
The Committee reviewed the proposed fee levels for 2002/2003 taking into account the latest information available for 21 of the 22 other schools that we monitor and in particular the 11 schools with which we aim to compete. The Bursar mentioned that it was evident that a number of schools were likely to set their fees at levels above those currently being indicated. After some deliberation, the Committee decided to recommend to the full Governing Body that the fees for 2002/2003 should be:

- **Boarding**: £6,310 per term (+7.50%)
- **Day**: £5,048 per term (+11.68%)

Annex D to the agenda for a meeting of the Governors of Wellington College held on 19 June 2002

1145. Annex D is entitled 'Draft Budget for 2002/2003'. A paragraph headed 'Fees', on the second page of the draft budget notes,

>'The two pages of Annex D, Appendix 1 show these new figures for Wellington in comparison with the fees other schools expected to set as at 11th June 2002. The figures for the Rugby Group schools can be considered reasonably firm; those for the other schools are as reported in April and may well have changed to higher figures since then...'

2003/2004 academic year

1146. The OFT considers that the following extracts from Wellington College’s internal documents are consistent with and further evidence for the conclusion that Wellington College participated in the Survey for 2003/2004.

Annex C to the agenda for a meeting of the Executive and Finance Committee of the Governors of Wellington College held on 5 March 2003

1147. Annex C is entitled 'Outline Budget for 2003/2004'. A paragraph headed 'Fees', on the second page of the outline budget notes,

>'A recent survey amongst 43 senior schools indicated possible rises of between 5% and 10% with the majority around 8%; estimates for the Rugby Group of schools average out at 6.8%...'

The OFT notes that the same outline budget, containing the same paragraph quoted above, is also included as Annex C to the agenda for the meeting of Wellington College’s Governors held on 22 March 2003.
Annex D to the agenda of a meeting of the Executive and Finance Committee of the Governors of Wellington College held on 4 June 2003

Annex D is entitled ‘Draft Budget for 2003/2004’. A paragraph headed ‘Fees’, on the first page of the draft budget notes,

'a) Fees

In March Governors requested that the draft budget should be prepared on the basis of a 7.0% increase in the boarding and day fees, raising them to:

Boarding: £6,750 per term

Day: £5,400 per term...

...Wellington’s ranking overall this year is 9th and 7th amongst those that a [sic] geographical competitors. Included on page 2 of Appendix 1 is a cutting from the Sunday Times in which independent schools were accused of operating a cartel over fees. Wellington was not named.’

The OFT notes that a slightly revised version of the draft budget, containing a slightly amended version of the paragraph quoted above, is also included as Annex D to the agenda for the meeting of Wellington College’s Governors held on 18 June 2003.

Fee-setting process

1149. Wellington College’s fee-setting process during the relevant period can, in essence, be described as follows. Wellington College’s bursar is required to present to the March meeting of Wellington College’s Governors various options for an Outline Budget for the following financial year. The options covered include fee increases and salary awards. The purpose of the Outline Budget is to give Governors information on the factors most likely to impinge on Wellington College’s finances and to allow Governors to give the bursar guidance on the level of surplus to be achieved when the Draft Budget is prepared. After this, budget requests from departments are made and returned to enable Wellington College’s bursar and its accountant to agree departmental budgets and finalise staff requirements by early May and to produce the Draft Budget. The Draft Budget – which includes a proposal on the level of fee increases – is considered by Wellington College’s Governors in June, first by the Executive Committee of the Governing Body and then, after the Executive Committee has made any amendments, to the full Governing Body in the second half of June.

1150. The process commences in February or March of each academic year with discussion between Wellington College’s bursar and finance bursar. The two bursars take into account factors that affect Wellington College’s cost

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68 Document TXD2159.
69 Document TXD2167.
70 The description of Wellington College’s fee-setting process is taken from the answer to question 6 contained in Wellington College’s 9 March 2004 response (document TXD1979R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG038).
base, including teachers' salaries, and taking into account certain financial targets, such as a target surplus. Initial budget assumptions as to percentage fee and salary increases are put to Wellington College's Finance Committee and Wellington College's Governing Body in the February or March meetings of those entities each academic year. The resulting budget is reviewed at a Finance Meeting held in May or June of each academic year before the budget and fees are finally approved by Wellington College's Governing Body at its meeting in June or July. The Chairman of Governors notifies parents by letter about a week after the Governors' decision, at the end of the summer term.

Timing of the Sevenoaks Survey in relation to the fee–setting process

1151. The OFT notes that according to the Sevenoaks bursar's witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Wellington College, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar's request for prospective fee increases would have been sent to the Participant schools, including Wellington College, and Wellington College would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

1152. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Wellington College in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
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</thead>
<tbody>
<tr>
<td>Circulations</td>
<td></td>
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<tr>
<td>2001/2002</td>
<td>Boarding</td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>13 February</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May</td>
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<tr>
<td></td>
<td>8 May</td>
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<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>14 May</td>
</tr>
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</table>

71 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
<table>
<thead>
<tr>
<th>Other circulations:</th>
<th>17 May</th>
<th>7.5</th>
<th>10.3</th>
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<tr>
<td></td>
<td>29 May</td>
<td>7.5</td>
<td>10.3</td>
</tr>
<tr>
<td></td>
<td>25 June</td>
<td>7.5</td>
<td>10.3</td>
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<tr>
<th>2002/2003</th>
<th></th>
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<tbody>
<tr>
<td><strong>First main</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td><strong>circulation of</strong></td>
<td>11 February</td>
<td>–</td>
<td>–</td>
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<tr>
<td><strong>Sevenoaks Survey</strong></td>
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<tr>
<td>Other circulations:</td>
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<td>9.1</td>
</tr>
<tr>
<td><strong>Second main</strong></td>
<td></td>
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<tr>
<td><strong>circulation of</strong></td>
<td>22 April</td>
<td>6</td>
<td>10</td>
</tr>
<tr>
<td><strong>Sevenoaks Survey</strong></td>
<td></td>
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</tr>
<tr>
<td>Other circulations:</td>
<td>11 June</td>
<td>6</td>
<td>10</td>
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<tr>
<th>2003/2004</th>
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</thead>
<tbody>
<tr>
<td><strong>First main</strong></td>
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<td></td>
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<tr>
<td><strong>circulation of</strong></td>
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<td><strong>Sevenoaks Survey</strong></td>
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<tr>
<td>Other circulations:</td>
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<td>26 February</td>
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<tr>
<td></td>
<td>14 March</td>
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<tr>
<td></td>
<td>17 March</td>
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</tr>
<tr>
<td><strong>Second main</strong></td>
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<td></td>
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<tr>
<td><strong>circulation of</strong></td>
<td>17 April</td>
<td>7</td>
<td>7</td>
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<td><strong>Sevenoaks Survey</strong></td>
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<tr>
<td>Other circulations:</td>
<td>–</td>
<td>–</td>
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</table>

**Finalisation of fee increases**

1153. The final fee increases for Wellington College during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 7.51 per cent for boarding fees and 10.38 per cent for day fees and it was finalised on 20 June 2001. For the 2002/2003 academic year the

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72 See section 18 of the minutes of the meeting of Wellington College’s Governors held on 20 June 2001 (document TXD2127).
final fee increase was 7.5 per cent for boarding fees and 11.68 per cent for day fees and it was finalised on 19 June 2002. For the 2003/2004 academic year the final fee increase was 8.56 per cent for both boarding and day pupils and it was finalised on 18 June 2003.

Conclusion regarding Wellington College’s participation in the Sevenoaks Survey

1154. In relation to the 2001/2002 academic year, the OFT considers that Wellington College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Wellington College and Wellington College has participated in the Sevenoaks Survey in two other relevant years;

- Wellington College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Wellington College at least one circulation of the Sevenoaks Survey for this year; and

- extracts from a number of Wellington College’s internal documents are consistent with Wellington College’s participation in the Sevenoaks Survey for this academic year.

1155. In relation to the 2002/2003 academic year, the OFT considers that Wellington College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Wellington College and Wellington College has participated in the Sevenoaks Survey in two other relevant years;

- Wellington College has stated that it contributed to the Sevenoaks Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Wellington College at least one circulation of the Sevenoaks Survey for this year; and

- extracts from a number of Wellington College’s internal documents are consistent with Wellington College’s participation in the Sevenoaks Survey for this academic year.

1156. In relation to the 2003/2004 academic year, the OFT considers that Wellington College participated in the Sevenoaks Survey on the basis that:

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73 See section 17 of the minutes of the meeting of Wellington College’s Governors held on 19 June 2002 (document TXD2146).
74 See the minutes of the meeting of Wellington College’s Governors held on 18 June 2003 (document TXD2166).
75 See paragraphs 1131 to 1148 above.
• the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Wellington College and Wellington College has participated in the Sevenoaks Survey in two other relevant years;

• Wellington College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

• the Sevenoaks bursar or his assistant sent Wellington College at least one circulation of the Sevenoaks Survey for this year; and

• extracts from a number of Wellington College’s internal documents are consistent with Wellington College’s participation in the Sevenoaks Survey for this academic year.

1157. The OFT therefore considers that Wellington College both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 1133 and 1153 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Wellington College will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

1158. The OFT concludes that the evidence set out above demonstrates that Wellington College participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Wells Cathedral School**

**Evidence of participation in the Sevenoaks Survey**


1161. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Wells Cathedral School contributed to the Sevenoaks Survey, Wells Cathedral School noted,

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76 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
77 See the table at paragraph 1169 below.
Enclosed with Wells Cathedral School's response was a copy of at least one circulation of the Sevenoaks Survey in respect of the academic year 2001/2002 that Wells Cathedral School received from the Sevenoaks bursar or his assistant.

Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004, Wells Cathedral School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools. The OFT considers that this demonstrates that Wells Cathedral School received at least one circulation of the Sevenoaks Survey for the academic years 2002/2003 and 2003/2004 by, respectively, 17 April 2002 and 11 March 2003.

Fourth, the OFT notes that a number of Wells Cathedral School’s internal documents for the academic year 2001/2002 are consistent with and further evidence for the conclusion that Wells Cathedral School participated in the Sevenoaks Survey in respect of that academic year.

2001/2002 academic year

The OFT considers that the following extracts from Wells Cathedral School’s internal documents (one of which had a circulation of the Sevenoaks Survey attached to it) are consistent with and further evidence for the conclusion that Wells Cathedral School participated in the Survey for 2001/2002.

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78 The answer to question 7 contained in Wells Cathedral School’s 5 March 2004 response (document JXS0834R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG039).

79 Document LXT4010 shows that the electronic mail address bursar@bursarywcs.freeserve.co.uk was the recipient of electronic mails transmitting summaries of other schools’ fee-increase estimates contained in the Sevenoaks Surveys in respect of the academic year 2002/2003. Wells Cathedral School confirmed in its 7 October 2005 response (document MDB0089A) to the OFT’s section 26 Notice to it dated 4 October 2005 (document MDB0045E) that the electronic mail address bursar@bursarywcs.freeserve.co.uk was a valid electronic mail address for the bursar of Wells Cathedral School during the period January 2001 to December 2003 inclusive. The OFT therefore considers that the bursar of Wells Cathedral School received the electronic mails described above that were sent to the electronic mail address bursar@bursarywcs.freeserve.co.uk. Document LXT2542 shows that the electronic mail address bursar@wells-cathedral-school.com was the recipient of electronic mails transmitting summaries of other schools’ fee-increase estimates contained in the Sevenoaks Surveys in respect of the academic year 2003/2004. The OFT notes that the electronic mail address bursar@wells-cathedral-school.com is the electronic mail address of the bursar of Wells Cathedral School that is recorded in Wells Cathedral School’s 5 March 2004 response (document JXS0834R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG039) and that Wells Cathedral School confirmed in its 7 October 2005 response (document MDB0089A) to the OFT’s section 26 Notice to it dated 4 October 2005 (document MDB0045E) that this electronic mail address was a valid one for the bursar of Wells Cathedral School. The OFT therefore considers that the bursar of Wells Cathedral School received the electronic mails described above that were sent to the electronic mail address bursar@wells-cathedral-school.com.
1165. The agenda states at item 4,

‘Draft Revenue & Capital Budgets for 2001/02:…

Market Research (Paper E herewith)…’

A copy of the 13 February 2001 circulation of the Survey is attached at item E to the agenda.

1166. A paragraph in section 01/08 of the minutes headed ‘Fee increases in September 2001 – factors for consideration’ states,

‘After discussion… it was agreed to recommend that fees be increased generally from September 2001 by 8.5%... This level of increase was seen to be at the upper end of the range of fee increases in other schools (Agenda paper E), although the information obtained to date excluded many local competitor schools.’

Fee–setting process

1167. Wells Cathedral School’s fee–setting process during the relevant period can, in essence, be described as follows. In February of an academic year the Financial Controller (now called the deputy bursar) of Wells Cathedral School prepares financial papers to be discussed at a meeting of the Finance and Audit Committee that takes place in February or March. The financial papers relate to the setting of fees and to various factors that affect Wells Cathedral School’s cost base, including teachers’ salaries, and taking into account certain financial targets, such as a target surplus. The Finance and Audit Committee considers the papers and then makes a recommendation to the Governors of Wells Cathedral School in respect of fee increases. The Governors of Wells Cathedral School meet in March and decide, among other things, the fee increases for the following year. The Chairman notifies parents of the fee increases shortly after the Governors’ decision.

Timing of the Sevenoaks Survey in relation to the fee–setting process

1168. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Wells Cathedral School, at distinct points in

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80 Documents JXS0896 and JXS0904.
81 Document JXS0917.
82 The description of Wells Cathedral School’s fee–setting process is taken from the answer to question 6 contained in Wells Cathedral School’s 5 March 2004 response (document JXS0834R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG039).
its fee-setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Wells Cathedral School, and Wells Cathedral School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid-February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

1169. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Wells Cathedral School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>2001/2002</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td><strong>First main circulation of Sevenoaks Survey</strong></td>
<td>13 February</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td></td>
<td>8 May</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
<td>14 May</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>17 May</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>25 June</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td><strong>2002/2003</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>First main circulation of Sevenoaks Survey</strong></td>
<td>11 February</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td></td>
<td>15 February</td>
<td>5.5</td>
<td>5.5</td>
</tr>
<tr>
<td><strong>Second main circulation of</strong></td>
<td>22 April</td>
<td>5.5</td>
<td>5.5</td>
</tr>
</tbody>
</table>

83 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
Finalisation of fee increases

1170. The final fee increases for Wells Cathedral School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 9 per cent for both boarding and day pupils and it was finalised on 25 June 2001. For the 2002/2003 academic year the final fee increase was 7 per cent for both boarding and day pupils and it was finalised on 11 March 2002. For the 2003/2004 academic year the final fee increase was 11 per cent for both boarding and day pupils and it was finalised on 7 July 2003.

Conclusion regarding Wells Cathedral School’s participation in the Sevenoaks Survey

1171. In relation to the 2001/2002 academic year, the OFT considers that Wells Cathedral School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Wells Cathedral School and Wells

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84 See section 6.3 of the minutes of the meeting of the Governing Body of Wells Cathedral School held on 25 June 2001 (document TXD0047).
85 See section 3.13 of the minutes of the meeting of the Governing Body of Wells Cathedral School held on 11 March 2002 (document TXD0067).
86 See section 3.5–3.11 of the minutes of the meeting of the Governing Body of Wells Cathedral School held on 7 July 2003 (document TXD0096).
87 See paragraphs 1160 to 1166 above.
Cathedral School has participated in the Sevenoaks Survey in two other relevant years;

- Wells Cathedral School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- extracts from a number of Wells Cathedral School’s internal documents are consistent with Wells Cathedral School’s participation in the Sevenoaks Survey for this academic year, including one that had a copy of the Survey attached to it.

1172. In relation to the 2002/2003 academic year, the OFT considers that Wells Cathedral School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Wells Cathedral School and Wells Cathedral School has participated in the Sevenoaks Survey in two other relevant years;

- Wells Cathedral School has stated that it contributed to the Sevenoaks Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Wells Cathedral School at least one circulation of the Sevenoaks Survey for this year.

1173. In relation to the 2003/2004 academic year, the OFT considers that Wells Cathedral School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Wells Cathedral School, those fee increases reflected with a reasonable degree of accuracy Wells Cathedral School’s actual fee increase and Wells Cathedral School has participated in the Sevenoaks Survey in two other relevant years; and

- the Sevenoaks bursar or his assistant sent Wells Cathedral School at least one circulation of the Sevenoaks Survey for this year.

1174. The OFT therefore considers that Wells Cathedral School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 1162 and 1170 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Wells Cathedral School will have received at least one circulation of the Sevenoaks Survey containing competitors' estimated fee increases in respect of each of the academic years 2001/2002 and 2003/2004 before it finalised its own fee increases. In relation to the 2002/2003 academic year, although the OFT does not have specific evidence to demonstrate that Wells Cathedral School received circulations of the Sevenoaks Survey before it finalised its own fee increase, the OFT considers that the fact that Wells Cathedral School contributed its own
fee increase figures to the Sevenoaks Survey in those years (see paragraph 1169 above) means that it nevertheless participated in the Sevenoaks Survey for that year.

1175. The OFT concludes that the evidence set out above demonstrates that Wells Cathedral School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of the 2001/2002 and 2003/2004 academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

**Westminster School**

**Evidence of participation in the Sevenoaks Survey**


1178. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Westminster School contributed to the Sevenoaks Survey, Westminster School noted,

‘The School does not keep a record of the particular years in which it made any contribution to the Sevenoaks Survey. The Bursar recollects correcting actual current fees as shown on the survey. He has no specific recollection of contributing anticipated fees but believes he may have done so...’

1179. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004, Westminster School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools. The OFT considers that this demonstrates that Westminster School received at least one circulation of the Sevenoaks Survey for the academic years 2002/2003 and 2003/2004 by, respectively, 11 February 2002 and 11 March 2003.

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88 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
89 See the table at paragraph 1187 below.
90 The answer to question 15 contained in Westminster School’s 5 March 2004 response (document TXD1056R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG040).
91 Documents LXT3412 and LXT2542 show, respectively, that the electronic mail address David.chaundler@westminster.org.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘westminster.org.uk’ – corresponds with the domain name for Westminster School’s letter website: see http://www.westminster.org.uk/index.asp. The OFT therefore considers that Westminster School received the electronic mails described above that were sent to the electronic mail address David.chaundler@westminster.org.uk.
1180. Fourth, the OFT notes that a number of Westminster School’s internal documents for the academic year 2001/2002 are consistent with and further evidence for the conclusion that Westminster School participated in the Sevenoaks Survey in respect of that academic year.

2001/2002 academic year

1181. The OFT considers that the following extracts from Westminster School’s internal documents are consistent with and further evidence for the conclusion that Westminster School participated in the Survey for 2001/2002.

Draft Budget for 2001/2002 for Westminster School 92

1182. A paragraph headed ‘RECOMMENDED FEE INCREASE’ on page 2 of the document states,

'It should be noted that last year the increase was 4% against a national average for private schools of 8%. This year, provisionally, it appears that the national average will be 7.5%....'

(Emphasis added).

Paper regarding the Draft Budget for 2001/2002 prepared for a meeting of Westminster School’s Finance Committee held on 10 May 2001 93

1183. A paragraph headed ‘SCHOOL FEE INCREASE’ states,

'Last year the fee increase was 4% against a national average of 6.7%. It would appear that next year’s increase is likely to be in the order of 8%....'

(Emphasis added).

Fee–setting process

1184. Westminster School’s fee–setting process during the relevant period can, in essence, be described as follows94. The budgetary process takes into account factors that affect Westminster School’s cost base, including teachers’ salaries, and also certain financial targets, such as a target surplus. The process commences in January of each academic year with discussion between the bursar and members of Westminster School’s senior management team and between the bursar, Westminster School’s finance bursar and the chief accountant. In February budget holders are required to submit proposed budgets for the following year by the end of March.

92 Document TXD1093.
93 Document TXD1095.
94 The description of Westminster School’s fee–setting process is taken from the answer to question 6 contained in Westminster School’s 5 March 2004 response (document TXD1056R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG040).
Members of Westminster School’s senior management team then screen the budget proposals before they go to the finance bursar and chief accountant to be consolidated. The draft budget is produced in March and April, over the Easter Holidays, including a range of proposed fee levels relating to the surplus or deficit they would produce. In April and/or May the Finance Committee meets with Westminster School’s main budget holders to scrutinise the budgets. The overall budget is presented by the bursar and finance bursar. The Finance Committee suggests any amendments to the budget that it sees fit before recommending the budget to Westminster School’s Executive Committee. The Executive Committee meets in May to consider the budget, including fee level proposals, before making a recommendation to the full Governing Body. Westminster School’s full Governing Body meets in June to consider the budget and fee level proposals. Once the budget and fee increase proposals are approved by the Governing Body, parents are notified of the fee increases.

Timing of the Sevenoaks Survey in relation to the fee–setting process

The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Westminster School, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Westminster School, and Westminster School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Westminster School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

<table>
<thead>
<tr>
<th>Circulations</th>
<th>Year</th>
<th>Fee increase estimate (%)</th>
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<tbody>
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<td>Other circulations:</td>
<td>1 May</td>
<td>Boarding: 6, Day: 6</td>
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The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
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<td>8 May</td>
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<td>6</td>
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<tr>
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<td>14 May</td>
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<td>6</td>
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<td>Other circulations:</td>
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<td>29 May</td>
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<td>25 June</td>
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<td>11 February</td>
<td>6.5</td>
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<td>6.5</td>
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<tr>
<td><strong>First main circulation of Sevenoaks Survey</strong></td>
<td>22 April</td>
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<td>Other circulations:</td>
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<td>14 March</td>
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<tr>
<td></td>
<td>17 March</td>
<td>8 – 10</td>
<td>8 – 10</td>
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<tr>
<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
<td>17 April</td>
<td>8 – 10</td>
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<tr>
<td>Other circulations:</td>
<td>–</td>
<td>–</td>
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</table>

**Finalisation of fee increases**

1188. The final fee increases for Westminster School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase
was 6 per cent for both boarding and day pupils and it was finalised on 12 June 2001. For the 2002/2003 academic year the final fee increase was 6.5 per cent for both boarding and day pupils and it was finalised on 11 June 2002. For the 2003/2004 academic year the final fee increase was 9.5 per cent for both boarding and day pupils and it was finalised on 10 June 2003.

**Conclusion regarding Westminster School’s participation in the Sevenoaks Survey**

1189. In relation to the 2001/2002 academic year, the OFT considers that Westminster School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Westminster School, those estimates accurately reflected Westminster School’s actual fee increases and Westminster School has participated in the Sevenoaks Survey in two other relevant years;

- given that the last fee increase figures recorded in this year’s Sevenoaks Survey for Westminster School are the same as Westminster School’s finalised fee increase figures for this academic year, the OFT infers that the figures contained in the Survey must have come from Westminster School; and

- extracts from a number of Westminster School’s internal documents are consistent with Westminster School’s participation in the Sevenoaks Survey for this academic year.

1190. In relation to the 2002/2003 academic year, the OFT considers that Westminster School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Westminster School, those estimates accurately reflected Westminster School’s actual fee increases and Westminster School has participated in the Sevenoaks Survey in two other relevant years;

- given that the last fee increase figures recorded in this year’s Sevenoaks Survey for Westminster School are the same as Westminster School’s finalised fee increase figures for this academic year, the OFT infers that the figures contained in the Survey must have come from Westminster School; and

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96 See section 16 of the minutes of the meeting of the Governing Body of Westminster School held on 12 June 2001 (document TXD1099).
97 See the minutes of the meeting of the Governing Body of Westminster School held on 11 June 2002 (document TXD1151).
98 See the minutes of the meeting of the Governing Body of Westminster School held on 10 June 2003 (document TXD1161).
99 See paragraphs 1177 to 1183 above.
the Sevenoaks bursar or his assistant sent Westminster School at least one circulation of the Sevenoaks Survey for this year.

1191. In relation to the 2003/2004 academic year, the OFT considers that Westminster School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Westminster School, those estimates accurately reflected Westminster School’s actual fee increases and Westminster School has participated in the Sevenoaks Survey in two other relevant years; and

- the Sevenoaks bursar or his assistant sent Westminster School at least one circulation of the Sevenoaks Survey for this year.

1192. The OFT therefore considers that Westminster School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 1179 and 1188 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Westminster School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

1193. The OFT concludes that the evidence set out above demonstrates that Westminster School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

Winchester College

Evidence of participation in the Sevenoaks Survey


1196. Second, William Organ, the bursar at Winchester College from 1 January 1994 to 9 October 2004, stated in relation to the Sevenoaks Survey,
‘I became involved in the Sevenoaks Survey when I arrived as bursar and Winchester College’s name was on the list. I haven’t a clue when it started, it was going when I came and I just continued where my predecessor left off...’

Enclosed with Winchester College’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2001/2002 to 2003/2004 that Winchester College received from the Sevenoaks bursar or his assistant.

1197. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Winchester College was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools. The OFT considers that this demonstrates that Winchester College received at least one circulation of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 14 May 2001, 22 April 2002 and 11 March 2003.

1198. Fourth, the OFT notes that a number of Winchester College’s internal documents for each of the academic years 2001/2002 and 2002/2003 are consistent with and further evidence for the conclusion that Winchester College participated in the Sevenoaks Survey in respect of those academic years.

2001/2002 academic year

1199. The OFT considers that the following extract from Winchester College’s internal documents is consistent with, and further evidence for, the conclusion that Winchester College participated in the Survey for 2001/2002.

Minutes of Winchester College’s College meeting of 23 June 2001

1200. Paragraph 01/169 of the minutes states,

‘The Bursar said that, having reviewed the fees of the Rugby Group and several other schools whose increases averaged 6.65%, the meeting had recommended for Governing Body approval a fee increase from 1 September 2001 of 6%, with the exception that the pre–2000 day fee should be increased to maintain a £3,636 per annum differential from the boarding fee...’

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103 Documents LXT2749, AXZ514 and LXT2542 show, respectively, that the electronic mail address wgfo@bursary.wincoll.ac.uk was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘wincoll.ac.uk’ – corresponds with the domain name for contact electronic mail addresses given on Winchester College’s website: see http://www.winchestercollege.co.uk/NetCommunity/Page.aspx?&pid=245&srcid=246. The OFT therefore considers that Winchester College received the electronic mails described above that were sent to the electronic mail address wgfo@bursary.wincoll.ac.uk.
2002/2003 academic year

1201. The OFT considers that the following extract from Winchester College’s internal documents is consistent with, and further evidence for, the conclusion that Winchester College participated in the Survey for 2002/2003.

Minutes of Winchester College’s College meeting of 22 June 2002

1202. Paragraph 02/132 of the minutes states,

’The Bursar said that, having reviewed the fees of the Rugby Group and several other schools all of whose increases averaged 7.34%, the meeting had recommended for Governing Body approval a fee increase of 7%...’

(Emphasis added).

Fee–setting process

1203. Winchester College’s fee–setting process during the relevant period can, in essence, be described as follows. In January or March, Winchester College’s Governing Body sets guidelines on budgets, giving, for example, the number of pupils expected in the coming academic year, which would enable the bursar to allocate funds in the financial accounts. The bursar of Winchester College, working within these guidelines, examines various factors that affect Winchester College’s cost base, including teachers’ salaries, and also certain financial targets, such as a target surplus, in order to produce a likely range of possible fee increases for Winchester College. This range of fee increases is used to consider several budget structures.

1204. The bursar then requires spending departments within Winchester College to submit budget requests for the coming academic year. Once these figures are received, the budget proposals are discussed by Winchester College’s chief accountant, bursars, headmaster and then its school Resource’s Committee and senior management team. The senior management team decides on the fee and salary increase to recommend to the Finance Committee of the Governing Body of Winchester College. This Finance Committee considers the budget and fee increase figures at its meeting in June of an academic year. The Finance Committee makes any amendments it sees fit before recommending figures to a meeting of Winchester College’s full Governing Body, also in June. The Governing Body then sets the fee increases and budget figures.

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106 This description of Winchester College’s fee–setting process is taken from the 16 March 2005 witness statement of William Organ (document GCOR1049A).
Timing of the Sevenoaks Survey in relation to the fee–setting process

1205. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Winchester College, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Winchester College, and Winchester College would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

1206. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Winchester College in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004\textsuperscript{107}.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
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<tbody>
<tr>
<td></td>
<td>Boarding</td>
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<tr>
<td>2001/2002</td>
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<tr>
<td>Circulations</td>
<td></td>
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<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>13 February</td>
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<tr>
<td>Other circulations:</td>
<td>1 May</td>
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<td></td>
<td>8 May</td>
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<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>14 May</td>
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<tr>
<td>Other circulations:</td>
<td>17 May</td>
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<td>29 May</td>
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<td>25 June</td>
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\textsuperscript{107} The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
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<tr>
<th></th>
<th>2002/2003</th>
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<td></td>
<td></td>
<td>Boarding</td>
<td>Day</td>
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<td><strong>circulation of</strong></td>
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<td><strong>Sevenoaks Survey</strong></td>
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<td>11 February</td>
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<td><strong>Sevenoaks Survey</strong></td>
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<td>Other circulations:</td>
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<td>8</td>
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<td>14 March</td>
<td>7.5 – 10</td>
<td>7.5 – 10</td>
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<td>17 March</td>
<td>7.5 – 10</td>
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<td><strong>circulation of</strong></td>
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<td><strong>Sevenoaks Survey</strong></td>
<td></td>
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<tr>
<td>17 April</td>
<td>17 April</td>
<td>7.5 – 10</td>
<td>7.5 – 10</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>–</td>
<td>–</td>
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**Finalisation of fee increases**

1207. The final fee increases for Winchester College during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 6 per cent for both boarding and day pupils and it was on 23 June 2001. For the 2002/2003 academic year the final fee increase was 7 per cent for both boarding and day pupils and it was finalised on 22 June 2002. For the 2003/2004 academic year the final fee increase was 9.5

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1 See section 01/169 of the minutes of Winchester College’s College meeting held on 23 June 2001 (document JA13).
2 See section 02/132 of the minutes of Winchester College’s College meeting held on 22 June 2002 (document TXD1890).
per cent for both boarding and day pupils and it was finalised on 20 and 21 June 2003³.

**Conclusion regarding Winchester College’s participation in the Sevenoaks Survey**

1208. In relation to the 2001/2002 academic year, the OFT considers that Winchester College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Winchester College and Winchester College has participated in the Sevenoaks Survey in two other relevant years;

- Winchester College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Winchester College at least one circulation of the Sevenoaks Survey for this year; and

- an extract from Winchester College’s internal documents is consistent with Winchester College’s participation in the Survey for this academic year.

1209. In relation to the 2002/2003 academic year, the OFT considers that Winchester College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Winchester College and Winchester College has participated in the Sevenoaks Survey in two other relevant years;

- Winchester College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Winchester College at least one circulation of the Sevenoaks Survey for this year; and

- an extract from Winchester College’s internal documents is consistent with Winchester College’s participation in the Survey for this academic year.

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³ See page 15 of the minutes of Winchester College’s College meeting held on 20 and 21 June 2003 (document JA3).

⁴ See paragraphs 1195 to 1201 above.
1210. In relation to the 2003/2004 academic year, the OFT considers that Winchester College participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Winchester College and Winchester College has participated in the Sevenoaks Survey in two other relevant years;

- Winchester College has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- the Sevenoaks bursar or his assistant sent Winchester College at least one circulation of the Sevenoaks Survey for this year.

1211. The OFT therefore considers that Winchester College both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 1197 and 1207 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Winchester College will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

1212. The OFT concludes that the evidence set out above demonstrates that Winchester College participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

Woldingham School

Evidence of participation in the Sevenoaks Survey


1215. Second, in its response to a question from the OFT regarding the years in which Woldingham School contributed to the Sevenoaks Survey and a

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5 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
6 See the table at paragraph 1230 below.
request by the OFT to supply copies of the Sevenoaks Surveys from 2000 onward, Woldingham School stated,

‘Woldingham contributed to the nationwide survey each year from January 2000.’7

1216. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Woldingham School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools8. The OFT considers that this demonstrates that Woldingham School received at least one circulation of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004 by, respectively, 14 May 2001, 22 April 2002 and 11 March 2003.

1217. Fourth, the OFT notes that a number of Woldingham School’s internal documents for each of the academic years 2001/2002 to 2003/2004 are consistent with and further evidence for the conclusion that Woldingham School participated in the Sevenoaks Survey in respect of those academic years.

2001/2002 academic year

1218. The OFT considers that the following extracts from Wordingham School’s internal documents are consistent with and further evidence for the conclusion that Woldingham School participated in the Survey for 2001/2002.

Minutes of the meeting of Woldingham School’s Board of Governors held on 1 March 20019

1219. Paragraph 7 of the document is headed ‘Report of the Finance Committee Meeting held on 8 February 2001’. Sub-paragraph 7.5.1 headed ‘Fees’ states,

‘In considering the Budget proposals there was a recommendation to increase Boarding Fees by 6.75% to £5440 and Day Fees by 7.75% to £3245 per Term. This continues the policy of narrowing the differential between Day and Boarding Fees, in common with other schools. Whilst comparative figures confirmed that Woldingham School’s Fees were below a peer group of schools it was agreed that it would not be

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7 Taken from Woldingham’s 5 March 2004 response (document SJN0662R) to question 7 of the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG041).
8 Documents LXT2749, AXZ514 and LXT2542 show, respectively, that the electronic mail address waltonp@woldingham.surrey.sch.uk was the recipient of electronic mails transmitting summaries of other schools’ fee-increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2001/2002, 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic mail address – ‘woldingham.surrey.sch.uk’ – corresponds with the domain name for the electronic mail address of the bursar of Woldingham School that is recorded on Woldingham School’s 5 March 2004 response (document SJN0662R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG041). The OFT therefore considers that Woldingham School received the electronic mails described above that were sent to the electronic mail address waltonp@woldingham.surrey.sch.uk.
9 Document SJN0668.
appropriate to try and narrow the gap further at this time..... The Board accepted and approved the proposals.'

Letter from Chairman of Governors of Woldingham School to Parents dated March 2001 headed 'School fees Academic Year 2001/2002' 10

1220. The final paragraph of the letter states,

'Whilst I recognise that this increase is above the current rate of inflation... I can assure you that an up to date survey confirms that we remain very competitive measured against other leading girls' boarding schools as well as HMC boys and co–ed schools.'

In the light of the other evidence that Woldingham School participated in the Sevenoaks Survey in respect of the 2001/2002 academic year (see paragraphs 1214 to 1216 above), the OFT considers that the references to fee increases of other schools in the above quotation are to fee increase information taken, at least in part, from the Sevenoaks Survey.

Minutes of the Finance Committee held on 3 May 2001 11

1221. Paragraph 3.3 headed 'Fees' states,

'The Bursar reported that he had ascertained that Schools Fees in the sector had risen by 7.5% across the board. Our proposed rise was on the low side....'

2002/2003 academic year

1222. The OFT considers that the following extracts from Woldingham School’s internal documents are consistent with and further evidence for the conclusion that Woldingham School participated in the Survey for 2002/2003.

Minute of meeting of the Finance Committee held on 28 February 2002 12


'A basic Fee increase of 5% was being considered as reasonable and at a level with Woldingham’s Peer Group of Schools...'

2003/2004 academic year

1224. The OFT considers that the following extracts from Woldingham School’s internal documents are consistent with and further evidence for the conclusion that Woldingham School participated in the Survey for 2003/2004.

10 Document SJN0732.
11 Document SJN0697.
12 Document SJN0710.
Minutes of the meeting of Woldingham School’s Board of Governors held on 20 March 2003  

1225. Page 4, paragraph 7 of the document is headed 'Report of the Finance Committee held on 5 February 2003'. Under sub-paragraph 7c headed 'Fees for Academic Year 2003/2004', the second paragraph states,

'Following the Finance Committee Meeting the Bursar redrew the projections and a suggested fee rise of 8% was now submitted to the Board..... A document showing the proposed increases at peer schools had been tabled and indicated that Woldingham was competitive so far as fees and proposed fee rises were concerned'.

Letter from Chairman of Governors of Woldingham School to Parents dated March 2003 headed 'School fees'  

1226. The first paragraph on page 2 of the letter states,

'Woldingham partakes in an informal survey of leading boarding schools and the outcome of the survey undertaken during February suggests that all boarding schools are increasing fees by between 8 and 10% in September. Many of those partaking in the survey have yet finally to decide their fees but the clear indication is that Woldingham is not out of line in its proposals.'

Minutes of the meeting of Woldingham School’s Board of Governors held on 25 June 2003  

1227. Page 4, paragraph 7 of the document is headed 'Report of the Finance Committee held on 5 June 2003'. Sub-paragraph 7.1 states,

'It was noted that the eventual fee increase implemented was 8.75% and this had turned out to be at the lower end of Boarding School fee increases across the country.'

Fee–setting process  

1228. Woldingham School’s fee–setting process during the relevant period can, in essence, be described as follows16. In December of an academic year the bursar starts to create budget proposals for the following financial year, which commences in August. This follows discussion with the Headmistress regarding the prospective pupil numbers for the coming academic year. The bursar takes into account a number of factors that may affect Woldingham School’s cost base.

The budget and fee proposals are presented to the Finance Committee during the spring term, a meeting is normally held in February. Following

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13 Document SJN0674.  
14 Document SJN0732.  
15 Document SJN0675.  
16 The description of Woldingham’s fee–setting process is taken from the answer to question 6 of Woldingham School’s 5 March 2004 response (document SJN0662R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG041).
discussions and after any amendments required from the decisions of the Finance Committee have been made, the papers are put to the full Board of Governors in its meeting which usually takes place in March. The fee proposal is discussed and ratified. Parents are advised of the fees to be charged for the coming academic year by letter which is sent during the Easter holiday.

**Timing of the Sevenoaks Survey in relation to the fee-setting process**

1229. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Woldingham School, at distinct points in its fee-setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Woldingham School, and Woldingham School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid-February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

1230. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Woldingham School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004.

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17 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period. Woldingham School stated in the Schools’ Joint Factual Statement (document JM 01–a) that the fee–increase estimates for the 2001/2002 academic year recorded in the Sevenoaks Survey for Woldingham School are incorrect. Also, according to Woldingham School’s representations in the Schools’ Joint Factual Statement (document JM 01–a), the figures recorded against Woldingham School for the circulations of the Survey for the 2002/2003 academic year dated 22 April and 11 June 2002 include a 2 per cent capital development surcharge to fund school capital projects, which was not a factor in the base fee–setting process. According to the school, the actual base fee increase figures for boarding and day pupils on these dates were 5 per cent for boarding pupils and 5.2 per cent for day pupils. Woldingham School made similar representations in the Schools’ Joint Factual Statement (document JM 01–a) in relation to figures recorded against Woldingham School in the Survey for the 2003/2004 academic year. According to the school, all figures recorded against Woldingham School for the 2003/2004 academic year also include a 2 per cent capital development surcharge to fund school capital projects which was not a factor in the base fee–setting process. According to the school, the actual base fee increase figure was 6.75 per cent for both boarding and day pupils in respect of the 2003/2004 academic year.
<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
<th>Boarding</th>
<th>Day</th>
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<tbody>
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<td></td>
<td></td>
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<td>Circulations</td>
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<tr>
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<td>13 February</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
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<td>6</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>8 May</td>
<td>6</td>
<td>7</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>14 May</td>
<td>6.7</td>
<td>7.7</td>
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<tr>
<td>Other circulations:</td>
<td>17 May</td>
<td>6.7</td>
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<td>29 May</td>
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<td></td>
<td>25 June</td>
<td>6.7</td>
<td>7.7</td>
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<tr>
<td><strong>2002/2003</strong></td>
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<td></td>
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<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>11 February</td>
<td>5.2</td>
<td>5.2</td>
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<tr>
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<td>5.2</td>
<td>5.2</td>
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<tr>
<td>Second main circulation of Sevenoaks Survey</td>
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<td>7</td>
<td>7.2</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>11 June</td>
<td>7</td>
<td>7.2</td>
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<tr>
<td><strong>2003/2004</strong></td>
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<tr>
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<tr>
<td></td>
<td>14 March</td>
<td>9.75</td>
<td>9.75</td>
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</table>
### Finalisation of fee increases

1231. The final fee increases for Woldingham School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 6.75 per cent for both boarding and day pupils and it was finalised on 1 March 2001\(^\text{19}\). For the 2002/2003 academic year the final fee increase was 7 per cent for both boarding and day pupils and it was finalised on 18 March 2002\(^{20}\). For the 2003/2004 academic year the final fee increase was 8.75 per cent for both boarding and day pupils and it was finalised on 20 March 2003\(^{21}\).

### Conclusion regarding Woldingham School’s participation in the Sevenoaks Survey\(^{22}\)

1232. In relation to the 2001/2002 academic year, the OFT considers that Woldingham School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Woldingham School and Woldingham School has participated in the Sevenoaks Survey in two other relevant years;

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18 Woldingham has stated in its response to question 12(iii) (document SJN0662R) of the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG041), that the response to the April/May request by the bursar is likely to be the same as the response to the February request. However, in relation to the academic year 2003/04, the fee recommendation was reduced because a review of costs and the full detail of the teachers’ pay rise, had reduced the level of anticipated costs for the academic year commencing August 2003.

19 See the minutes of the 1 March 2001 meeting of Woldingham School’s Board of Governors (document SJN0668) and the answer to question 24 of Woldingham School’s 5 March 2004 response (document SJN0662R) to the OFT’s section 26 Notice dated 9 February 2004 (document SMG041).

20 See the minutes of the 18 March 2002 meeting of Woldingham School’s Board of Governors (document SJN0671) and the answer to question 24 of Woldingham School’s 5 March 2004 response (document SJN0662R) to the OFT’s section 26 Notice dated 9 February 2004 (document SMG041). According to Woldingham School’s representations, the figure includes a 2 per cent capital development surcharge which was not a factor in the base fee-setting process. See note 17 above.

21 See the minutes of the 20 March 2003 meeting of Woldingham School’s Board of Governors (document SJN0674) and the answer to question 24 of Woldingham School’s 5 March 2004 response (document SJN0662R) to the OFT’s section 26 Notice dated 9 February 2004 (document SMG041). According to Woldingham School’s representations, the figure includes a 2 per cent capital development surcharge which was not a factor in the base fee-setting process. See note 17 above.

22 See paragraphs 1214 to 1227 above.
Woldingham School has stated that it contributed to the Sevenoaks Survey in respect of this academic year;

the Sevenoaks bursar or his assistant sent Woldingham School at least one circulation of the Sevenoaks Survey for this year; and

extracts from a number of Woldingham School’s internal documents are consistent with Woldingham School’s participation in the Sevenoaks Survey for this academic year.

1233. In relation to the 2002/2003 academic year, the OFT considers that Woldingham School participated in the Sevenoaks Survey on the basis that:

the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Woldingham School and Woldingham School has participated in the Sevenoaks Survey in two other relevant years;

Woldingham School has stated that it contributed to the Sevenoaks Survey in respect of this academic year;

the Sevenoaks bursar or his assistant sent Woldingham School at least one circulation of the Sevenoaks Survey for this year; and

extracts from a number of Woldingham School’s internal documents are consistent with Woldingham School’s participation in the Sevenoaks Survey for this academic year.

1234. In relation to the 2003/2004 academic year, the OFT considers that Woldingham School participated in the Sevenoaks Survey on the basis that:

the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Woldingham School and Woldingham School has participated in the Sevenoaks Survey in two other relevant years;

Woldingham School has stated that it contributed to the Sevenoaks Survey in respect of this academic year;

the Sevenoaks bursar or his assistant sent Woldingham School at least one circulation of the Sevenoaks Survey for this year; and

extracts from a number of Woldingham School’s internal documents are consistent with Woldingham School’s participation in the Sevenoaks Survey for this academic year.

1235. The OFT therefore considers that Woldingham School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 1216 and 1231 above demonstrates that the timing of the circulation of the Sevenoaks
Survey was such that Woldingham School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

1236. The OFT concludes that the evidence set out above demonstrates that Woldingham School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

Worth School

Evidence of participation in the Sevenoaks Survey


1239. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Worth School contributed to the Sevenoaks Survey, Worth School noted,

'We took part in each of the years 2001, 2002, 2003.'

Enclosed with Worth School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2001/2002 to 2003/2004 that Worth School received from the Sevenoaks bursar or his assistant.

1240. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003 and 2003/2004, Worth School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools. The OFT considers that this demonstrates that Worth School received at least one circulation of the Sevenoaks Surveys for the academic years 2001/2002, 2002/2003,

1241. Fourth, the OFT notes that a number of Worth School’s internal documents for each of the academic years 2001/2002 to 2003/2004 are consistent with and further evidence for the conclusion that Worth School participated in the Sevenoaks Survey in respect of those academic years.

2001/2002 academic year

1242. The OFT considers that the following extracts from Worth School’s internal documents (one of which had a circulation of the Sevenoaks Survey attached to it) are consistent with and further evidence for the conclusion that Worth School participated in the Survey for 2001/2002.

Minutes of a meeting of Worth School’s Board of Governors’ Resources Committee held at Worth School on 3 March 2001

1243. Paragraph 285.2 on page 6 of the minutes states,

‘The Committee took note of fee levels at selected other schools and the proposed increases of Schools in the South East. The Committee noted that an increase in the range of 7 to 7.5% would be in line with what other schools appeared to be doing, would keep Worth’s fees competitive and would enable the SDP2 target surplus to be achieved.’

Agenda for and minutes of a meeting of Worth School’s Board of Governors, comprising both Monks and Laity held on 23 March 2001

1244. Item 9 of the agenda states,

1245. ‘Fees and Draft Budget for 2001/02…’

1246. A copy of the 13 February 2001 circulation of the Survey is attached to the minutes.

2002/2003 academic year

1247. The OFT considers that the following extracts from Worth School’s internal documents (one of which had a slightly revised circulation of the Sevenoaks Survey attached to it) are consistent with and further evidence for the conclusion that Worth School participated in the Survey for 2002/2003.

Minutes of a meeting of Worth School’s Board of Governors’ Resources Committee held at Worth School on 1 March 2002

1248. Page 4 of the minutes states,

27 Document SJN0236.
28 Document SJN0237.
29 Document SJN0241.
The RSC had considered a comparison table of the current fees of Worth’s competitor schools and anticipated fee increases. The RSC had also seen a more widespread analysis of schools. In both cases Worth fees were significantly lower than other schools deemed to be comparable in status to Worth.

On the basis of the budget figures and relative fee levels, the RSC recommended that the fee increase for 2002/03 should be 8% for Boarders and Day Boys…'

A slightly revised version of the 15 February 2002 circulation of the Survey, which has had percentage fee increase figures for 5 schools that do not participate in the Sevenoaks Survey added at the end of the table, is attached to the minutes30.

Minutes of a meeting of Worth School’s Board of Governors, comprising both Monks and Laity held on 15 March 200231

1249. Page 4 of the minutes states,

'588.2... surplus could be achieved with a 7% increase in fees and would be comfortably be achieved with an 8% increase. The RSC had recommended an 8% increase, having regard to the indications from the table of comparative fees that Worth’s fees were low by comparison with our competitors.

588.3 The Chairman asked why the RSC had recommended an 8% increase and Martin Gairdner said that the RSC had thought that it was important that the school’s fees should not fall behind those of its competitors...

588.4 It was unanimously agreed that the fee increase for next year should be 8% on all fees.'

(Emphasis added).

2003/2004 academic year

1250. The OFT considers that the following extracts from Worth School’s internal documents (two of which had a circulation of the Sevenoaks Survey attached to them) are consistent with and further evidence for the conclusion that Worth School participated in the Survey for 2003/2004.

Draft School Budget for the academic year 2003/2004 attached to the Draft Minutes of a meeting of Worth School’s Governors’ Finance and Resources Committee held on 28 February 200332

1251. A paragraph on the first page of the Draft School Budget headed 'Fees' states,

30 The additional schools added, as written on the document, are Ardingly, Brighton, Burgess Hill, Hurstpierpoint and Rodean.
31 Document SJN0242.
32 Document SJN0246.
'I attach a summary of initial fee rise indications from a selection of Schools... Commonly schools underestimate when giving this information at this time in the year...'

A copy of the 14 February 2003 circulation of the Survey is attached to the document.

School bursar’s Report on the Draft School Budget attached to the Minutes of a meeting of Worth School’s Board of Governors held on 14 March 2003

1252. A paragraph on the first page of the Draft School Budget headed ‘Fee levels’ states,

'I attach a summary of current fee levels and initial fee rise indications from a selection of schools. Commonly schools underestimate when giving this information at this time in the year...'

A copy of the 14 February 2003 circulation of the Survey is attached to the document.

Fee–setting process

1253. Worth School’s fee–setting process during the relevant period can, in essence, be described as follows. Worth School’s budgetary process takes into account factors that affect Worth School’s cost base, including teachers’ salaries, and also certain financial targets, such as a target surplus. The process begins in January when departments are asked to submit estimates for the following year to the bursar by the end of that month or in early February. The bursar then prepares a first draft budget from the budget estimates and from initial indications of pupil numbers for the coming academic year. Worth School’s senior management team meets to consider the budget in early February and the bursar then prepares options for fee increases which are submitted to Worth School’s Finance Committee at the end of February or in early March. The Finance Committee considers the budget and fee increase proposals and makes a recommendation to Worth School’s Governors on the fee increase for the following year. At their meeting towards the end of March, Worth School’s Governors discuss the Finance Committee’s recommendation and agree the actual fee increase to be implemented. Parents are notified of the fee increase at the end of the Lent Term (January to March).

1254. Initial budget assumptions as to percentage fee and salary increases are put to Worth School’s Finance Committee and Worth School’s Governing Body in the February or March meetings of those entities each academic year. The resulting budget is reviewed at a Finance Meeting held in May or June of each academic year before the budget is finally approved by Worth School’s Governing Body at its meeting in June or July.

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33 Document SJN0247.
34 The description of Worth School’s fee–setting process is taken from the answer to question 6 contained in Worth School’s 1 March 2004 response (document SJN0212R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG042).
Timing of the Sevenoaks Survey in relation to the fee-setting process

1255. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Worth School, at distinct points in its fee-setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Worth School, and Worth School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid-February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

1256. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Worth School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004:

<table>
<thead>
<tr>
<th>Year</th>
<th>Fee increase estimate (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Boarding</td>
</tr>
<tr>
<td><strong>2001/2002</strong></td>
<td></td>
</tr>
<tr>
<td>First main circulation of Sevenoaks Survey</td>
<td>13 February</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>1 May</td>
</tr>
<tr>
<td></td>
<td>8 May</td>
</tr>
<tr>
<td>Second main circulation of Sevenoaks Survey</td>
<td>14 May</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>17 May</td>
</tr>
<tr>
<td></td>
<td>29 May</td>
</tr>
<tr>
<td></td>
<td>25 June</td>
</tr>
</tbody>
</table>

35 The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period. In relation to the figures recorded against Worth School for the 2001/2002 academic year, the OFT notes and records the Statement by Worth School in the Schools’ Joint Factual Statement (document JM 01–a) that ‘The 7% estimate was sent to Sevenoaks on 6 March 2001 (as per email submitted to the OFT). No further information was submitted until 4 May 2001 when the finalised fees, approved at the March Governors meeting, were sent to Sevenoaks bursar.'
Finalisation of fee increases

1257. The final fee increases for Worth School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 8 per cent for boarding pupils and 9.4 per cent for day pupils and it was finalised on 23 March 2001\textsuperscript{36}. For the 2002/2003 academic year the final fee increase was 8 per cent for both boarding and day pupils and it was finalised on 15 March 2002\textsuperscript{37}. For the 2003/2004 academic year the final fee increase was 8 per cent for both boarding and day pupils and it was finalised on 17 April 2004.

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|}
\hline
\hline
\textit{First main circulation of Sevenoaks Survey} & 11 February & 12 February \\
\hline
Other circulations: & 15 February & 14 February \\
\hline
\textit{Second main circulation of Sevenoaks Survey} & 22 April & 17 April \\
\hline
Other circulations: & 11 June & 14 March \\
\hline
\end{tabular}
\end{table}

\begin{table}[h]
\centering
\begin{tabular}{|l|c|c|}
\hline
 & Boarding & Day \\
\hline
\textit{First main circulation of Sevenoaks Survey} & 11 February & 12 February \\
\hline
Other circulations: & 15 February & 14 February \\
\hline
\textit{Second main circulation of Sevenoaks Survey} & 22 April & 17 April \\
\hline
Other circulations: & 11 June & 14 March \\
\hline
\end{tabular}
\end{table}

\textsuperscript{36} See section 518.3 of the meeting of Worth School’s Board of Governors held on 23 March 2001 (document SJN0237).

\textsuperscript{37} See section 588.4 of the meeting of Worth School’s Board of Governors held on 15 March 2002 (document SJN0242).
fee increase was 10.6 per cent for both boarding and day pupils and it was finalised on 14 March 2003\textsuperscript{38}.

\textit{Conclusion regarding Worth School’s participation in the Sevenoaks Survey}\textsuperscript{39}

1258. In relation to the 2001/2002 academic year, the OFT considers that Worth School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Worth School and Worth School has participated in the Sevenoaks Survey in two other relevant years;

- Worth School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- extracts from a number of Worth School’s internal documents are consistent with Worth School’s participation in the Sevenoaks Survey for this academic year, including one that had a copy of the Survey attached to it.

1259. In relation to the 2002/2003 academic year, the OFT considers that Worth School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Worth School and Worth School has participated in the Sevenoaks Survey in two other relevant years;

- Worth School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- extracts from a number of Worth School’s internal documents are consistent with Worth School’s participation in the Sevenoaks Survey for this academic year, including one that had a slightly revised version of a circulation of the Survey attached to it.

1260. In relation to the 2003/2004 academic year, the OFT considers that Worth School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Worth School and Worth School has participated in the Sevenoaks Survey in two other relevant years;

- Worth School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided

\textsuperscript{38} See section 43.2.9 of the minutes of the meeting of Worth School’s Board of Governors held on 14 March 2003 (document SJN0247) and Worth School’s statement in the Schools’ Joint Factual Statement (document JM 01–a).

\textsuperscript{39} See paragraphs 1238 to 1252 above.
the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- extracts from a number of Worth School’s internal documents are consistent with Worth School’s participation in the Sevenoaks Survey for this academic year, including two that had copies of the Survey attached to them.

1261. The OFT therefore considers that Worth School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 1240 and 1257 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Worth School will have received at least one circulation of the Sevenoaks Survey containing competitors’ estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

1262. The OFT concludes that the evidence set out above demonstrates that Worth School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

Wycombe Abbey School

Evidence of participation in the Sevenoaks Survey


1265. Second, in its response to a question from the OFT regarding the years from January 2000 onward in which Wycombe Abbey School contributed to the Sevenoaks Survey, Wycombe Abbey School stated,

‘2000 (This is conjecture in the absence of any relevant documents on file), 2001, 2002, 2003’

Enclosed with Wycombe Abbey School’s response was a copy of at least one circulation of the Sevenoaks Survey in respect of each of the years 2001/2002 to 2003/2004 that Wycombe Abbey School received from the Sevenoaks bursar or his assistant.

40 See paragraphs 309 to 322 above for a description of the Sevenoaks Survey.
41 See the table at paragraph 1284 below.
42 Taken from Wycombe Abbey’s response (document SJN1206R) to question 7 of the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG043).
1266. Third, the OFT notes that, in respect of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004, Wycombe Abbey School was an addressee of at least one electronic mail that the Sevenoaks bursar or his assistant sent to Participant schools.\footnote{Documents LXT3412 and LXT2542 show, respectively, that the electronic mail address lukej@wycombeabbey.com was the recipient of electronic mails transmitting summaries of other schools’ fee–increase estimates contained in the Sevenoaks Surveys in respect of the academic years 2002/2003 and 2003/2004. The OFT notes that the domain name in this electronic address – 'wycombeabbey.com' – corresponds with the domain name for a contact electronic mail address given on Wycombe Abbey School’s website address: see http://www.wycombeabbey.co.uk/contacts/contacts.htm. The OFT notes that J.C.O. Luke was at the relevant time, and still is, the bursar of Wycombe Abbey School (see document SJN1206R). The OFT therefore considers that the bursar of Wycombe Abbey School received the electronic mails described above that were sent to the electronic mail address lukej@wycombeabbey.com.} The OFT considers that this demonstrates that Wycombe Abbey School received at least one circulation of the Sevenoaks Surveys for the academic years 2002/2003 and 2003/2004 by, respectively, 11 February 2002 and 11 March 2003.

1267. Fourth, the OFT notes that a number of Wycombe Abbey School’s internal documents for each of the academic years 2001/2002 to 2003/2004 are consistent with and further evidence for the conclusion that Wycombe Abbey School participated in the Sevenoaks Survey in respect of those academic years.

2001/2002 academic year

1268. The OFT considers that the following extracts from Wycombe Abbey School’s internal documents are consistent with and further evidence for the conclusion that Wycombe Abbey School participated in the Survey for 2001/2002.

Letter from Julian Patrick to all bursars dated 12 February 2001 with the circulation of the Sevenoaks Survey dated 13 February 2001 attached\footnote{Document SJN1235.}

1269. The letter which attaches the 13 February 2001 circulation of the Sevenoaks Survey has a handwritten note in the top left hand corner which states,

'Council: Feb 01'.

Minutes of a Meeting of the Council held at Wycombe Abbey School on Saturday 24 February 2001\footnote{Document SJN1236.}

1270. The penultimate paragraph on page 7 of the minutes of this meeting states,

'Fees

...based therefore on the forecast and surplus projections, the School should be considering a fee increase within the range of 6.5%–7.4%.
This was broadly in keeping with the 7% average increase emerging from current predictions within the independent sector.'

2002/2003 academic year

1271. The OFT considers that the following extracts from Wycombe Abbey School’s internal documents are consistent with and further evidence for the conclusion that Wycombe Abbey School participated in the Survey for 2002/2003.

Document dated 1 February 2002 entitled 'Notes for the Finance Committee Meeting 9 February 2002':

1272. The final paragraph on page 3 of the Note states,

'As usual, Wycombe Abbey’s considerations of the fee for the forthcoming academic year will be under way before the majority of other schools. I will, however, gather as much relevant intelligence as possible for consideration at the meeting.'

Minutes of a Meeting of Wycombe Abbey School’s Finance Committee held on 9 February 2002:

1273. The minutes state,

'There remained concern about fee increases 3 times higher than inflation and a corresponding fear that at some stage the market would cry “foul”...

...Feedback from other Schools confirmed this widespread concern but, against a stated aspiration to peg fee rises to 5% in acknowledgement of these concerns, the consensus acknowledged that practicalities and, in particular, the continuing upward pressure on salaries, would drive schools more towards a 6% – 7% increase.'

(Emphasis added).

2003/2004 academic year

1274. The OFT considers that the following extracts from Wycombe Abbey School’s internal documents are consistent with and further evidence for the conclusion that Wycombe Abbey School participated in the Survey for 2003/2004.

Notes for Wycombe Abbey’s Finance Committee meeting on 8 February 2003, dated 31 January 2003 by 'JCOL' (John Luke, the bursar of Wycombe Abbey School):

1275. The final paragraph of item 8 of the Note states,
'As usual, Wycombe Abbey’s deliberations of the fee for the forthcoming year will be under way before the majority of other schools. I will, however gather as much relevant intelligence as possible for consideration at the meeting.'

1276. Further, the OFT notes that Wycombe Abbey School’s response to an OFT question regarding whether the school had ever requested that the dates of the Sevenoaks Survey be brought forward or put back, Wycombe Abbey School stated,

'No. However, Sevenoaks School circulated the request for information for the 2003 survey on 3 February 2003. Input was requested by 7 February to allow Sevenoaks to circulate a summary of the results on 15 February. Because the Wycombe Abbey Finance committee was due to meet on Saturday 8 February, an advance copy of the survey, showing the results obtained to date, was requested by telephone. This was received on 6 February 2003.'

1277. The three pieces of electronic mail set out below demonstrate how Wycombe Abbey School actively requested, and received from Sevenoaks School, the preliminary results of the Sevenoaks Survey for its own internal fee-setting discussions in February 2003.


1278. The electronic mail states,

'I understand you have a Governor’s meeting on Friday and you requested a copy of the summary thus far.

[...][C]

Sevenoaks school

< <ESTIMATED OR FIXED FEES 2003.doc> >'

Return electronic mail from John Luke, bursar of Wycombe Abbey School to [...][C], dated 6 February 2003

1279. The electronic mail states,

'Thank you very much indeed. I am most grateful.

In fact our meeting is on Saturday so if there were to be any significant additions by tomorrow pm, update would be greatly appreciated.'
Electronic mail from [...]C], entitled 'Fees survey 2003’ to John Luke, bursar of Wycombe Abbey School dated 7 February 2003 attaching Sevenoaks survey as at 7 February 200353

1280. This electronic mail states,

'This is the updated list as at 7.2.03

[...][C]

Sevenoaks School

< <ESTIMATED OR FIXED FEES 2003.doc> >'.

The OFT considers that the three pieces of electronic mail set out at paragraphs 1278 to 1280 demonstrate that Wycombe Abbey School obtained a preliminary copy of the results of the Sevenoaks Survey in respect of the 2003/2004 academic year in advance of the 8 February 2003 meeting of Wycombe Abbey School’s Governors.

Minutes of a meeting of the Finance Committee held on 8 February 200354

1281. Paragraph 8 entitled 'Fees' states,

'The Bursar had gathered estimates of likely fee increases from other schools. The general trend echoed well understood tensions relating to the general level of fee increases in the independent sector exceeding the headline rate of inflation, and the consequent concern of many governing bodies to limit fee increases, whereas upward cost pressures argued against this. Some governing bodies had declared their aspiration to peg increases to about 6%. However against this aspiration, all independent schools faced a variety of significantly increased costs in the forthcoming year, notably the Teachers’ Pension contributions and rises in insurance premiums. These pressures were likely to override aspirations to peg fee increases, and preliminary surveys suggested that rises of 7%, 8% and even 9% and 10% were being considered by other schools.'

Fee–setting process

1282. Wycombe Abbey School’s fee–setting process during the relevant period can, in essence, be described as follows.55 In January of an academic year the school commences its budgetary process. The School Accountant consults with the Senior Management Team to formulate assumptions, such as number of pupils, increases in salaries, staffing levels and likely trends in inflation rates. These will form the basis for the Operating Account Forecast for the following year. In addition, significant changes in curriculum, major maintenance costs and any other significant forecasted

53 Document SJN1259. It does not appear that this version of the Sevenoaks Survey as at 7 February 2003 was circulated to all the schools but rather it was sent to Wycombe Abbey on specific request.
54 Document SJN1248.
55 The description of Wycombe Abbey’s fee–setting process is taken from the answer to question 6 contained in Wycombe Abbey’s response (document SJN1206R) to the OFT’s section 26 Notice to it dated 9 February 2004 (document SMG043).
additional expenditure is identified wherever possible. Finally suggested fee levels are incorporated into the forecast to produce surpluses covering capital expenditure. The Finance Committee meet in January to consider fee levels with a view to making a recommendation to the Council. The Council determines the level of fees in its meeting held at the end of February or in the first few days of March. The Council are guided by the Finance Committee’s recommendation. Parents are notified of the fee increase towards the end of March.

Timing of the Sevenoaks Survey in relation to the fee–setting process

1283. The OFT notes that according to the Sevenoaks bursar’s witness statement, as set out at paragraphs 316 to 321 above, the circulations of the results of the Sevenoaks Survey would have been sent to the Participant schools, including Wycombe Abbey School, at distinct points in its fee–setting process. Towards the end of January or in early February the Sevenoaks bursar’s request for prospective fee increases would have been sent to the Participant schools, including Wycombe Abbey School, and Wycombe Abbey School would have submitted an estimate to the Survey. The results of this first request for information would have been circulated in mid–February and the results of the second request for information would have been circulated in May. After each of the two main circulations, the Sevenoaks bursar would have sent out a number of circulations, the precise number of which varied from year to year.

1284. The table below sets out the percentage fee increase figures that were recorded in the Sevenoaks Survey circulations for Wycombe Abbey School in respect of each of the academic years 2001/2002, 2002/2003 and 2003/2004\textsuperscript{56}.

<table>
<thead>
<tr>
<th>Circulations</th>
<th>Year</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>First main circulation of Sevenoaks Survey</strong></td>
<td>2001/2002</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>13 February</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Other circulations:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1 May</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>8 May</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>14 May</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Other circulations:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>17 May</td>
<td>7</td>
<td>7</td>
</tr>
</tbody>
</table>

\textsuperscript{56} The figures in this table are taken from the Sevenoaks Survey for each of the academic years during the relevant period.
<table>
<thead>
<tr>
<th>Date</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td>29 May</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>25 June</td>
<td>7</td>
<td>7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2002/2003</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>First main circulation of Sevenoaks Survey</strong></td>
<td>11 February</td>
<td>6.89</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>15 February</td>
<td>6.89</td>
</tr>
<tr>
<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
<td>22 April</td>
<td>6.89</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>11 June</td>
<td>6.89</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2003/2004</th>
<th>Boarding</th>
<th>Day</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>First main circulation of Sevenoaks Survey</strong></td>
<td>12 February</td>
<td>7.4</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>14 February</td>
<td>7.4</td>
</tr>
<tr>
<td></td>
<td>26 February</td>
<td>7.4</td>
</tr>
<tr>
<td></td>
<td>14 March</td>
<td>7.4</td>
</tr>
<tr>
<td></td>
<td>17 March</td>
<td>8</td>
</tr>
<tr>
<td><strong>Second main circulation of Sevenoaks Survey</strong></td>
<td>17 April</td>
<td>8</td>
</tr>
<tr>
<td>Other circulations:</td>
<td>–</td>
<td>–</td>
</tr>
</tbody>
</table>

**Finalisation of fee increases**

1285. The final fee increases for Wycombe Abbey School during the relevant period were as follows. For the 2001/2002 academic year the final fee increase was 7.4 per cent for both boarding and day pupils and it was finalised on 24 February 2001\(^7\). For the 2002/2003 academic year the final fee increase was 6.9 per cent for both boarding and day pupils and it

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\(^7\) See paragraph 7 of the minutes of the meeting of Wycombe Abbey School’s Council held on 24 February 2001 (document SJN1236).
was finalised on 23 February 2002\textsuperscript{58}. For the 2003/2004 academic year the final fee increase was 8 per cent for both boarding and day pupils and it was finalised on 1 March 2003\textsuperscript{59}.

Conclusion regarding Wycombe Abbey School’s participation in the Sevenoaks Survey\textsuperscript{60}

1286. In relation to the 2001/2002 academic year, the OFT considers that Wycombe Abbey School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Wycombe Abbey School and Wycombe Abbey School has participated in the Sevenoaks Survey in two other relevant years;

- Wycombe Abbey School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year; and

- extracts from a number of Wycombe Abbey’s School’s internal documents are consistent with Wycombe Abbey School’s participation in the Sevenoaks Survey for this academic year.

1287. In relation to the 2002/2003 academic year, the OFT considers that Wycombe Abbey School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Wycombe Abbey School and Wycombe Abbey School has participated in the Sevenoaks Survey in two other relevant years;

- Wycombe Abbey School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;

- the Sevenoaks bursar or his assistant sent Wycombe Abbey School at least one circulation of the Sevenoaks Survey for this year; and

- extracts from a number of Wycombe Abbey’s School’s internal documents are consistent with Wycombe Abbey School’s participation in the Sevenoaks Survey for this academic year.

\textsuperscript{58} See paragraph 5b of the minutes of the meeting of Wycombe Abbey School’s Council held on 23 February 2002 (document SJN1243).

\textsuperscript{59} See paragraph 6b of the minutes of the meeting of Wycombe Abbey School’s Council held on 1 March 2003 (document SJN1251).

\textsuperscript{60} See paragraphs 1284 to 1281 above.
1288. In relation to the 2003/2004 academic year, the OFT considers that Wycombe Abbey School participated in the Sevenoaks Survey on the basis that:

- the Sevenoaks Survey in respect of this academic year included fee-increase estimates for Wycombe Abbey School and Wycombe Abbey School has participated in the Sevenoaks Survey in two other relevant years;
- Wycombe Abbey School has stated that it contributed to the Sevenoaks Survey in respect of this academic year and, moreover, it provided the OFT with a copy of at least one circulation of the Survey in respect of this academic year;
- the Sevenoaks bursar or his assistant sent Wycombe Abbey School at least one circulation of the Sevenoaks Survey for this year; and
- extracts from a number of Wycombe Abbey’s School’s internal documents are consistent with Wycombe Abbey School’s participation in the Sevenoaks Survey for this academic year.

1289. The OFT therefore considers that Wycombe Abbey School both contributed its own fee-increase estimates to and received the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004. Further, the OFT notes that the evidence set out at paragraphs 1266 and 1285 above demonstrates that the timing of the circulation of the Sevenoaks Survey was such that Wycombe Abbey School will have received at least one circulation of the Sevenoaks Survey containing competitors' estimated fee increases in respect of each of the academic years 2001/2002 to 2003/2004 before it finalised its own fee increases.

1290. The OFT concludes that the evidence set out above demonstrates that Wycombe Abbey School participated in the Sevenoaks Survey in respect of each of the academic years 2001/2002 to 2003/2004 and that in respect of each of those academic years it received at least one circulation of the Sevenoaks Survey before it made its final decision on the fee increases for those years.

F. Conclusion

1291. The OFT considers that the evidence set out at paragraphs 354 to 1290 above is strong and compelling evidence\(^{61}\) that each of the Participant schools participated in the Sevenoaks Survey during the relevant period in respect of the academic years as set out in the table below. This has also been admitted by each of the Participant schools (see paragraphs 36 to 38 above).

\(^{61}\) See also paragraphs 1303 to 1306 for a discussion of the burden and standard of proof.
Table of schools’ participation in the Sevenoaks Survey

<table>
<thead>
<tr>
<th>Participant school</th>
<th>Academic years in respect of which the school participated in the Sevenoaks Survey by submitting and/or receiving information concerning its intended fee increase(s) for that year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participant school</td>
<td>Academic years in respect of which the school participated in the Sevenoaks Survey by submitting and/or receiving information concerning its intended fee increase(s) for that year</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
III. LEGAL ASSESSMENT

A. Introduction

1292. This section sets out the legal framework within which the OFT has considered the facts and evidence of this case, as described in Section II above, and the OFT’s application of that framework to those facts.

1293. The section is structured as follows.

- First, it sets out the OFT’s conclusions regarding the applicability of Article 3 of Council Regulation (EC) No 1/200362.

- Second, it outlines the provisions of the Chapter I prohibition, including:
  - the requirements of section 60 of the Act, which provide for the consistent application of European Community and UK domestic competition law;
  - the burden and standard of proof relevant to the application of the Chapter I prohibition;
  - the application of the transitional period in relation to the coming into force of the Chapter I prohibition.

- Third, it considers in more detail the constituent elements that must be satisfied in order to demonstrate an infringement of the Chapter I prohibition, in particular:
  - an analysis of what constitutes an 'undertaking';
  - an analysis of what is meant by the terms 'agreement' and 'concerted practice';
  - the requirements for a finding that an agreement and/or concerted practice has as its object or effect the prevention, restriction or distortion of competition;

including the application of each of those elements to the facts of this case.

- Fourth, it sets out the OFT’s conclusions as regards:
  - the appreciability;
  - effect on trade within the UK; and

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duration;

of the Parties’ conduct.

• Finally, this section sets out the OFT’s conclusion regarding the proper legal and economic analysis of the facts of this case.

B. Application of Article 81 of the EC Treaty – effect on interstate trade

1294. Following the entry into application of Council Regulation (EC) No 1/2003\textsuperscript{63} on 1 May 2004, the OFT is required when applying national competition law to agreements and/or concerted practices between undertakings which may affect trade between Member States also to apply Article 81 of the EC Treaty (‘Article 81’)\textsuperscript{64}. In view of the OFT’s conclusion that the agreement and/or concerted practice particularised in this Decision was terminated before 1 May 2004\textsuperscript{65}, the OFT does not consider it is under a duty to apply Article 81 in the particular circumstances of this case. Accordingly, the OFT has not considered whether trade between Member States may have been appreciably affected, and this Decision relates solely to whether the Chapter I prohibition has been infringed.

1295. Notwithstanding the above, the OFT considers that trade between Member States is unlikely to have been appreciably affected by the Participant schools’ conduct in this case.

C. The Chapter I prohibition

1296. The Chapter I prohibition provides that,

1297. ‘agreements between undertakings, decisions by associations of undertakings or concerted practices which (a) may affect trade within the United Kingdom and (b) have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom, are prohibited unless they are exempt in accordance with the provisions of Part I of the Act.’\textsuperscript{66}

1298. The prohibition applies in particular to agreements, decisions or concerted practices which directly or indirectly fix purchase or selling prices\textsuperscript{67}. The prohibition will only apply if the prevention, restriction or distortion of competition is appreciable\textsuperscript{68}.

\textsuperscript{63} Ibid.
\textsuperscript{64} Article 3, Regulation 1/2003.
\textsuperscript{65} See paragraphs 1384 to 1388 below.
\textsuperscript{66} Section 2(1) of the Act.
\textsuperscript{67} Section 2(2)(a) of the Act.
\textsuperscript{68} See OFT Competition law guideline on Agreements and concerted practices (OFT401, Edition 12/04), paragraphs 2.15 to 2.21.
1299. Under section 3 of the Act, certain categories of agreement or concerted practice are excluded from the Chapter I prohibition. Under section 50 of the Act, vertical agreements and land agreements may also be excluded from the provisions of the Act. An agreement or concerted practice will also be exempt from the Chapter I prohibition if it falls within a category of agreement specified in a block exemption order under section 6 of the Act or benefits from a parallel exemption under section 10 of the Act. Following the amendment of the Act on 1 May 2004[^69], an agreement or concerted practice will also be exempt from the Chapter I prohibition if it meets the requirements of section 9 of the Act. Until 1 May 2004, however, an agreement or concerted practice could only benefit from an exemption under section 9 if it was notified to the OFT and an individual exemption was granted with respect to it[^70].

1300. In order to find an infringement of the Chapter I prohibition, the OFT must establish to the requisite standard that the Participant schools are undertakings which participated in an agreement and/or concerted practice that may affect trade within the UK[^71] and had as its object or effect the appreciable prevention, restriction or distortion of competition. The OFT has also considered whether an exclusion or exemption applies.

**Section 60 – Consistency with European Community law**

1301. Section 60(1) of the Act sets out the principle that, so far as it is possible (having regard to any relevant differences between the provisions concerned), questions arising in relation to competition within the UK are dealt with in a manner which is consistent with the treatment of corresponding questions arising in European Community law in relation to competition within the Community. In particular, under section 60(2) of the Act, the OFT must act (so far as it is compatible with the provisions of the Act) with a view to securing that there is no inconsistency with the principles laid down by the EC Treaty and the European Court and any relevant decision of the European Court[^72]. Under section 60(3) of the Act, the OFT must, in addition, have regard to any relevant decision or statement of the European Commission (‘the Commission’).

1302. The equivalent provision in EC competition law to the Chapter I prohibition is Article 81 on which the Chapter I prohibition is modelled.


[^70]: Sections 4 and 14 of the Act. These sections were repealed with effect from 1 May 2004 by the Competition Act 1998 and Other Enactments (Amendment) Regulations 2004, SI 2004/1261, thereby abolishing the requirement of notification. At the same time the Act was amended to provide explicitly that the burden of proving that the conditions of section 9 are satisfied is borne by the undertaking claiming the benefit of that section (section 9(2), inserted by the Competition Act 1998 and Other Enactments (Amendment) Regulations 2004, SI 2004/1261).

[^71]: Under section 2(3) of the Act, the Chapter I prohibition applies only if the agreement, decision or concerted practice is, or is intended to be, implemented in the UK. Pursuant to section 2(7) of the Act, the Chapter I prohibition applies equally where the agreement or concerted practice operates or is intended to operate only in a part of the UK.

[^72]: Under section 59(1) of the Act, ‘the European Court’ means the Court of Justice of the European Communities and includes the Court of First Instance.
Burden and standard of proof

1303. The burden of proving an infringement of the Chapter I prohibition lies upon the OFT. This does not preclude the OFT from relying, where appropriate, on evidential presumptions, however\footnote{73}. In \textit{Napp} the Competition Appeal Tribunal (‘the CAT’) held as follows:

\begin{quote}
‘100. In our view it follows from Article 6(2) [of the European Convention on Human Rights] that the burden of proof rests throughout on the Director to prove the infringements alleged.

‘110. That approach does not in our view preclude the Director, in discharging the burden of proof, from relying, in certain circumstances, from inferences or presumptions that would, in the absence of any countervailing indications, normally flow from a given set of facts, for example ... that an undertaking’s presence at a meeting with a manifestly anti–competitive purpose implies, in the absence of explanation, participation in the cartel alleged: \textit{Montecatini v Commission} [Case C–235/92P [1999] ECR I–4575], at paragraphs 177 to 181\footnote{74}.\end{quote}

1304. As regards the standard of proof, the CAT held that,

\begin{quote}
‘formally speaking, the standard of proof in proceedings under the Act involving penalties is the civil standard of proof, but that standard is to be applied bearing in mind that infringements of the Act are serious matters attracting severe financial penalties. It is for the Director to satisfy us in each case, on the basis of strong and compelling evidence, taking account of the seriousness of what is alleged, that the infringement is duly proved, the undertaking being entitled to the presumption of innocence, and to any reasonable doubt there may be\footnote{75}.\end{quote}

1305. This statement has been further clarified by the CAT in its ruling in the \textit{Replica Kit} appeals\footnote{76}:

\begin{quote}
‘204. It also follows that the reference by the Tribunal to "strong and compelling" evidence at [109] of \textit{Napp} should not be interpreted as meaning that something akin to the criminal standard is applicable to these proceedings. The standard remains the civil standard. The evidence must however be sufficient to convince the Tribunal in the circumstances of the particular case, and to overcome the presumption of innocence to which the undertaking concerned is entitled’.
\end{quote}

\footnote{73} Also, in the case of an agreement or concerted practice that has been implemented after 1 May 2004, where an undertaking seeks to rely on an exemption under section 9 of the Act, the burden of proving that the requirements of that section apply will rest on the undertaking claiming the benefit of the exemption (see note 70 above).

\footnote{74} \textit{Napp Pharmaceutical Holdings Ltd v DGFT}, [2002] CAT 1 at paragraphs 100 and 110. The CAT confirmed this approach in the joined cases of \textit{JJB Sports PLC v OFT} and \textit{Allsports plc v OFT} [2004] CAT 17 (‘Replica Kit’), at paragraph 164; see also paragraphs 928 and 931. The references to ‘the Director’ are to the Director General of Fair Trading, whose office was abolished and whose functions were transferred to the OFT on the coming into force of the Enterprise Act 2002 on 1 April 2003.

\footnote{75} \textit{Napp} (see note 74 above), at paragraph 109.

\footnote{76} See note 74 above, at paragraph 204. The same principles were applied by the CAT in \textit{Argos Limited and Littlewoods Limited v OFT} [2004] CAT 24, at paragraphs 158 to 166 and in \textit{Apex Asphalt and Paving Co. Limited v Office of Fair Trading} [2005] CAT 4, at paragraph 60.
In using the term 'strong and compelling' to describe its evidence in this Decision, the OFT has followed the same principle. The OFT considers that the evidence set out in Section II above is sufficient to overcome the presumption of innocence to which the Parties are entitled.

**Application of transitional period**

1307. The Chapter I prohibition came into force on 1 March 2000\(^77\). Under the transitional arrangements in Schedule 13 to the Act, however, agreements made before that date benefited from a transitional period of one year during which the Chapter I prohibition did not apply\(^78\).

1308. This is subject to a number of exceptions, however. In particular, the transitional period does not apply to agreements\(^79\) that fell to be registered under the Restrictive Trade Practices Act 1976 ('the RTPA') and which were not registered within the relevant time limit or which contained relevant restrictions, or in the case of agreements as to goods information provisions, that had been acted on prior to registration\(^80\). The RTPA was repealed on the coming into force of the Chapter I prohibition\(^81\). The agreements to which the RTPA applied were certain restrictive and information agreements as to goods\(^82\) and restrictive agreements as to services\(^83\), including where restrictions were accepted as to the charges to be quoted or offered\(^84\) or where provision was made, in the case of goods, for the furnishing of information with respect to the charges made or quoted (or to be made or quoted)\(^85\).

1309. The provisions empowering the Secretary of State to bring information agreements as to services within the scope of the RTPA were never used, however. Moreover, the RTPA only covered services that were 'designated' and services consisting in the provision of education were, in any event, excluded from designation\(^86\). Agreements as to the provision of educational services made before 1 March 2000 therefore benefit from the transitional period and the Chapter I prohibition will only be applicable to such agreements with effect from 1 March 2001.

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\(^{77}\) Paragraph 19 of Schedule 13 to the Act.

\(^{78}\) The term 'agreement' was defined in section 43(1) of the RTPA as including 'any agreement or arrangement, whether or not it is or is intended to be enforceable ... by legal proceedings'.

\(^{79}\) Paragraph 20(1)(a) and (2) of Schedule 13 to the Act.

\(^{80}\) Sections 1(b) and 76(3) of the Act and Competition Act 1998 (Commencement No 5) Order 2000, SI 2000/344.

\(^{81}\) Sections 6 and 7 of the RTPA and the Restrictive Trade Practices (Information Agreements) Order 1969.

\(^{82}\) Section 11 of the RTPA and the Restrictive Trade Practices (Services) Order 1976.

\(^{83}\) Sections 6 and 11 of the RTPA and the Restrictive Trade Practices (Services) Order 1976.

\(^{84}\) Section 7 of the RTPA and the Restrictive Trade Practices (Information Agreements) Order 1969.

\(^{85}\) Section 13(3) and Schedule 1, paragraph 14 of the RTPA. This was reflected in article 2(2) of The Restrictive Trade Practices (Services) Order 1976 which excluded those services described in Schedule 4 to the Fair Trading Act 1973. paragraph 14 of Schedule 4 to that Act covered services consisting in the provision of education.
D. Undertakings

1310. As set out above\(^\text{87}\), the Sevenoaks Survey was 'resurrected' by the Sevenoaks bursar in 1997. As such, the arrangement pre–dated 1 March 2000 and the Chapter I prohibition will only be applicable with effect from 1 March 2001. This does not, however, preclude the OFT from taking account of facts arising before that date for the purpose of throwing light on facts and matters in issue on or after that date\(^\text{88}\).

1311. The Chapter I prohibition applies to agreements or concerted practices between 'undertakings'. In order to demonstrate that there has been an infringement it is therefore necessary to establish that the Participant schools are undertakings.

**Meaning of the term 'undertaking'**

1312. The word ‘undertaking’ is not defined in the Act or in the EC Treaty. It is a wide term that the European Court of Justice (‘the ECJ’) has held to cover 'any entity engaged in an economic activity, regardless of the legal status of the entity or the way in which it is financed'\(^\text{89}\).

1313. Accordingly, the key consideration in establishing whether an entity is an 'undertaking' is whether it is engaged in 'economic activity'. The ECJ has defined 'economic activity' as 'any activity consisting in offering goods and services on a given market'\(^\text{90}\).

1314. The fact that an organisation does not make a profit\(^\text{91}\) or lacks profit motive\(^\text{92}\) or that it pursues a non–economic purpose\(^\text{93}\) does not disqualify it from being an undertaking provided that it is carrying on some form of commercial or economic activity.

1315. This has resulted in a wide variety of organisations being considered as undertakings, including companies\(^\text{94}\), partnerships\(^\text{95}\), individuals operating

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\(^{87}\) See paragraph 314.

\(^{88}\) Napp (see note 74 above), at paragraph 217.


\(^{93}\) For example, Case C–67/96 Albany International v Stichting Bedrijfspensioenfonds Textielindustrie [1999] ECR I–5751, where the objective pursued was social.

\(^{94}\) In all their corporate forms, including a limited partnership (Case 258/78 Nungesser v Commission [1982] ECR 2015); or a trust company (see Commission decision in Fides, OJ 1979 L57/33).

\(^{95}\) For example, see Commission decision in Breeders’ rights: roses, OJ 1985 L369/9.
as sole traders\textsuperscript{96}, trade associations\textsuperscript{97}, and (in some circumstances) public entities that offer goods or services on a given market\textsuperscript{98}.

1316. The OFT considers that a charity will also be an undertaking for the purpose of the Act where it carries on an economic activity. This is consistent with the OFT’s treatment of two cancer research charities as being ‘enterprises’ for the purposes of the mergers provisions of the Fair Trading Act 1973 (‘FTA’), on the basis that certain of their activities, such as retailing and the licensing of intellectual property rights, were carried out for gain or reward\textsuperscript{99}. Although the definition of the term ‘undertaking’ for the purposes of the Competition Act 1998 is not identical to that of the term ‘enterprise’ under the FTA\textsuperscript{100}, the OFT considers that the activities that resulted in the charities being treated as ‘enterprises’ for the purposes of the FTA would equally be considered to be economic activities for the purposes of assessing whether or not they are ‘undertakings’ under the Act.

\textbf{The Participant schools as ‘undertakings’}

1317. The Participant schools are all either registered or unregistered charities and provide some bursaries and scholarships. As set out above, a charity will be considered an undertaking where it carries on an economic activity. The provision of a service for payment at the point of provision of that service would clearly fall within the definition of an ‘economic activity’.

1318. In this case the Participant schools provide the following services: i) all of the Participant schools provide educational services to boarding pupils at independent fee–paying senior schools (‘boarding services’); and ii) most of them also provide educational services to day pupils at independent fee–paying senior schools (‘day services’). These educational services are provided in return for the payment of fees. Moreover, the fees are directly related to the cost of providing that service. The provision of such services is, therefore, an economic activity. There are some instances where the educational services are not provided for full payment by parents, for example, where there is part payment by way of a bursary or scholarship. In those instances the Participant school is still carrying on an economic activity in return for payment, however, even though part of the payment is coming from a different source, such as a charitable trust established for that purpose.

\textsuperscript{97} For example, Case 71/74 \textit{FRUBO v Commission} [1975] ECR 4469.
\textsuperscript{98} For example, Case C–41/90 \textit{Höfner and Elser v Macroton} (see note 89 above).
\textsuperscript{100} Section 63(2) of the FTA (now replaced by section 129 of the Enterprise Act 2002) defined an enterprise as the activities, or part of the activities of a business. Section 137(1) of the FTA (now replaced by section 129(1) of the Enterprise Act 2002) provided that a ‘business includes a professional practice and includes any other undertaking which is carried out for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge’.
Even though 'undertakings' within the meaning of the Act need not be profit–making, the majority of the Participant schools do in fact aim to generate a surplus when setting the level of fees.

The OFT therefore considers that all of the Participant schools are engaged in an economic activity, namely the provision of educational services for payment and, as such, are undertakings for the purposes of the Act.

E. Case law in relation to agreements and concerted practices

Agreement and/or concerted practice

The Chapter I prohibition applies to 'agreements' or 'concerted practices'.

The ECJ has confirmed that it is not necessary, for the purposes of finding an infringement of Article 81, to characterise conduct as exclusively an agreement or a concerted practice. The concepts of agreement and concerted practice are not mutually exclusive and there is no rigid dividing line between the two. They are intended,

'to catch forms of collusion having the same nature and only distinguishable from each other by their intensity and the forms in which they manifest themselves.'

This is particularly, but not exclusively, so in the case of complex infringements of long duration. Indeed the same principle will apply even where the infringement is of short duration. As the CAT has confirmed in its judgments in both the Replica Kit and Argos/Littlewoods cases,

'It is trite law that it is not necessary for the OFT to characterise an infringement as either an agreement or a concerted practice: it is sufficient that the conduct in question amounts to one or the other.'

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101 Where the cases cited in this section involved the sharing of pricing information amongst competitors, the information exchanges took place in the context of a more or less explicit understanding amongst the parties as to future pricing, which the exchange of information served to underpin. The application of this case law in the context of information exchange arrangements where there is no such explicit understanding is discussed in the sections that follow this one.

102 Section 2(1) of the Act.


106 See note 74 above) at paragraph 644.

1324. It is not, therefore, necessary for the OFT to come to a conclusion as to whether the behaviour of the Participant schools specifically constituted an agreement or a concerted practice in order to demonstrate an infringement of the Chapter I prohibition.

**Single infringement where acts are in pursuit of common objectives**

1325. Equally, where a group of undertakings pursues a common objective or objectives involving at one and the same time agreements and concerted practices, it is not necessary to divide the conduct by treating it as consisting of a number of separate infringements where there is sufficient consensus to adhere to a plan limiting the commercial freedom of the parties.

1326. For example, the ECJ held in *Anic* that,

>'When ... the infringement involves anti–competitive agreements and concerted practices, the Commission must, in particular, show that the undertaking intended to contribute by its own conduct to the common objectives pursued by all the participants and that it was aware of the actual conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and that it was prepared to take the risk.'

1327. Further, the ECJ has stated that an undertaking that has taken part in an agreement and/or concerted practice through conduct of its own,

>'which was intended to bring about the infringement as a whole [will] also be responsible, throughout the entire period of its participation in that infringement, for conduct put into effect by other undertakings in the context of the same infringement.'

1328. Moreover, the fact that a party does not abide fully by an agreement or concerted practice which is manifestly anti–competitive does not relieve that party of responsibility for it. Equally, the fact that a party may come to recognise that in practice it can 'cheat' on the agreement or concerted practice at certain times does not preclude a finding that there was a continuing single overall infringement.

**Agreement**

1329. An 'agreement' within the meaning of the Chapter I prohibition exists in circumstances where there is a concurrence of wills in that a group of undertakings adhere to a common plan that limits or is likely to limit their individual commercial freedom by determining lines of mutual action or cooperation.

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109 Ibid., at paragraph 83.
abstention from action. This is irrespective of the way in which the parties' intention to behave on the market in accordance with the terms of that agreement is expressed.

There is no requirement for the agreements to be legally binding or formal, nor to contain enforcement mechanisms. An agreement does not have to be in writing and may be express or implied from the conduct of the parties. The prohibition is intended to catch a wide range of agreements including oral agreements and 'gentlemen's' agreements as, by their nature, anti-competitive agreements are rarely written down.

As held by the European Court of First Instance ('the CFI'), for an agreement to exist,

'it is sufficient if the undertakings in question have expressed their joint intention to conduct themselves on the market in a specific way.'

Thus, for example, the CAT found in the Argos/Littlewoods case that there was an informal 'gentleman's' agreement between a retailer, Argos, and its supplier, Hasbro, to the effect that Argos would sell certain of Hasbro's products at the retail price recommended by Hasbro. The agreement was verbal and had not been reduced to writing. Nor was it legally binding or result in any guarantee that Argos would actually follow Hasbro's recommended prices. The situation was described by the CAT as follows:

'Mr Wilson's evidence in our judgment establishes what he describes as a "gentleman's agreement". Argos told Hasbro what its pricing intentions were, namely that it was intending to price at RRP's in the next catalogue. Those pricing intentions are highly confidential. Argos may not have communicated its intentions product by product, by going through a list, but there was no doubt that the stated intentions applied to Action Man and Core Games. It is true that there was no certainty, and no guarantee that Argos would price at RRP, and certainly no legally enforceable agreement. There may also from time to time have been some exceptions where Argos did not price at the price it had previously indicated. However, it seems to us implicit in the arrangements as described, unchallenged, by Mr Wilson, that there was an express or

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112 See the Court of First Instance decision (subsequently upheld by the ECJ) in Case T–41/96 Bayer v European Commission [2000] ECR II–3383, at paragraph 69. See also the CAT's judgment in Replica Kit (see note 74 above), at paragraphs 156 and 637.


114 See Commission decisions in Betafence v European Commission (see note 74 above), at paragraph 103 above, at paragraph 715.


116 See the CAT's decision in Replica Kit (see note 74 above), at paragraph 156 and 637.


118 See the Commission's decision in Case T –7/89 Hercules Chemicals v European Commission (see note 103 above), at paragraph 69.

119 See the CAT's decision in Replica Kit (see note 74 above), at paragraph 672.
implied agreement, albeit verbal and with no guarantee, that Argos would sell at Hasbro’s RRP’s, at least to a material extent, on Action Man and Core Games in the A/W 1999 and S/S 2000 catalogues.\textsuperscript{120}

Notwithstanding the absence of any guarantee or that the arrangement was not legally binding, the CAT concluded that an agreement existed for the purposes of the Chapter I prohibition\textsuperscript{121}. This conclusion has recently been upheld by the Court of Appeal\textsuperscript{122}.

1332. Finally, an agreement may consist not only of an isolated act, but also of a series of acts or a course of conduct\textsuperscript{123}.

\textbf{Concerted Practice}

\textit{Introduction}

1333. The Chapter I prohibition also applies to 'concerted practices.' A concerted practice does not require an actual agreement (whether express or implied) to have been reached. Rather, as the ECJ held in \textit{Dyestuffs}\textsuperscript{124},

\begin{quote}
'Article [81] draws a distinction between the concept of "concerted practices" and that of "agreements between undertakings" or of "decisions by associations of undertakings"; the object is to bring within the prohibition of that Article a form of co–ordination between undertakings which, without having reached the stage where an agreement properly so called has been concluded, knowingly substitutes practical co–operation between them for the risks of competition.'\textsuperscript{125}
\end{quote}

1334. The ECJ expressed this in \textit{Anic} as follows:

\begin{quote}
'The list in Article [81(1)] of the Treaty is intended to apply to all collusion between undertakings, whatever form it takes. ... The only essential thing is the distinction between independent conduct, which is allowed, and collusion, which is not, regardless of any distinction between types of collusion.'\textsuperscript{126}
\end{quote}

1335. In addition to the requirement of concertation between the parties, the concept of a 'concerted practice' has also been held to imply conduct on the market pursuant to such collusion, and a relationship of cause and effect between the two. Thus, in \textit{Anic} the ECJ held as follows:

\begin{itemize}
  \item \textsuperscript{120} Ibid., at paragraph 687.
  \item \textsuperscript{121} Ibid., at paragraph 700.
  \item \textsuperscript{122} \textit{Argos and Littlewoods v OFT} [2006] EWCA Civ 1318, at paragraphs 135 to 137.
  \item \textsuperscript{123} C\textsuperscript{a}se C–49/92P \textit{European Commission v Anic Partecipazioni SpA} (see note 108 above) at paragraph 81.
  \item \textsuperscript{124} Case 48/69 \textit{ICI Ltd. v European Commission} [1972] ECR 1969.
  \item \textsuperscript{125} Ibid at paragraph 64. This has been followed in: Cases 40/73 etc. \textit{Suiker Unie v Commission} [1975] ECR 1663, at paragraph 26; Cases C–89/85 etc. \textit{Ahlström Osakeyhtiö v Commission} [1993] ECR I–1307 ('Woodpulp II'), at paragraph 63; Case C–42/92P \textit{Anic v Commission} (see note 108 above), at paragraph 115; and Case C–199/92 P \textit{Hüls} [1999] ECR I–4125, at paragraph 158. See also \textit{Replica Kit} (see note 74 above), at paragraph 151 and \textit{Apex Asphalt and Paving Co Limited v OFT} (see note 76 above), at paragraph 206 (iii).
  \item \textsuperscript{126} Case C–42/92P \textit{Anic v Commission} (see note 108 above), at paragraph 108. See also \textit{Replica Kit} (see note 74 above), at paragraph 153.
\end{itemize}
'as is clear from the very terms of Article [81(1)] of the treaty, a concerted practice implies, besides undertakings concerting together, conduct on the market pursuant to those collusive practices, and a relationship of cause and effect between the two'.

1336. The requirements of concertation and of conduct on the market pursuant to such concertation are discussed further below (see paragraphs 1337 to 1347).

Concertation

1337. The concept of a concerted practice must be understood in the light of the principle that each economic operator must determine independently the policy it intends to adopt on the market. In particular, as the ECJ held in *Suiker Unie*,

"Although it is correct to say that this requirement of independence does not deprive economic operators of the right to adapt themselves intelligently to the existing and anticipated conduct of their competitors, it does however strictly preclude any direct or indirect contact between such operators, the object or effect whereof is either to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market".

1338. In *Anic*, the ECJ, citing in addition to *Suiker Unie* a number of further cases, elaborated on this as follows:

"According to that case law, although that requirement of independence does not deprive economic operators of the right to adapt themselves intelligently to the existing and anticipated conduct of their competitors, it does however strictly preclude any direct or indirect contact between such operators, the object or effect whereof is to influence the conduct on the market of an actual or potential competitor or to disclose to such a competitor the course of conduct which they themselves have decided to adopt or contemplate adopting on the market, where the object or effect of such contact is to create conditions of competition which do not correspond to the normal conditions of the market in question, regard being had to the nature of the

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127 Case C–42/92P *Anic v Commission* (see note 108 above), at paragraph 118. Followed in Cases C–199/92 P etc. *Hüls AG v. Commission* (see note 125 above), at paragraph 162. See also *Apex Asphalt and Paving Co Limited v OFT* (see note 76 above), at paragraph 206 (ix).

128 Cases 40/73 etc. *Suiker Unie v Commission* (see note 125 above), at paragraph 173; Cases C–199/92 P etc. *Hüls AG v. Commission* (see note 125 above), at paragraph 159. See also *Replica Kit* (see note 74 above), at paragraph 152 and *Apex Asphalt and Paving Co Limited v OFT* (see note 76 above), at paragraph 206 (iv).

129 Cases 40/73 etc. *Suiker Unie v Commission* (see note 125 above), at paragraph 174. This was followed in Case C–42/92P *Anic v Commission* (see note 108 above), at paragraph 117, Cases C–199/92 P etc. *Hüls AG v. Commission* (see note 125 above), at paragraph 160. See also *Apex Asphalt and Paving Co Limited v OFT* (see note 76 above), at paragraph 206 (v).

products or services offered, the size and number of the undertakings and the volume of the said market.\textsuperscript{131}

The requirement that the object or effect of the concertation must be to prevent, restrict or distort competition is discussed further below (see paragraphs 1348 to 1358).

1339. A concerted practice may, in particular, occur where there are reciprocal contacts between undertakings which have the object or effect of removing or reducing uncertainty as to their future conduct on the market,\textsuperscript{132} including by way of the disclosure to a competitor of the course of conduct which an undertaking has itself decided to adopt or contemplates adopting on the market.\textsuperscript{133} Moreover, in \textit{Cimenteries}\textsuperscript{134} the CFI held that reciprocal contacts are established,

\begin{quote}
where one competitor discloses its future intentions or conduct on the market to another when the latter requests it or, at the very least, accepts it \textsuperscript{135}.
\end{quote}

and that,

\begin{quote}
'\textit{It is sufficient that, by its statement of intention, the competitor should have eliminated or, at the very least, substantially reduced uncertainty as to the conduct on the market to be expected on his part}.'\textsuperscript{136}
\end{quote}

1340. In order to prove concertation, it is not therefore necessary to show that the competitor in question has formally undertaken, in respect of one or several others, to adopt a particular course of conduct or that the competitors have expressly agreed a particular course of conduct on the market. It is sufficient that, by its statement of intention, the competitor should have eliminated or, at the very least, substantially reduced uncertainty as to the conduct on the market to be expected on his part. Applying this principle in \textit{Replica Kit} the CAT concluded as follows:

\begin{quote}
'Applying the principles in \textit{Suiker Unie} and \textit{Cimenteries}, ... the facts as we find them to be disclose direct contact between competitors, taking place in a private home, at which retail prices were discussed. In the course of that contact both JJB and Sports Soccer respectively disclosed the course of conduct which they had decided to adopt or contemplated adopting in the market, namely to price at £39.99. By stating their respective pricing
\end{quote}

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\textsuperscript{131} Case C–42/92P \textit{Anic} v \textit{Commission} (see note 108 above), at paragraph 117.
\textsuperscript{132} Cases 40/73 etc. \textit{Suiker Unie} and others v \textit{European Commission} (see note 125 above), at paragraph 175. See also, \textit{Apex Asphalt and Paving Co Limited} v \textit{OFT} (see note 76 above), at paragraph 206 (vi).
\textsuperscript{133} Cases 40/73 etc. \textit{Suiker Unie} and others v \textit{European Commission} (see note 125 above), at paragraph 174 and Case C–42/92P \textit{Anic} v \textit{Commission} (see note 108 above), at paragraph 117, both quoted in paragraphs 1337 and 1338 above.
\textsuperscript{134} Cases T–25/95 etc \textit{Cimenteries} CBR SA and others v \textit{European Commission} ECR II–491
\textsuperscript{135} Ibid., at paragraph 1849. See also \textit{Apex Asphalt and Paving Co Limited} v \textit{OFT} (see note 76 above), at paragraph 206 (vii).
\textsuperscript{136} Ibid., at paragraph 1852. See also \textit{Apex Asphalt and Paving Co Limited} v \textit{OFT} (see note 76 above), at paragraph 206 (viii).
intentions, both JJB and Sports Soccer in our view substantially reduced uncertainty as to their future conduct in the market.\[137\]

Moreover, the requirement of concertation may be satisfied by the unilateral disclosure of information by one party to another (where that information is 'at the very least' accepted by the recipient.\[138\]) Thus, in *Tate and Lyle v the Commission* the CFI held that,

'Moreover, the fact that only one of the participants at the meetings in question reveals its intentions is not sufficient to exclude the possibility of an agreement or concerted practice.'\[139\]

Citing this in *Replica Kit*\[140\], in the passage that immediately follows the extract quoted at paragraph 1341 above, the CAT went on to conclude that,

'even if the evidence had established only that JJB had unilaterally revealed its future pricing intentions to Allsports and Sports Soccer a concerted practice falling within the Chapter I prohibition would thereby have been established. The fact of having attended a private meeting at which prices were discussed and pricing intentions disclosed, even unilaterally, is in itself a breach of the Chapter I prohibition, which strictly precludes any direct or indirect contact between competitors having, as its object or effect, either to influence future conduct in the market or to disclose future intentions.'\[141\]

1342. Similarly, the mere receipt of information concerning competitors may be sufficient to give rise to concertation. Thus, in *Tate and Lyle v the Commission*, the CFI stated, in response to Napier Brown’s argument that it was attending the meeting in its capacity as a customer and not as a competitor, that,

'66. ... even if its competitors had been informed [that Napier Brown was participating those meetings in a spirit that was different from theirs], the mere fact that it received at those meetings information concerning competitors, which an independent operator preserves as business secrets, is sufficient to demonstrate that it had an anti–competitive intention.

'67. By participating at one of those meetings, each participant knew that during the following meetings its most important competitor ... would reveal its future price intentions. Independently of any other reason for participating in those meetings, there was always one at least

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137 *Replica Kit* (see note 74 above), at paragraph 872.
138 *Cases T–25/95 etc Cimenteries CBR SA and others v European Commission* (see note 134 above), at paragraph 1849.
140 *Replica Kit* (see note 74 above).
141 *Replica Kit* (see note 74 above), at paragraph 873.
which was to eliminate in advance the uncertainty concerning the future conduct of competitors\textsuperscript{142}.

### Resulting conduct on the market

1343. As noted above, the concept of a concerted practice implies, besides undertakings concerting with each other, subsequent conduct on the market and a relationship of cause and effect between the two\textsuperscript{143}.

1344. The concept does not necessarily imply that the concertation should produce the concrete effect of restricting, preventing or distorting competition, however. Thus, the ECJ held in \textit{Anic} that,

\begin{quote}
'although the concept of a concerted practice presupposes conduct of the participating undertakings on the market, it does not necessarily imply that that conduct should produce the concrete effect of restricting, preventing or distorting competition\textsuperscript{144}.'
\end{quote}

1345. In particular, it will not be necessary to prove such a concrete anti–competitive effect where the concerted practice has an anti–competitive object (as to which, see further below). As the ECJ held in \textit{Anic},

\begin{quote}
'it follows from the actual text of Article \[81(1)\] that, as in the case of agreements between undertakings and decisions by associations of undertakings, concerted practices are prohibited, regardless of their effect, when they have an anti–competitive object\textsuperscript{145}.'
\end{quote}

1346. Furthermore, where an undertaking participating in concerting arrangements remains active on the market, there is a presumption that it will take account of the information exchanged with its competitors. In \textit{Anic} the ECJ held that,

\begin{quote}
'subject to proof to the contrary, which it is for the economic operators concerned to adduce, there must be a presumption that the undertakings participating in concerting arrangements and remaining active on the market take account of the information exchanged with their competitors when determining their conduct on the market, particularly when they concert together on a regular basis over a long period, as was the case here.'\textsuperscript{146}
\end{quote}

\textsuperscript{142} Cases T–202/98, T–204/98 and T–207/98 \textit{Tate & Lyle plc v Commission} [2001] ECR II 2035 (see note 139 above), at paragraph 54.
\textsuperscript{143} \textit{Case C–42/92P Anic v Commission} (see note 108 above), at paragraph 118 and Cases C–199/92P etc. \textit{Hüls AG v European Commission} (see note 125 above), at paragraph 162. See also \textit{Apex Asphalt and Paving Co. Limited v Office of Fair Trading} (see note 76 above), at paragraph 206 (ix).
\textsuperscript{144} \textit{Case C–42/92P Anic v Commission} (see note 108 above), at paragraph 124. See also \textit{Apex Asphalt and Paving Co. Limited v Office of Fair Trading} (see note 76 above), at paragraph 206 (xii).
\textsuperscript{145} \textit{Case C–42/92P Anic v Commission} (see note 108 above), at paragraph 123. See also \textit{Apex Asphalt and Paving Co. Limited v Office of Fair Trading} (see note 76 above), at paragraph 206 (xii).
\textsuperscript{146} \textit{Case C–42/92P Anic v Commission} (see note 108 above), at paragraph 121, Cases C–199/92P etc. \textit{Hüls AG v European Commission} (see note 125 above), at paragraph 162 and Cases T–25/95 etc \textit{Cimenteries CBR SA and others v European Commission} (see note 134 above), at
1347. This approach has been followed by the CAT, for example in *Replica Kit*, where it held as follows:

"Even where participation in a meeting is limited to the mere receipt of information about the future conduct of a competitor, the law presumes that the recipient of the information cannot fail to take that information into account when determining its own future policy on the market".

F. **Object or effect – prevention, restriction or distortion of competition**

No need to prove anti-competitive effect where anti-competitive object established

1348. Section 2(1) of the Act is expressed to prohibit, ‘agreements between undertakings … or concerted practices which … have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom’. Given the express wording of that section, the OFT is not, as a matter of law, obliged to establish that an agreement or concerted practice has an anti-competitive effect where it is found to have as its object the prevention, restriction or distortion of competition. As the ECJ held in *Anic*,

"it follows from the actual text of Article [81(1)] that, as in the case of agreements between undertakings and decisions by associations of undertakings, concerted practices are prohibited, regardless of their effect, when they have an anti-competitive object".

Case law on anti-competitive object

1349. The ‘object’ of an agreement and/or concerted practice is not assessed by reference to the Parties’ subjective intentions when they enter into it, but rather is determined by an objective analysis of its aims. As the ECJ held in the *Cram* case,

"In order to determine whether an agreement has as its object the restriction of competition, it is not necessary … to verify that the parties..."

paragraphs 1865 and 1910. See also *Apex Asphalt and Paving Co. Limited v Office of Fair Trading* (see note 76 above), at paragraph 206 (x).


148 The ECJ has acknowledged this principle on many occasions in relation to the interpretation of Article 81(1). In *Consten & Grundig v Commission* [1966] ECR 299, at page 342 it held that ‘there is no need to take account of the concrete effects of an agreement once it has as its object the prevention, restriction or distortion of competition.’ As set out above, the ECJ has held that this is equally the case where the conduct in question is a concerted practice (Case C–42/92P *Anic v Commission* (see note 108 above), at paragraph 123).

149 Case C–42/92P *Anic v Commission* (see note 108 above), at paragraph 123. See also *Apex Asphalt and Paving Co. Limited v Office of Fair Trading* (see note 76 above), at paragraph 206 (xii).


had a common intent at the time when the agreement was concluded. It is rather a question of examining the aims pursued by the agreement as such, in the light of the economic context in which the agreement is to be applied.\(^\text{152}\)

1350. In cases where the agreement or concerted practice contains 'obvious restrictions of competition' it will be treated as having an anti–competitive object and no account needs to be taken of the actual conditions in which the agreement or concerted practice functions, or the actual structure of the market.\(^\text{153}\) This will be the case even if the agreement or concerted practice also had other objectives.\(^\text{154}\)

**Case law on sharing of information**

**General**

1351. The case law in relation to agreements and concerted practices cited at paragraphs 1321 to 1347 above included a significant number of cases in which information, including pricing information, had been shared amongst competitors.

1352. Information sharing was also the subject of the *UK Tractors* case, in which the exchange of non–price related information between competitors in circumstances where the information exchange did not underpin any anti–competitive object was held by both the CFI and ECJ to infringe Article 81.\(^\text{155}\)

1353. In that case the information exchanged did not concern prices or future conduct and it was not contended that the arrangement had an anti–competitive object.\(^\text{156}\) Rather, it was found that the exchange of sales

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\(^{152}\) Ibid., at paragraph 26.


\(^{154}\) Examples of agreements or concerted practices which have been held by the European Court to have as their object the prevention, restriction or distortion of competition include: price–fixing in any form, whether horizontal or vertical (for example: Case 123/83 *BNIC v Clair* [1985] ECR 391, at paragraph 22; Case 27/87 *Erauw–Jacquery v La Hesbignonne* [1988] ECR 1919, at paragraph 15; see also Case T–14/89 *Montedipe SpA v Commission* (see note 150 above), at paragraphs 246 and 265; and Case T–148/89 *Tréfilunion v Commission* (see note 150 above), at paragraphs 101 and 109); market–sharing (see for example: Case 41/69 *ACF Chemiefarma v Commission* [1970] ECR 661, at paragraph 128; and Cases 96/82, etc. *IAZ v Commission* [1983] ECR 3369 at paragraphs 19 to 29; and agreements to limit output or sales (see for example: Case T–14/89 *Montedipe SpA v Commission* (see note 150 above), at paragraphs 246 and 265; and Case T–148/89 *Tréfilunion v Commission* (see note 150 above), at paragraphs 101 and 109); see also OFT Competition law guideline on Agreements and concerted practices (OFT401, Edition 12/04), paragraphs 3.4 to 3.8, 3.10 and 3.12 to 3.13.


\(^{156}\) Case T–35/92 *John Deere v Commission* (see note 155 above), at paragraph 92; Case C–7/95 P *John Deere v Commission* (see note 155 above), at paragraph 75.
information had an anti–competitive effect. Nevertheless, the reasoning in that case is instructive for the purposes of this Decision. In particular, the European Court’s conclusions were based on the finding that the information exchange in the highly concentrated oligopolistic UK tractor market, reduced or removed uncertainty about the future conduct of competitors, notwithstanding that the information exchanged did not itself concern the participants’ individual strategies or intended conduct. The ECJ identified as relevant considerations the nature of the information exchanged, which was found to constitute business secrets, the frequency and systematic nature of the exchange and the fact that the information was shared between the main suppliers for their sole benefit to the exclusion of other suppliers and of consumers.

Disclosure/exchange of information relating to pricing

1354. The information exchanged in UK Tractors did not concern prices or future conduct. The exchange of pricing information is particularly sensitive from a competition law perspective. Indeed, the mere disclosure of such information to competitors will almost certainly be anti–competitive where it is capable of influencing their future conduct on the market, as will its receipt (see paragraphs 1341 to 1342 above).

1355. As regards the disclosure of information relating to intended future pricing, in the Replica Kit case, involving a supplier’s dealings with a retailer, the CAT stated,

'657. ... Suiker Unie and subsequent cases state that what is strictly precluded is "any direct or indirect contact" between economic operators the object or effect of which is either to influence future market conduct or to disclose future intentions ...'

'658. ... Cimenteries (at paragraphs 1849 and 1852) and Tate & Lyle (at paragraphs 54 to 60) ... show that even the unilateral disclosure of future pricing intentions can constitute a concerted practice if the effect of disclosure is in fact to reduce uncertainty in the marketplace ...'

'659. Thus, for example, if one retailer A privately discloses to a supplier B its future pricing intentions in circumstances where it is reasonably foreseeable that B might make use of that information to influence market conditions, and B passes that information to a competing retailer C, then in our view, A, B and C are to be regarded on those facts as parties to a

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157 Aggregate industry sales, the participants’ sales volumes and market shares in various geographical areas and sales by dealers in each participant’s distribution network (Case T–34/98 Fiatagri v Commission (see note 155 above), at paragraph 14 and Case T–35/92 John Deere v Commission (see note 155 above), at paragraph 15).
158 Case T–35/92 John Deere v Commission (see note 155 above), at paragraph 51; Case C–7/95 P John Deere v Commission (see note 155 above), at paragraph 90.
159 Case T–35/92 John Deere v Commission (see note 155 above), at paragraph 81; Case C–7/95 P John Deere v Commission (see note 155 above), at paragraph 89.
160 Case T–35/92 John Deere v Commission (see note 155 above), at paragraphs 88 to 89.
concerted practice having its object or effect the prevention, restriction or distortion of competition. The prohibition on direct or indirect contact between competitors on prices has been infringed.

'660. As regards A, the position might in our view be different only if it could be shown that retailer A revealed its future pricing strategy to its supplier B for some legitimate purpose not related in any way to competition, and could not reasonably have foreseen that such information would be used by B in a way capable of affecting market conditions. It seems to us that such disclosure by a retailer to a supplier will rarely be legitimate, otherwise retail price maintenance could be introduced by the back door'.

1356. The threat to effective competition is especially obvious where an arrangement involves the regular and systematic exchange of specific information as to future pricing intentions between competitors. The exchange of such information reduces uncertainties inherent in the competitive process and facilitates the coordination of the parties' conduct on the market.

1357. The OFT therefore considers that the unilateral disclosure or exchange of future pricing information between competitors (in particular the private exchange, or unilateral disclosure, amongst competitors of specific future pricing intentions, especially where this is on a regular and systematic basis) has as its obvious object the prevention, restriction or distortion of competition. Accordingly, in order to establish an infringement of the Chapter I prohibition in such circumstances it is not necessary for the OFT to demonstrate that it also had this effect.

1358. Such exchange of information risks facilitating parallel price increases whilst at the same time reducing, or even eliminating, the risk of losing customers to more efficient competitors that might not otherwise have

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163 Replica Kit (see note 74 above). The cases cited by the CAT are Cases 40/73 etc. Suiker Unie v Commission (see paragraph 1337 and note 125 above), at paragraph 174, Cases T–25/95 etc. Cimenteries CBR SA and others v Commission (see paragraph 1339 and note 134 above) and cases T–202/98 etc. Tate and Lyle plc v Commission (see paragraph 1341 and note 139 above).

164 In its recent judgment in this case, the Court of Appeal expressed the view that the CAT may have gone too far in paragraph 659 of its judgment insofar as it intended to suggest that an infringement would be committed in cases where A did not, in fact, foresee that B would make use of the pricing information to influence market conditions by passing it onto C or in which C did not appreciate that the information was being passed to him with A’s concurrence (JJB Sports v OFT [2006] EWCA Civ 1318, at paragraph 91). The Court of Appeal did not need to decide this point on the facts before it in that case, however. Nor is it necessary for the OFT to consider the point in the present case, given that the Participant schools were well aware both: (i) when submitting their fee information to the Sevenoaks bursar as part of the Survey, that it would be shared with the other Participant schools; and (ii) when receiving the fee information in the Survey, that it was being passed to them with the other Participant schools’ concurrence. Moreover, the Replica Kit case involved the indirect exchange of pricing information amongst competitors via a supplier that was not itself a competitor. In the case of the Sevenoaks Survey, the information exchange was coordinated by a competitor, namely Sevenoaks School.

165 See OFT Competition law guideline on Trade associations, professions and self–regulating bodies (OFT 408, Edition 12/04), paragraph 3.10.
increased their prices\textsuperscript{166}. Indeed, it is hard to envisage what legitimate purpose could be served by the exchange of such information, in particular in circumstances where the information remains otherwise confidential and is not shared with customers.

G. Application of the case law to the facts

Operation and timing of the Sevenoaks Survey

1359. As set out in Section II above, the fees for each of the Participant schools, for both boarding and day pupils, are set annually, with effect from the beginning of each academic year in September. In the case of most Participant schools, the new fees are decided in May or June of the previous academic year, with the budgetary process, including the review of fee levels, being commenced during the preceding Spring term, running from January to March. The earliest date by which any of the Participant schools finalises its fees is the end of February or in early March of the preceding academic year\textsuperscript{167}. Once set the fees remain unchanged until the start of the following academic year in September. Details of the fee-setting process for each of the Participant schools are set out in Section II Part E at paragraphs 354 to 1290 above.

1360. The information collated by the Sevenoaks bursar and circulated to the Participant schools in the form of the Sevenoaks Survey comprised each of the Participant schools’ intended fee increases for the following academic year, the information being updated periodically as the annual budgetary process progressed and the Participant schools revised their figures\textsuperscript{168}. The preparation and circulation of the Survey, which took place between January and June each year, was specifically timed to coincide with the schools’ budgeting procedures\textsuperscript{169}. As explained in paragraphs 309 to 322 above, the first questionnaire was circulated to the Participant schools in late January or early February each year and the first version of the Survey, incorporating the information submitted by the Participant schools, was circulated in February. This was followed by a further version of the Survey in May, and in one year June, with a number of updates in between. As a result, with only few exceptions\textsuperscript{170}, each of the...

\textsuperscript{166} See, for example, the Commission’s decision in \textit{BDS OJ L62}, page 38, at paragraphs 30 ff.; cited in OFT Competition law guideline on Trade associations, professions and self–regulating bodies (OFT 408, Edition 12/04), paragraph 3.10.
\textsuperscript{167} Bromsgrove School, Downe House School, Millfield School, Royal Hospital School, Rugby School, Sedbergh School, Sevenoaks School, St. Edward’s School, St Leonards School, Woldingham School, Worth School, Wycombe Abbey School.
\textsuperscript{168} As set out at paragraph 1386 below, there are a number of Participant schools that only submitted their fee estimates to the Sevenoaks Survey for two years during the relevant period.
\textsuperscript{169} See extract from Julian Patrick’s Witness statement (document GCOR1034C), paragraph 4 quoted at paragraph 318 above.
\textsuperscript{170} As discussed in Section II above, in a number of instances (Dauntsey’s School, in respect of the 2001/2002 academic year; Downe House School, in respect of all three years in the relevant period; Mill Hill School, in respect of all three years in the relevant period; St Leonards–Mayfield School, in respect of all three years in the relevant period; Truro School, in respect of all three years in the relevant period) the earliest date for which the OFT is able to establish that they received the Survey post–dates the meeting at which the relevant fee increase was decided (see, respectively, paragraphs 593 to 600, 606 to 613, 813 to 821, 1025 to 1034 and 1097 to
Participant schools received at least one version of the Sevenoaks Survey, revealing the intended fee increases of the other Participant schools, before it finalised its own fee increase(s) for the following academic year. Equally, each Participant school submitted its own intended fee increase(s) for inclusion in the Survey before the other Participant schools, or at least the vast majority of them\(^\text{171}\), had finalised their fee increase(s) for the coming academic year\(^\text{172}\). The evidence of the participation of each of the Participant schools in the Sevenoaks Survey is set out at paragraphs 354 to 1290 above.

1361. The importance of the timing of the Survey is underlined by the following request made by the bursar of Oakham School. In a letter to the Sevenoaks bursar dated 6 February 2001, which enclosed Oakham School’s completed questionnaire, the Oakham School bursar states as follows:

> 'As you rightly infer, the annual survey summaries prove to be of immense value when preparing budget and fee proposals. In light of this, I should point out that our Finance and General Purposes Committee is scheduled for 17\(^\text{th}\) May 2001. Therefore it is likely that I will receive the results of the Questionnaire II Survey too late to be of any real value to us at this meeting. Would it be at all possible for Questionnaire II returns to be made one week earlier thus enabling a summary to be circulated during the week commencing 7\(^\text{th}\) May? May I just add that I am very grateful to you for your initiative in undertaking this annual survey'\(^\text{173}\).

By way of response to this request, the Sevenoaks bursar wrote to all the Participant schools as follows:

> 'I have received a number of requests to bring forward by one week the circulation of the second summary. I am happy to do this if this is what the majority would like but it does mean that the second questionnaire must be completed and returned to me by no later than Friday 4 May'\(^\text{174}\).

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\(^{1103}\) In each of those cases, however, the schools in question submitted their own intended fee increase(s) for inclusion in the Sevenoaks Survey before the vast majority of other Participant schools had finalised their fee increases for the following academic year. The OFT considers that this is sufficient in the particular context in which the schools submitted the information to the Survey to conclude that they participated in the Survey during those years. The schools in question have also admitted that they participated in the Sevenoaks Survey in respect of the academic years as set out in paragraph 1291 above.

\(^{171}\) Ibid.

\(^{172}\) As discussed in paragraphs 403 to 408 above, Benenden School has denied that the fee information recorded against its name in the Sevenoaks Survey for the years 2002/2003 and 2003/2004 was submitted by it. Even if that is accepted, the OFT has established that for each of those years the school received at least one version of the Sevenoaks Survey, revealing the intended fee increases of the other Participant schools, before it finalised its own fee increase. The OFT considers that this is sufficient in the particular context in which Benenden School received the Survey to conclude that it participated in the Survey during those years. Benenden School has never contested that it participated in the Survey for the year 2001/2002 and has now admitted that it participated in the Survey in respect of each of the academic years 2001/2002 to 2003/2004 (see paragraphs 36 to 38 above).

\(^{173}\) Letter dated 6 February 2001 provided by Oakham School in response to the OFT’s section 26 Notice sent on 9 February 2004 (document AX2277).

1362. Through their participation in the Sevenoaks Survey, the Participant schools thus exchanged on a regular and systematic basis specific information regarding each other’s pricing intentions for the coming academic year. Those pricing intentions were highly confidential and were not made available to parents of pupils or published more generally.

Existence of a concerted practice

1363. By participating in the Sevenoaks Survey, the Participant schools engaged in a form of co-ordination which knowingly substituted practical co-operation for the risks of competition, amounting at the very least to a concerted practice. The Participant schools were engaging in reciprocal contacts with their competitors in such a way as to remove or reduce uncertainty as to their future conduct on the market in circumstances where the object of such contact was to prevent, restrict or distort competition.

1364. All the Participant schools remained active on the market throughout the relevant period.

1365. It follows that by participating in the Sevenoaks Survey, the Participant schools at the very least engaged in a concerted practice for the purposes of the Chapter I prohibition.

Existence of an agreement

1366. The OFT considers that by their participation in the Sevenoaks Survey, the Participant schools were also party to an agreement for the purposes of the Chapter I prohibition. Each school submitted information as to its own pricing intentions on the understanding, that in return it would receive a copy of the Survey showing the intended price increases of the other Participant schools. This is reflected in the covering letters that were sent by the Sevenoaks bursar with each questionnaire. In each case, the letter began with the following or similar wording:

‘Please find attached two questionnaires and if you would like your School to be included in the annual surveys, would you kindly complete and return the forms...’

1367. Further, the OFT considers that it was implicit in the way the Sevenoaks Survey operated – and the fact that it was intended that the information exchanged was reasonably reliable – that there was a ‘gentlemen’s’ agreement amongst the Participant schools that fee increase figures submitted to the Survey would accurately reflect actual future fee levels. This is underlined by the fact that revised figures were submitted and updated versions of the Survey circulated as the budgetary

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176 See paragraph 5 above.
process progressed. In these circumstances, the Survey gave rise to an understanding between the Participant schools as to future pricing levels for each school.

**Classification of the infringement as an agreement and/or concerted practice**

1368. As set out at paragraphs 1322 to 1324 above, there is no need for the purpose of applying the Chapter I prohibition to arrive at a definitive conclusion as to whether the behaviour of the Participant schools amounted to an agreement or a concerted practice. Nothing turns on the precise form taken by each of the elements comprising the overall agreement and/or concerted practice.

**Single infringement**

1369. As set out above, at paragraphs 1325 to 1328, where a group of undertakings pursues a common objective or objectives involving one or more agreements or concerted practices, they may be treated as participating in a single infringement, at least where the members of the group were aware of or could reasonably have foreseen that common objective.

1370. At the point at which it submitted the information regarding its intended fee increase(s) to the Sevenoaks bursar, each Participant school would have been aware that the information would be circulated to the other Participant schools and must have foreseen that the other Participant schools might use it when determining the level of its own fee increase(s). As a result, the OFT considers that the Participant schools together participated in a single infringement.

**Anti-competitive object or effect**

1371. For the reasons set out above at paragraphs 1351 to 1357, the OFT considers that, the exchange of specific information regarding future pricing intentions between competitors, particularly where it is done on a regular and systematic basis, constitutes an obvious restriction of competition and, as such, has as its ‘object’ the prevention, restriction or distortion of competition. In these circumstances, it is not necessary to examine the specific economic context of the information exchange or the structure of the relevant market (see paragraph 1350 above).

1372. By participating in the Sevenoaks Survey, the Participant schools took part in the exchange of specific information regarding future pricing intentions. This was done on a regular and systematic basis.

1373. In light of the above, the OFT considers that the Participant schools were party to an agreement and/or concerted practice having as its object the prevention, restriction or distortion of competition. The OFT considers that this amounts to a serious infringement of the Chapter I prohibition.

1374. As explained in paragraphs 1348 and 1348 above, it follows that, for the purposes of establishing an infringement of the Chapter I prohibition, there
is no need for the OFT also to show that the arrangement had an anti–competitive effect. The OFT, therefore, makes no finding as to whether the arrangement, as well as having as its object the prevention, restriction or distortion of competition, also had an effect on the fee levels of the Participant schools.

H. Appreciability

1375. The Chapter I prohibition applies where an agreement or concerted practice has as its object or effect the appreciable prevention, restriction or distortion of competition in the UK or a part of the UK. The OFT takes the view that an agreement and/or concerted practice will not in general appreciably restrict competition if it is covered by the European Commission’s Notice on Agreements of Minor Importance\(^{177}\). This Notice provides that an agreement between competitors will not appreciably restrict competition if the parties’ combined share of the relevant market does not exceed 10 per cent\(^{178}\), save that agreements which directly or indirectly fix prices, share markets or limit production are regarded as capable of appreciably restricting competition even where the combined market shares fall below this level.

1376. The OFT considers that, as in the case of price fixing or market sharing agreements\(^{179}\), an agreement or concerted practice amongst competitors which has as its object the co–ordination of prices in breach of the Chapter I prohibition, by its very nature, restricts competition to an appreciable extent.

1377. The overall agreement and/or concerted practice between the Participant schools had as its object the prevention, restriction or distortion of competition and concerned the exchange of sensitive information relating to future pricing intentions. The OFT therefore considers that the agreement and/or concerted practice has an appreciable effect on competition irrespective of whether or not the Parties’ combined market share in the relevant market falls below 10 per cent.\(^{180}\) The OFT therefore takes the view that the agreement and/or concerted practice in this case prevents, restricts or distorts competition to an appreciable extent.

1378. The OFT notes that, in any event, the Parties’ combined market shares, at least in the market for boarding services, are well above the level at which their conduct, even had it not consisted in the exchange of information on

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\(^{178}\) See paragraphs 7 to 9 of the Commission Notice and OFT Competition law guideline on Agreements and concerted practices (OFT 401, Edition 12/04), paragraph 2.16.

\(^{179}\) See OFT Competition law guideline on Agreements and concerted practices (OFT 401, Edition 12/04), paragraphs 3.4 and 3.10.

future fees, could be expected to have an appreciable effect on the market\footnote{181}. 

I. Effect on trade within the UK

1379. For the purposes of the Chapter I prohibition, the UK includes any part of the UK where an agreement/concerted practice operates or is intended to operate\footnote{182}. The OFT considers that by its very nature an agreement or concerted practice involving the exchange of information on future fees amongst competitors is likely to affect trade. It should be noted that, for the Chapter I prohibition to apply, an agreement or concerted practice does not actually have to affect trade so long as it is capable of affecting trade. Moreover, the OFT considers the effect on trade within the UK to be a purely jurisdictional test to establish that the agreement or concerted practice in question has some effect in the UK – the test is not read as importing a requirement that the effect on trade should be appreciable.

1380. The agreement and/or concerted practice was implemented in the UK. Moreover, the regular and systematic exchange amongst the Participant schools of their intended fee increases, thereby artificially facilitating the horizontal co-ordination of price increases, was clearly at the very least capable of altering the pattern of trade within the UK. The OFT therefore considers that trade within the UK may have been affected by the conduct of the Participant schools in this case.

J. Exclusion or exemption

1381. None of the exclusions under sections 3 or 50 of the Act applies.

1382. There is also no block exemption order under section 6 that would apply to the conduct objected to. Nor is there an applicable EC Council or Commission Regulation by virtue of which the conduct would benefit from a parallel exemption under section 10 of the Act.

1383. No application for individual exemption of the agreement and/or concerted practice was made under section 4 of the Act. Moreover, had such an application been made, it is most unlikely that the OFT would have found it to have met the requirements of section 9 of the Act. In particular, the OFT considers that:

i) it is extremely hard, if not impossible, to see how the exchange of school’s future pricing intentions might contribute to improving the provision of educational services; and

ii) it is equally difficult to see how the agreement could be said to allow parents a share of the resulting benefit, if any, where price competition between the schools was distorted.

\footnote{181}{See paragraphs 307 and 308 above for the OFT’s estimates of market shares.}
\footnote{182}{Section 2(7) of the Act.}
In the light of the above, the OFT does not need to consider whether any of the remaining requirements for exemption under that section would have been met.

K. Duration of infringement

1384. As set out at paragraphs 1307 to 1310 above, the Chapter I prohibition will not have been applicable to the Participant schools’ participation in the Sevenoaks Survey until 1 March 2001. The infringement, therefore, commenced on that date.

1385. The OFT was informed by those Participant schools that applied for leniency and by the Independent Schools Council (the ‘ISC’) that the practice of exchanging prospective fee increase information through the Sevenoaks Survey stopped when the OFT began its investigation in June 2003. The ISC issued guidance in collaboration with the OFT to all of its members in relation to the Act and, following consultation with the ISC, the OFT issued a paper of Frequently Asked Questions by Independent Schools on 22 June 2004. The OFT’s investigation has not uncovered any evidence that would suggest that the practice continued after June 2003.

1386. As set out in paragraph 1291 above, and as the Participant schools have admitted (see paragraphs 36 to 38 above) the OFT considers that, with two exceptions, each of the Participant schools participated in the Sevenoaks Survey in respect of each of the academic years from 2001/2002 to 2003/2004 by submitting and/or receiving information concerning their intended fee increases for that academic year. In the case of Sedbergh School, however, the OFT considers that it only has sufficient evidence of the school’s participation in the Survey in respect of the academic years 2002/2003 and 2003/2004. Similarly, as regards Truro School, the OFT considers that it only has evidence of that school’s participation in the Survey in respect of the academic years 2001/2002 and 2003/2004. The admissions by Sedbergh School and Truro School as to their participation in the Survey is limited to those years (see paragraphs 36 to 38 above).

L. Conclusion on application of Chapter I prohibition

1387. The OFT concludes, on the basis of the facts, as set out in Section II above, and of the OFT’s analysis of those facts as set out in this Section III, that during the period from 1 March 2001 to June 2003 all of the Participant schools infringed the Chapter I prohibition by participating in an agreement and/or concerted practice in which detailed information as to the fees which they intended to charge was exchanged which had as its

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184 See paragraphs 942 to 946 and 953 to 956.
185 See paragraphs 1097 to 1107 above.
object the prevention, restriction or distortion of competition in the market for the provision of educational services to both boarding and day pupils at independent fee–paying senior schools.

1388. The OFT is not required to show that the arrangement had an anti–competitive effect in order to establish an infringement of the Act. The OFT, therefore, makes no finding as to whether the infringement had any effect on the fee levels of the Participant schools.
IV. PRINCIPLES FOR DETERMINING THE PARTIES

A. Introduction

1389. This section sets out the principles which the OFT has applied in determining for each Participant school the entity or entities which is or are responsible for the infringement described in Sections II and III of this Decision and to which liability for the infringement should be attributed. These are the Parties to which this Decision is addressed and which the OFT considers should be required to pay any financial penalty under section 36(1) of the Act.\(^\text{186}\)

1390. A full list of the Parties is set out at paragraph 11 in Section I of this Decision.

B. Concept of an 'undertaking'

1391. The Chapter I prohibition concerns agreements and concerted practices between 'undertakings'. Similarly, the OFT's power under section 36(1) of the Act to impose financial penalties for breaches of the Chapter I prohibition applies to 'undertakings'.

1392. This concept is distinct from that of legal personality. Thus, in the context of agreements between a parent company and its subsidiary, the ECJ has held that,

> 'Where ... the subsidiary, although having a separate legal personality does not freely determine its conduct on the market but carries out the instructions given to it directly by the parent company by which it was wholly controlled, Article [81(1)] does not apply to the relationship between the subsidiary and the parent company with which it forms an economic unit'.\(^\text{187}\)

1393. Similarly, in the context of an agreement concluded between companies within the same corporate group and one or more third parties, the ECJ has held that,

> 'In competition law, the term "undertaking" must be understood as designating an economic unit for the purpose of the subject–matter of the

\(^{186}\) See Section V of this Decision.

agreement in question, even if in law that economic unit consists of several persons, natural or legal.\footnote{188}

C. Attribution of liability

General principles

1394. When it comes to the attribution of liability for an infringement of the Chapter I prohibition, including the imposition of a financial penalty, it is necessary, however, to identify the legal or natural person or persons who may be held responsible for the infringement by the undertaking.

1395. This issue has been considered by the European Court in a number of different contexts.\footnote{189} The following relevant guiding principles emerge from these cases:

- First, it falls in principle, to the legal or natural person managing the undertaking in question when the infringement was committed to answer for that infringement;\footnote{190}

- Second, where a parent company exerts decisive influence on the policy of a subsidiary such that the latter does not enjoy real autonomy in determining its own course of action on the market, liability may be attributed to the parent company for the actions of the subsidiary;\footnote{191}

- Third, where liability for the infringement of an undertaking may be attributed to two or more legal entities, each will be jointly and severally liable for the conduct of the undertaking.\footnote{192}

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\footnote{188}{Case 170/83 Hydrotherm [1984] ECR 2999, at paragraph 11. See also OFT Competition law guideline on Agreements and concerted practices (OFT 401, Edition 12/04), paragraph 2.6.}\n
\footnote{189}{These have included in relation to questions as to: (i) the circumstances in which a parent company may be held responsible for the behaviour of its subsidiary (e.g. Case 48/69 ICI v Commission [1972] ECR 619, at paragraphs 130 and 137; Case 107/82 AEG v Commission [1983] ECR 3151; and Case C–286/98 P Stora Kopparberg v Commission [2000] ECR I–9925, at paragraph 29), (ii) whether several companies within a group may be held jointly and severally liable for an infringement (e.g. Case T–9/99 HFB Holding v Commission [2002] ECR II 1487, at paragraphs 522 to 532 and paragraphs 54 to 68; upheld on appeal, Case C–189/02 P etc. Dansk Rerindustri A/S v Commission, judgment of 28 June 2005, unpublished, at paragraphs 103 to 130); and (iii) whether a company may be held liable for the conduct of an undertaking prior to its acquisition (e.g. Cases 29–30/83 CRAM v Commission [1984] ECR 1679, at paragraphs 6 to 9; Case C–279/98 P Cascades v Commission [2002] ECR 2813, at paragraphs 68 to 82; and Case 286/98 P Stora Kopparbergs [2000] ECR I–9925, at paragraphs 31 to 40) or after its disposal (e.g. Case C–49/92 P Anic v Commission [1999] ECR I–4125, at paragraphs 139–147).}\n
\footnote{191}{Case 48/69 ICI v Commission (see note 189 above), at paragraphs 130 ff; Case 107/82 AEG v Commission (see note 189 above), at paragraphs 47 ff.; Case 286/98 P Stora Kopparbergs (see note 189 above), at paragraphs 27 to 29.}\n
\footnote{192}{Case T–9/99 HFB Holding v Commission (see note 189 above), at paragraphs 522 to 532 and paragraphs 54 to 68; upheld on appeal, Case C–189/02 P etc. Dansk Rerindustri A/S v Commission (see note 189 above).}
Fourth, a change in the legal form or name of an undertaking does not create a new undertaking free of liability for the anti-competitive behaviour of its predecessor, when, from an economic point of view the two are identical; the determining factor is whether there is a functional and economic continuity between the original infringer and the undertaking into which it was merged;

Fifth, if, at the time the infringement decision is adopted, responsibility for operating the undertaking has been assumed by a legal or natural person other than the person that was managing the undertaking when the infringement was committed, liability for the infringement will, as a general rule, stay with the person that was managing the undertaking at the time of the infringement;

Sixth, liability for the infringement of an undertaking may, however, pass to a successor operator where the legal person responsible for managing the undertaking has ceased to exist in law after the infringement has been committed and before the infringement decision is adopted;

Seventh, liability may also pass to an entity where there is a 'structural link' between the legal person responsible for managing the undertaking at the time of the infringement and its successor, notwithstanding that the legal person which managed the undertaking at the time of the infringement is still in existence.

Application to the Participant schools

The OFT has applied the above general principles when determining for each Participant school the Party or Parties to which liability for the infringement should be attributed.

For each Participant school, the OFT has first identified the legal entity that was responsible for running the school during the relevant period. In most cases this will be the Party to which the OFT has attributed liability for the infringement by that Participant school. In some cases liability for the infringement by a Participant school is shared with another legal entity, in which case each Party's liability for the conduct of the Participant school is joint and several.

193 Cases 29–30/83 CRAM v Commission (see note 189 above), at paragraph 9.
194 Ibid., at paragraph 43.
195 Case C–49/92 P Commission v Anic Participazioni SpA [1999] ECR I 4125, at paragraphs 139 to 147; Case C–279/98 P Cascades (see note 189 above), at paragraph 78; Case 286/98 P Stora Kopparbergs (see note 189 above), at paragraph 37; Case C–248/98 P KNP BT v Commission (see note 190 above), at paragraph 71; and Case C–297/98 P SCA Holding v Commission (see note 190 above), at paragraph 27. See also OFT Competition law guideline on Enforcement (OFT 407, Edition 12/04), paragraph 5.41.
1398. In the case of a number of the Participant schools, the legal entity responsible for running the school changed either during the relevant period or between the end of the relevant period and the date of this Decision\textsuperscript{198}. None of these cases, however, involved the arms length transfer of relevant activities between existing and functioning undertakings. Rather, the transfer in each case was made in the context of the incorporation of the entity previously responsible for running the school, as part of a purely internal reorganisation of a single economic unit amounting to a mere change in the legal form and, in most cases, name of the economic entity. In some cases this also involved a change in the number of legal entities comprised in the single economic unit\textsuperscript{199}.

1399. Where in such cases the legal entity that ran the school is no longer in existence, only the entity or entities that currently run(s) the school has or have been made a Party to this Decision\textsuperscript{200}. This is also the case where the predecessor entity, although formally still in existence, is effectively dormant. Where, on the other hand, the entity that ran the school during the relevant period continues to exist and to remain active as part of the undertaking thus reorganised, both that entity and its successor have been made Parties, on the basis that they constitute one and the same economic unit\textsuperscript{201}. The same principles have been applied where there has been a change in the entity that exercises control over the Party running the school\textsuperscript{202}.

1400. Where the Party that runs a Participant school is itself controlled by a parent entity, in the sense that the parent entity may be said to exert a decisive influence on the Participant school’s commercial policy, the parent entity has also been included as a Party to these proceedings\textsuperscript{203}. This includes where the Party that runs a Participant school is a wholly owned subsidiary of another company which may, therefore be presumed to exercise decisive influence over the commercial policy of its subsidiary.

\textsuperscript{198} Bromsgrove School, Dauntsey’s School, Gresham’s School, Repton School, Sevenoaks School, Tonbridge School and Worth School.
\textsuperscript{199} Dauntsey’s School, Gresham’s School, Repton School, Sevenoaks School and Tonbridge School.
\textsuperscript{200} See Bromsgrove School and Worth School
\textsuperscript{201} See Dauntsey’s School, Gresham’s School, Repton School, Sevenoaks School and Tonbridge School.
\textsuperscript{202} See Lancing College.
\textsuperscript{203} See Ampleforth College, Epsom College, Lancing College, Tonbridge School, Wellington College and Worth School.
SECTION V.

V. ENFORCEMENT

1401. This section sets out the OFT’s enforcement action and its reasons for it.

A. Decision

1402. The evidence set out in Sections I and II of this Decision formed the basis of the Statement of Objections sent to the Parties. The Participant schools have admitted that they committed an infringement of the Chapter I prohibition of the Act by participating in the exchange of information through the Sevenoaks Survey which as a matter of law had as its object the distortion of competition within the United Kingdom. With the exception of two of the Participant schools, the academic years in respect of which the Participant schools have admitted exchanging information through the Survey are 2001/2002 to 2003/2004. Sedbergh School has admitted that it participated in the Survey in respect of the academic years from 2001/2002 to 2003/2004 and Truro School has admitted participation in respect of the academic years 2001/2002 and 2003/2004. On the basis of these admissions and on the evidence set out at paragraphs 354 to 1290 above, the OFT concludes that the Participant schools were party to an agreement and/or concerted practice having as its object the prevention, restriction or distortion of competition in breach of the Chapter I prohibition. The Participant schools have made no admission as to whether the infringement had any effect on fee levels and this Decision makes no finding that there was such an effect.

B. Directions

1403. Undertakings are required by law to comply with the Act. Section 32(1) of the Act provides that if the OFT has made a decision that an agreement and/or concerted practice infringes the Chapter I prohibition, it may give to such person or persons as it considers appropriate such directions as it considers appropriate to bring the infringement to an end.

1404. As described at paragraphs 1385 to 1387 above, the OFT has concluded that the agreement and/or concerted practice that infringed the Chapter I prohibition started by no later than the 1 March 2001 and terminated in June 2003. Since the infringement has already come to an end\(^\text{204}\) the OFT has concluded that it is not necessary to issue directions in this case.

\(^{204}\) See paragraph 1385 above.
C. Financial Penalties

Introduction

1405. Section 36(1) of the Act provides that, on making a Decision that an agreement\(^{205}\) and/or concerted practice has infringed the Chapter I prohibition, the OFT may require a party to the agreement to pay it a penalty in respect of the infringement. No penalty which has been fixed by the OFT may exceed 10 per cent of the turnover of the undertaking calculated in accordance with the provisions of the Competition Act 1998 (Determination of Turnover for Penalties Order) 2000 as amended ('the 2004 Penalties Order').\(^{206}\) Prior to the entry into force on 1 May 2004 of the 2004 Penalties Order, the maximum penalty that could be imposed under section 36 of the Act was 10 per cent of turnover in the UK of the undertaking in the financial year preceding the date when the infringement ended (multiplied pro rata by the length of the infringement where the length of the infringement was in excess of one year, up to a maximum of three years).\(^{207}\) Where, as in this case, an infringement ended before 1 May 2004, the OFT will make any necessary adjustment to ensure that, as well as not exceeding the current maximum amount, the penalty also does not exceed the maximum amount applicable prior to that date.

1406. The OFT may impose a penalty on an undertaking that has infringed the Chapter I prohibition only if it is satisfied that the infringement has been committed intentionally or negligently\(^{208}\), although the OFT is not obliged to specify whether it considers the infringement to be intentional or merely negligent\(^{209}\). The CAT has stated that,

> 'an infringement is committed intentionally for the purposes of the Act if the undertaking must have been aware that its conduct was of such a nature as to encourage a restriction or distortion of competition.'\(^{210}\)

1407. The OFT considers that an infringement of the Chapter I prohibition will have been committed intentionally if the undertaking must have been aware that the object or effect of the agreement, decision or concerted practice in question was of such nature as to encourage a restriction or distortion of competition. In particular, the OFT considers that serious infringements of the Chapter I prohibition which have as their object the restriction of competition are by their very nature committed intentionally.

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\(^{205}\) Section 2(5) of the Act states: ‘a provision of this Part which is expressed to apply to, or in relation to, an agreement is to be read as applying equally to, or in relation to, ... a concerted practice (but with any necessary modifications).’ As such, where this section of the Decision includes references to agreements taken from the Act or associated statutory instruments, those references should be taken to refer also to concerted practices.


\(^{207}\) ‘OFT’s guidance as to the appropriate amount of a penalty’ (OFT423, December 2004), paragraph 2.18.

\(^{208}\) Section 36(3) of the Act.

\(^{209}\) Napp Pharmaceutical Holdings Limited v Director General of Fair Trading [2001] CAT 1 at paragraphs 457 and 459.

\(^{210}\) Ibid., paragraph 456.
in that any undertaking participating in such an infringement cannot be unaware of the anti-competitive nature of its conduct\textsuperscript{211}.

1408. In this case the Parties participated in an agreement and/or concerted practice in which detailed information as to the fees which they intended to charge was exchanged amongst competitors and which had as its object the prevention, restriction or distortion of competition in the market for the provision of education services to both boarding and day pupils at senior independent fee-paying schools. The OFT considers that the Parties cannot have failed to be aware that the obvious consequence of this arrangement would be the prevention, restriction or distortion of competition.

1409. The OFT is therefore satisfied that the infringement was, in the case of each of the Parties committed intentionally or, at the very least, negligently.

1410. Whether the Parties were aware that the arrangement was unlawful is irrelevant for the purpose of establishing that the infringement was committed intentionally or negligently\textsuperscript{212}.

1411. In any event, the OFT notes that the entry into force of the Act in March 2000 was preceded by a considerable amount of publicity, including in particular, the publication by the OFT of detailed guidelines on the Act. These included guidelines on the Major provisions of the Act\textsuperscript{213}, the Chapter I prohibition\textsuperscript{214} and on Trade associations, professions and self-regulating bodies\textsuperscript{215}, all of which were issued in March 1999. The guidelines included guidance on the exchange of price information\textsuperscript{216} and an explanation regarding the application of the Act to services that had previously been exempt from the provisions of the RTPA\textsuperscript{217}. The

\textsuperscript{211} See OFT Competition guideline on Enforcement (OFT Guideline 407, Edition 12/04), paragraph 5.9.

\textsuperscript{212} See OFT Competition guideline on Enforcement (OFT Guideline 407, Edition 12/04), paragraph 5.10.

\textsuperscript{213} OFT 400 (Edition March 1999).

\textsuperscript{214} OFT 401 (Edition March 1999).

\textsuperscript{215} OFT 408 (Edition March 1999).

\textsuperscript{216} See OFT Competition law guideline on the Chapter I prohibition (OFT 401, Edition March 1999), paragraphs 3.21 and 3.22 ('The exchange of information on prices may lead to price co-ordination and therefore eliminate any competition which would otherwise be present between the undertakings. This will be the case whether the information exchanged relates directly to the prices charged or to the elements of a pricing policy, for example including discounts, costs, terms of trade and rates and dates of change'). See also OFT Competition law guideline on Trade associations, professions and self-regulating bodies (OFT 408, Edition March 1999), paragraphs 3.8 to 3.10 ('The regular and systematic exchange of specific information on prices between competitors is ... likely to reduce the uncertainties inherent in the competitive process and to facilitate the coordination of market conduct, whether the exchange is organised by the members themselves or ... by or through an association of undertakings. While the compilation of general information, for example general price trends for an industry, may not have an appreciable effect on competition, it must not cover (or enable undertakings to divine) confidential information relating to individual undertakings').

\textsuperscript{217} OFT Competition law guideline on Trade associations, professions and self-regulating bodies (OFT 408, Edition March 1999), paragraph 6.8 ('The scope for exclusion from the Chapter I prohibition [under Schedule 4 to the Act, which has since been repealed] is ... narrower than that from the Restrictive Trade Practices Act in that it is limited to the designated rules of the
guidelines, including those on the Major provisions, the Chapter I prohibition and on Trade associations, professions and self–regulating bodies, were also issued in draft for prior consultation218.

1412. The Act itself was also the subject of prior consultation before its introduction into Parliament as a Bill in 1997219. These included consultations under the previous government in 1988220, 1989221 and 1996222 and the publication of a draft bill in August 1996223. This was followed in August 1997 by the issue of a further consultation document and draft bill by the new incoming government224.

1413. The Act was finally enacted on 9 November 1998, although the Chapter I prohibition did not come into force until 1 March 2000. Moreover, as explained in paragraphs 1307 to 1310 above, in the case of agreements that had been made before 1 March 2000 the Chapter I prohibition did not apply until 1 March 2001. The Parties therefore had every opportunity to cease their participation in the Survey before the Chapter I prohibition came into effect.

Immunity from penalties

1414. Section 39(3) of the Act provides that a party to a small agreement is immune from the effect of section 36(1). This is defined, pursuant to section 39(1) of the Act and the Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000,225 as an agreement between undertakings the combined applicable turnover of which for the business year ending in the calendar year preceding the one during which the infringement occurred does not exceed £20 million. Since the combined applicable turnover of the Parties exceeds that amount, however, the agreement and/or concerted practice cannot benefit from immunity from penalties under that section.

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218 In the case of the guideline on the Major provisions, a draft was published for consultation and a press notice (No. 13/98) issued on 20 March 1998. Drafts of the guidelines on the Chapter I prohibition and on Trade associations, professions and self–regulating bodies were issued with a press notice (No. 51/98) on 26 November 1998, along with a number of other draft guidelines.

219 The first and second readings were on 15 and 30 October 1997.

220 Review of restrictive trade practices policy: a consultative document, Department of Trade and Industry, March 1988 (Cm 331), a green paper.

221 Opening markets: new policy on restrictive trade practices, Department of Trade and Industry, July 1989 (Cm 727), a white paper.


223 Tackling cartels and the abuse of market power: a draft bill, Department of Trade and Industry, August 1996.

224 A prohibition approach to anti–competitive agreements and abuse of a dominant position: draft Bill, Department of Trade and Industry, August 1996.

225 SI 2000/262.
Double jeopardy

1415. Under section 38(9) of the Act, if a penalty or fine has been imposed by the European Commission, or by a court or other body in another Member State in respect of an agreement or conduct, the OFT must take that penalty or fine into account when setting the amount of a penalty in relation to that agreement or conduct. This is to ensure that, where an anti–competitive agreement or conduct is subject to proceedings resulting in a penalty or fine in another Member State, an undertaking will not be penalised again in the United Kingdom for the same anti–competitive effects\(^\text{226}\). In this case there is no double jeopardy since no penalty has been imposed by the European Commission or by a court or other body in another Member State.

Calculation of penalties

The OFT’s guidance on penalties

1416. In accordance with section 38(8) of the Act, the OFT must have regard to the guidance on penalties issued under section 38(1) of the Act for the time being in force when setting the amount of the penalty (‘the penalties guidance’\(^\text{227}\)). By way of exception, the OFT may however depart from the penalties guidance where there are good reasons for doing so\(^\text{228}\).

1417. The penalties guidance sets out the approach to calculating a financial penalty imposed under section 36 of the Act. Paragraph 2.1 of the penalties guidance states,

\[
\text{‘2.1 A financial penalty imposed by the OFT under section 36 of the Act will be calculated following a five step approach:}
\]

- calculation of the starting point having regard to the seriousness of the infringement and the relevant turnover of the undertaking
- adjustment for duration
- adjustment for other factors
- adjustment for further aggravating or mitigating factors, and
- adjustment if the maximum penalty of 10 per cent of the worldwide turnover of the undertaking\(^\text{12}\) is exceeded and to avoid double jeopardy.’

Step 1 – starting point

1418. Under the penalties guidelines, the starting point for determining the level of penalty is calculated having regard to the seriousness of the

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\(^{226}\) See the OFT’s guidance as to the appropriate amount of a penalty, OFT 423 (December 2004), paragraph 2.20.

\(^{227}\) The OFT’s guidance as to the appropriate amount of a penalty, OFT 423 (December 2004).

\(^{228}\) Gransden & Co. Ltd. and another v Secretary of State for the Environment and another (1985) 54 P. & C.R. 86 at 94, per Woolf J. The Court of Appeal in its recent judgment in the Replica Kits and Toys cases (see notes 164 and 122 above) also made clear, at paragraph 161 of the judgment, that section 38(8) of the Act does not bind the OFT to follow the penalties guidance in all respects in every case but that, in accordance with general principle, the OFT must give reasons for any significant departure from the penalties guidance.
infringement and the relevant turnover of the undertaking. The ‘relevant turnover’ is the turnover of the undertaking in the relevant product market and relevant geographic market affected by the infringement in the last business year. The last business year is the business year preceding the date of the Decision. The starting point is formulated as a percentage of each undertaking’s relevant turnover, up to a maximum of 10 per cent.

1419. The actual percentage rate which is applied to the relevant turnover depends upon the nature of the infringement. The more serious and widespread the infringement, the higher the likely percentage rate. When making its assessment, the OFT considers a number of factors, including the nature of the product, the structure of the market, the market share(s) of the undertaking(s) involved in the infringement, entry conditions and the effect on competitors and third parties. The damage caused to consumers whether directly or indirectly is also an important consideration. In the absence of an agreed resolution, the OFT would expect in a case such as this, which involves a serious infringement of the Act, to set a starting point of at least 5 per cent of relevant turnover. The maximum starting point that the OFT could have imposed, absent the agreed resolution, is 10 per cent of relevant turnover.

Step 2 – adjustment for duration

1420. At step 2 of the penalties guidance, the starting point may be adjusted to take into account the duration of the infringement. Penalties for infringements which last for more than one year may be multiplied by not more than the number of years of the infringement. Part years may be treated as full years for this purpose. In this case the infringement lasted between two and three years and related to the exchange of fee information in respect of three academic years.

Step 3 – adjustment for other factors

1421. At step 3 of the penalties guidance, the penalty may then be adjusted as appropriate to achieve the OFT’s policy objectives, particularly the objective of deterring undertakings (including other undertakings which might be considering activities which are contrary to the Chapter I prohibition) from engaging in anti-competitive practices such as price fixing and market sharing. Considerations at this stage may include the OFT’s estimate of any economic or financial benefit made by the infringing

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229 Ibid., at paragraph 2.3.
230 Ibid., at paragraph 2.7.
231 The Penalties Order, Article 3.
232 The OFT’s guidance as to the appropriate amount of a penalty, OFT 423 (December 2004) at paragraph 2.8.
233 Ibid., at paragraph 2.4.
234 Ibid., at paragraph 2.5.
235 Ibid., at paragraph 2.10.
236 Ibid., at paragraph 2.11.
undertakings from the infringement(s), and the special characteristics, including the size and financial position of the undertakings in question²³⁷.

Step 4 – adjustment for aggravating and mitigating factors

1422. Step 4 of the penalties guidance provides for the penalty to be increased or decreased to take account of any aggravating or mitigating factors respectively²³⁸.

Step 5 – adjustment to prevent the maximum penalty from being exceeded and to avoid double jeopardy

1423. At step 5 of the penalties guidance the penalty will be adjusted if necessary to ensure that it does not exceed the statutory maximum and that the requirements of section 38(9) of the Act have been complied with (see paragraphs 1405 and 1415 above).

Departure from the penalties guidance

1424. Notwithstanding the requirement to have regard to the penalties guidance when determining the amount of a financial penalty imposed in accordance with section 36(1) of the Act (see paragraph 1416 above), the OFT may depart, by way of exception, from the penalties guidance provided that it gives clear reasons for doing so²³⁹.

1425. The OFT has had regard to the penalties guidance in this case but nevertheless considers that there are a number of exceptional features of the case, which taken together make it appropriate to depart from the penalties guidance in the circumstances of the case²⁴⁰. The OFT sets out its reasoning below.

Relevant features of the present case that the OFT considers justify departure from the penalties guidance

1426. In concluding that it would be appropriate to depart from the penalties guidance in this case, the OFT has had particular regard to a number of unusual features of the case which in combination serve to justify departure from the penalties guidance in this instance.

1427. Firstly, the OFT notes the voluntary admission on behalf of the Participant schools in the terms set out in paragraph 1402 above. Secondly, and unusually, the OFT notes that the Participant schools agreed to make an ex gratia payment to fund a £3 million educational trust fund for the benefit of pupils who attended the Participant schools during the academic years in respect of which fee information was exchanged, thus indirectly benefiting those whose interests the Act is designed to protect. Thirdly,

²³⁷ Ibid., at paragraph 2.11.
²³⁹ See paragraph 1416 and note 228 above.
²⁴⁰ Ibid., at paragraph 2.17.
the OFT also notes that the Participant schools are all non-profit making charitable bodies.

1428. The OFT also notes that the Participant schools ceased the infringement immediately on becoming aware that participation in the Sevenoaks Survey was unlawful and, together with the ISC, have subsequently taken steps to ensure compliance with the Act. 241

1429. The OFT considers that the agreement by the Participant schools to fund the educational trust referred to above also underlines the schools’ acceptance of responsibility for the infringement and the sincerity of their regret at having acted unlawfully.

1430. Having regard to all of the above factors, the OFT considered that it would be appropriate, as part of the agreed resolution, to depart from the penalties guidance and limit the financial penalty it imposed to a nominal amount of £10,000 per Participant school.

1431. With the exception of the Royal Hospital School (see paragraphs 37 and 174 above), the OFT therefore imposes a financial penalty of £10,000 in respect of the participation of each of the Participant schools in the infringement, subject to the reductions agreed with the leniency applicants. As explained at paragraphs 1389 to 1400 above, and as set out at paragraphs 8 and 11 above, this Decision is addressed to the entity or entities that are responsible for the actions of the Participant schools. Where the OFT considers that more than one entity may be held responsible for a school’s participation in the infringement, each is made jointly and severally liable for the penalty imposed in respect of that school.

1432. As agreed between the OFT and the Parties as part of the agreed resolution, the OFT reserves its right to increase the financial penalty in respect of any Participant school by way of further decision in the event that that school should fail to comply with any of the terms of the agreed resolution. Equally and as also agreed, if any Party should bring appeal proceedings before the CAT in respect of this Decision, the OFT reserves its right to make an application to the CAT:

- to increase the penalty imposed on that Party; and
- to require that Party to pay the OFT’s full costs of the appeal regardless of the outcome of that appeal.

Adjustment to prevent the maximum penalty from being exceeded and to avoid double jeopardy

1433. The OFT may not impose a penalty that exceeds 10 per cent of the worldwide turnover of a Party in its last business year before the date of this Decision, calculated in accordance with the Penalties Order242. The

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241 Documents COR PR 1–a to COR PR 50–a.
242 See note 206 above.
section 36(8) turnover figure is not restricted to a Party’s turnover in the relevant product market and relevant geographic market. The OFT has considered whether, in relation to each Party, the penalty would exceed 10 per cent of its section 36(8) turnover. In relation to each of the Parties, the OFT is satisfied that £10,000 represents less than 10 per cent of that Party’s worldwide turnover. The OFT is also satisfied that the sum of £10,000 is less than the maximum penalty that would have been applicable in respect of the infringement prior to 1 May 2004, i.e. 10 per cent of turnover in the United Kingdom of the undertaking in the financial year preceding the date when the infringement ended (multiplied pro rata by the length of the infringement where the length of the infringement was in excess of one year, up to a maximum of three years).

1434. Also, the OFT must, when setting the amount of a penalty for a particular agreement or concerted practice, take into account any penalty or fine that has been imposed by the European Commission or by a court or other body in another Member State in respect of the same agreement or concerted practice. No such adjustments are necessary in this case.

**Leniency**

1435. The penalties in respect of the following six schools, which were granted conditional leniency under the OFT’s leniency policy (see paragraphs 18 and 19 above) have been reduced by the amounts set out below:

- Eton College – 50 per cent reduction;
- Winchester College – 50 per cent reduction;
- Sevenoaks School – 45 per cent reduction;
- Benenden School – 30 per cent reduction;
- Cheltenham Ladies’ College – 30 per cent reduction; and
- Malvern College – 20 per cent reduction.

**D. Conclusion on penalties**

1436. The OFT therefore requires the Parties to pay the financial penalties set out in the table below in respect of the Participant schools’ infringement of the Act. Where more than one Party is named in respect of the same Participant school, each is jointly and severally liable for the penalty in respect of that school.

---

243 The OFT’s guidance as to the appropriate amount of a penalty, OFT 423 (December 2004) at paragraph 2.17.
244 Details of the Parties’ turnover are set out in Annex 6.
245 Ibid., at paragraph 2.20.
<table>
<thead>
<tr>
<th>Party or Parties</th>
<th>Participant school for which Party or Parties is or are responsible</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>St Laurence Education Trust</td>
<td>Ampleforth College</td>
<td>£10,000</td>
</tr>
<tr>
<td>Ampleforth Abbey Trustees</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Community of St Laurence of the English Congregation of Black Monks of the Order of St Benedict</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The trustees of The Bedford Charity (The Harpur Trust)</td>
<td>Bedford School</td>
<td>£10,000</td>
</tr>
<tr>
<td>Benenden School (Kent) Limited</td>
<td>Benenden School</td>
<td>£7,000$^{246}$</td>
</tr>
<tr>
<td>The Warden and Council of Saint Andrew’s College Bradfield</td>
<td>Bradfield College</td>
<td>£10,000</td>
</tr>
<tr>
<td>Bromsgrove School</td>
<td>Bromsgrove School</td>
<td>£10,000</td>
</tr>
<tr>
<td>Bryanston School Incorporated</td>
<td>Bryanston School</td>
<td>£10,000</td>
</tr>
<tr>
<td>Canford School Limited</td>
<td>Canford School</td>
<td>£10,000</td>
</tr>
<tr>
<td>The Governing Body of Charterhouse School</td>
<td>Charterhouse School</td>
<td>£10,000</td>
</tr>
<tr>
<td>The President and Council of Cheltenham College</td>
<td>Cheltenham College</td>
<td>£10,000</td>
</tr>
<tr>
<td>The Cheltenham Ladies’ College</td>
<td>Cheltenham Ladies’ College</td>
<td>£7,000$^{247}$</td>
</tr>
<tr>
<td>The Clifton College</td>
<td>Clifton College</td>
<td>£10,000</td>
</tr>
<tr>
<td>Cranleigh School</td>
<td>Cranleigh School</td>
<td>£10,000</td>
</tr>
<tr>
<td>Dauntsey’s School</td>
<td>Dauntsey’s School</td>
<td>£10,000</td>
</tr>
<tr>
<td>The trustee of the Dauntsey School Foundation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Downe House School</td>
<td>Downe House School</td>
<td>£10,000</td>
</tr>
<tr>
<td>Eastbourne College (Incorporated)</td>
<td>Eastbourne College</td>
<td>£10,000</td>
</tr>
<tr>
<td>Epsom College</td>
<td>Epsom College</td>
<td>£10,000</td>
</tr>
<tr>
<td>The Royal Medical Foundation of Epsom College</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

$^{246}$ As noted at paragraph 1435 above, the financial penalty has been reduced by 30 per cent in accordance with the OFT’s leniency programme. See The OFT’s guidance as to the appropriate amount of a penalty, OFT 423 (December 2004) at paragraphs 3.11 to 3.12.

$^{247}$ As noted at paragraph 1435 above, the financial penalty has been reduced by 30 per cent in accordance with the OFT’s leniency programme. See The OFT’s guidance as to the appropriate amount of a penalty, OFT 423 (December 2004) at paragraphs 3.11 to 3.12.
<table>
<thead>
<tr>
<th>Party or Parties</th>
<th>Participant school for which Party or Parties is or are responsible</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Kynge’s College of Our Ladye of Eton beside Windesore</td>
<td>Eton College</td>
<td>£5,000&lt;sup&gt;248&lt;/sup&gt;</td>
</tr>
<tr>
<td>Gresham’s School The trustees of Gresham’s School Trust The Wardens and Commonalty of the Mistery of Fishmongers of the City of London</td>
<td>Gresham’s School</td>
<td>£10,000</td>
</tr>
<tr>
<td>The Governors of Haileybury</td>
<td>Haileybury</td>
<td>£10,000</td>
</tr>
<tr>
<td>The Keepers and Governors of the Possessions, Revenues and Goods of the Free Grammar School of John Lyon, within the town of Harrow-on-the-Hill</td>
<td>Harrow School</td>
<td>£10,000</td>
</tr>
<tr>
<td>The Governors, the Headmaster and the Lower Master of the King’s School of the Cathedral Church of Canterbury in the City of Canterbury</td>
<td>King’s College Canterbury</td>
<td>£10,000</td>
</tr>
<tr>
<td>Lancing College Limited The Woodard Corporation Malvern College</td>
<td>Lancing College Malvern College</td>
<td>£8,000&lt;sup&gt;249&lt;/sup&gt; £10,000</td>
</tr>
<tr>
<td>Marlborough College</td>
<td>Marlborough College</td>
<td>£10,000</td>
</tr>
<tr>
<td>Millfield</td>
<td>Millfield School</td>
<td>£10,000</td>
</tr>
<tr>
<td>The Mill Hill School Foundation</td>
<td>Mill Hill School</td>
<td>£10,000</td>
</tr>
<tr>
<td>The trustees of Oakham School</td>
<td>Oakham School</td>
<td>£10,000</td>
</tr>
<tr>
<td>The Corporation of Oundle School</td>
<td>Oundle School</td>
<td>£10,000</td>
</tr>
<tr>
<td>The Council of St Peter’s College, Radley</td>
<td>Radley College</td>
<td>£10,000</td>
</tr>
<tr>
<td>Repton School Sir John Port’s Charity</td>
<td>Repton School</td>
<td>£10,000</td>
</tr>
</tbody>
</table>

<sup>248</sup> As noted at paragraph 1435 above, the financial penalty has been reduced by 50 per cent in accordance with the OFT’s leniency programme. See The OFT’s guidance as to the appropriate amount of a penalty, OFT 423 (December 2004) at paragraphs 3.11 to 3.12.

<sup>249</sup> As noted at paragraph 1435 above, the financial penalty has been reduced by 20 per cent in accordance with the OFT’s leniency programme. See The OFT’s guidance as to the appropriate amount of a penalty, OFT 423 (December 2004) at paragraphs 3.11 to 3.12.
<table>
<thead>
<tr>
<th>Party or Parties</th>
<th>Participant school for which Party or Parties is or are responsible</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Governing Body of Rugby School</td>
<td>Rugby School</td>
<td>£10,000</td>
</tr>
<tr>
<td>St Edward’s School</td>
<td>St Edward’s School</td>
<td>£10,000</td>
</tr>
<tr>
<td>St Leonards–Mayfield School</td>
<td>St Leonards–Mayfield School</td>
<td>£10,000</td>
</tr>
<tr>
<td>Sedbergh School</td>
<td>Sedbergh School</td>
<td>£10,000</td>
</tr>
<tr>
<td>Sevenoaks School</td>
<td>Sevenoaks School</td>
<td>£5,500¹⁰⁰</td>
</tr>
<tr>
<td>The trustees of Sevenoaks School Foundation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sherborne School</td>
<td>Sherborne School</td>
<td>£10,000</td>
</tr>
<tr>
<td>The Governing Body of Shrewsbury School</td>
<td>Shrewsbury School</td>
<td>£10,000</td>
</tr>
<tr>
<td>Stowe School Limited</td>
<td>Stowe School</td>
<td>£10,000</td>
</tr>
<tr>
<td>Strathallan School</td>
<td>Strathallan School</td>
<td>£10,000</td>
</tr>
<tr>
<td>Tonbridge School</td>
<td>Tonbridge School</td>
<td>£10,000</td>
</tr>
<tr>
<td>The trustees of the Methodist Independent Education Trust</td>
<td>Truro School</td>
<td>£10,000</td>
</tr>
<tr>
<td>The trustees of Uppingham School</td>
<td>Uppingham School</td>
<td>£10,000</td>
</tr>
<tr>
<td>The Wellington College</td>
<td>Wellington College</td>
<td>£10,000</td>
</tr>
<tr>
<td>Wells Cathedral School</td>
<td>Wells Cathedral School</td>
<td>£10,000</td>
</tr>
<tr>
<td>The Governing Body of Saint Peter’s College Westminster</td>
<td>Westminster School</td>
<td>£10,000</td>
</tr>
<tr>
<td>Saint Mary College of Winchester, near Winchester</td>
<td>Winchester College</td>
<td>£5,000²⁵¹</td>
</tr>
<tr>
<td>The trustees of the Woldingham School Trust</td>
<td>Woldingham School</td>
<td>£10,000</td>
</tr>
<tr>
<td>The trustees of the Society of the Sacred Heart</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

¹⁰⁰ As noted at paragraph 1435 above, the financial penalty has been reduced by 45 per cent in accordance with the OFT’s leniency programme. See The OFT’s guidance as to the appropriate amount of a penalty, OFT 423 (December 2004) at paragraphs 3.11 to 3.12.

²⁵¹ As noted at paragraph 1435 above, the financial penalty has been reduced by 50 per cent in accordance with the OFT’s leniency programme. See The OFT’s guidance as to the appropriate amount of a penalty, OFT 423 (December 2004) at paragraphs 3.11 to 3.12.
<table>
<thead>
<tr>
<th>Party or Parties</th>
<th>Participant school for which Party or Parties is or are responsible</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Worth School</td>
<td>Worth School</td>
<td>£10,000</td>
</tr>
<tr>
<td>Worth Abbey</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The Girls’ Education Company</td>
<td>Wycombe Abbey School</td>
<td>£10,000</td>
</tr>
<tr>
<td>Limited</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>TOTAL</strong></td>
<td><strong>£467,500</strong></td>
</tr>
</tbody>
</table>

1437. For the reasons set out at paragraph 174 above, no penalty has been imposed in respect of the Royal Hospital School.

**E. Payment of financial penalties**

1438. The Parties are required to ensure that the penalties for which they are liable have been paid by close of banking business on Friday 23 February 2007. If any of the Parties fails to pay the penalty within the deadline specified above, and has not brought an appeal against the imposition or amount of the penalty within the time allowed or such an appeal has been made and determined, the OFT can commence proceedings to recover the required amount as a civil debt.

John Fingleton

Chief Executive
ANNEX 1 – Terms of the resolution agreed with the Participant schools

From the Director of Competition Enforcement

Vincent Smith

[Name of the Party or Parties]

Date 15 February 2006

Dear Sirs

Case CE/2890/03 – Co-ordination of fee increases by certain independent fee-paying schools

Competition Act 1998

[Name of the Participant school]

The OFT sent a Statement of Objections to you dated 3 November 2005 concerning its investigation into the co-ordination of fee increases by certain independent fee-paying schools under the Competition Act 1998. This letter sets out the terms upon which the OFT would be prepared to resolve that investigation. In order to be effective, the terms must be accepted on behalf of each school referred to in the Statement of Objections (see paragraph 16 of the Statement of Objections) (collectively referred to in this letter as “the Schools”) by 6.00 p.m. on 31 March 2006.

The terms are as follows:

1) Each School will admit that it committed an infringement of the Chapter I prohibition in the Competition Act 1998 by participating in the exchange of information through the “Sevenoaks Survey” (as defined in paragraph 7 of the Statement of Objections) which [as a matter of law] had as its object the distortion of competition within the United Kingdom. Each School will admit that it participated in the Sevenoaks Survey in respect of each of the academic years from 2001/2002 to 2003/2004, save for Sedbergh School which will admit participation in respect of the academic years 2002/2003 and 2003/2004 and Truro School which will admit participation in respect of the academic years 2001/2002 and 2003/2004.

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252 Insertion of additional wording in square brackets agreed by the OFT following discussion between the OFT and the ISC, as reflected in the OFT’s letters to the Parties dated 18 May 2006 (documents COR AP 1 to COR AP 50 inclusive).
2) No admission is made by any School as to whether the exchange of information referred to in (1) had any effect on fee levels.

3) The Schools will make an ex gratia payment on the basis set out in (4) below in the total sum of £3 million into a trust established by a deed with the following characteristics and provisions:

   a) the trustees of the trust are to be appointed by the Chairman of the OFT, and having consulted the Charity Commissioners and those who paid fees to the Schools in respect of the 2001/2002, 2002/2003 and 2003/2004 academic years (save that the relevant academic years will be 2002/2003 and 2003/2004 for Sedbergh School and 2001/2002 and 2003/2004 for Truro School), and each trustee will be independent of any trustees, staff or members of the governing body of each School;

   b) the charitable objects of the trust will be limited to educational purposes;

   c) the beneficiaries of the trust will be those pupils who attended the Schools in the 2001/2002, 2002/2003 and 2003/2004 academic years (save that the relevant academic years will be 2002/2003 and 2003/2004 for Sedbergh School and 2001/2002 and 2003/2004 for Truro School);

   d) no beneficiary shall be more than 30 years of age at the time of distribution to them;

   e) the trust deed shall include a statement of intention that the trust is intended to benefit the class identified in (c) above. Save to the extent that there remain undistributed funds in the trust on 31 December 2013, if the trustees wish to make any application to the Charity Commissioners to widen the class of beneficiaries, they shall give the OFT advance notice of such application in good time so as to permit the OFT to make representations to the Charity Commissioners, if so advised.

4) In relation to the trust monies:

   a) they are to be paid by the Schools in annual instalments totalling £600,000, the first payment being in 2006 and the last payment made no later than 31 December 2010;

   b) the sums identified in (a) above shall be debts owed to the trust for which the Schools shall be jointly and severally liable;

   c) the payments by the Schools may be expressed as being paid without any admission as to liability and need not be expressed as representing “compensation” for any loss.
5) The OFT will adopt a Decision in respect of all the Schools (“the Decision”) which will:

As to substance

a) set out what has taken place in materially the same form as set out in the Statement of Objections, subject to any amendments deemed necessary and appropriate by the OFT as a result of the representations referred to in (7) below;

b) note the admissions made in accordance with (1) above and conclude that there have been such infringements as have been admitted;

c) expressly state that no finding has been made as to whether the infringement by each School had any effect on fee levels at that School;

As to remedy

d) set out the OFT’s normal approach to penalties and note in relation to this case that for the purpose of applying its guidance on penalties in Competition Act cases the OFT would have adopted a “starting point” of at least 5% of relevant fee income in the absence of a resolution on the terms set out in this letter;

e) take note of the exceptional features of this case, in particular:

   i) the admission made on behalf of the Schools in the terms set out in (1) above;

   ii) the *ex gratia* offer made by the Schools to set up and fund the trust identified in (3) above; and

   iii) the status of the Schools as charitable bodies,

as well as the cessation of the infringement immediately on discovery and the compliance efforts since then (in respect of the latter each School is to provide details in writing to the OFT by 6.00 p.m. 31 March 2006);

f) impose a financial penalty of £10,000 on each School [with the exception of the Royal Hospital School]\(^{253}\) in respect of the infringement of the Chapter I prohibition. The financial penalty will be reduced for successful leniency applicants in accordance with their leniency agreements with the OFT. The penalties will be

\(^{253}\) Insertion of additional wording in square brackets agreed between the OFT and Greenwich Hospital (see exchange of letters dated 17 and 31 March 2006 – documents COR PR 31–d and COR PR 31a to COR PR 31I respectively) and reflected in the OFT’s letters to the Parties dated 18 May 2006 (documents COR AP 1 TO COR AP 50).
payable by each School to the OFT within three months of the date of the OFT’s Decision;

g) reserve the right of the OFT to increase the financial penalty imposed on any individual School by way of further decision in the event that any School subsequently fails to comply with any of the terms set out in this letter.

6) If this proposal is accepted on behalf of all Schools by 6.00 p.m. on 31 March 2006 it will become effective and binding on each of the addressees of the Statement of Objections and the OFT (save as indicated in (7) and (8) below). The proposal will not become effective and binding on any School or the OFT if any School fails to accept it by 6.00 p.m. on 31 March 2006.

7) Prior to publication of the OFT’s Decision, the OFT will accept a single, concise memorandum submitted jointly by the Schools to the OFT by 6.00 p.m. on 5 May 2006 indicating material factual inaccuracies in the Statement of Objections. Should the memorandum, in the opinion of the OFT, exceed the scope identified in the previous sentence, the OFT may treat any agreement on the terms set out in this letter as ceasing to have effect and shall notify this to all addressees of the Statement of Objections forthwith.

8) If a trust is not established in accordance with the terms of this letter and to the satisfaction of the OFT before the adoption of the Decision by the OFT, then the OFT may treat any agreement on the terms set out in this letter as ceasing to have effect and shall notify this to all addressees of the Statement of Objections forthwith.

9) If any addressee of the Statement of Objections brings appeal proceedings before the Competition Appeal Tribunal in respect of the OFT’s Decision, the OFT reserves the right to make an application to the Tribunal:

a) to increase the penalty imposed on that particular School; and

b) to require the School to pay the OFT’s full costs of the appeal regardless of the outcome of that appeal.

If [Name of the Participant school] wishes to accept the terms set out in this letter, a duly authorised representative of the relevant addressee of the Statement of Objections should countersign the letter as indicated below and return it to the OFT so as to arrive by 6.00 p.m. on 31 March 2006.

Yours faithfully

VINCENT SMITH
For the Office of Fair Trading
ON BEHALF OF [NAME OF THE PARTY]

Signature:
Name:
Position:
Date:
ANNEX 2 – Characteristics of the Participant Schools

1) Table 1 indicates that schools within the Sevenoaks Survey account for just over 40% of boarding places within the independent senior school sector in the UK. Amongst boys schools the Participant schools account for 48% of all independent boarding schools. It is notable that only 1 of the largest 20 independent schools, when ranked by the number of boarders, is not a Participant school (Christ’s Hospital) and of the 50 largest, 39 are participants in the Sevenoaks Survey. The average number of boarders amongst Participant schools is 483 compared to an average number in the remainder of senior independent boarding schools (which have one or more boarders) of 124.

Table 1: Pupil numbers in independent fee–paying senior schools in the UK: January 2004

<table>
<thead>
<tr>
<th></th>
<th>All schools</th>
<th>Participant Schools</th>
<th>Participant Schools as a proportion of all schools</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boarders boys</td>
<td>33,400</td>
<td>16,000</td>
<td>48</td>
</tr>
<tr>
<td>Boarders girls</td>
<td>26,100</td>
<td>8,100</td>
<td>31</td>
</tr>
<tr>
<td><strong>Total Boarding</strong></td>
<td><strong>59,500</strong></td>
<td><strong>24,100</strong></td>
<td><strong>41</strong></td>
</tr>
<tr>
<td>Day boys</td>
<td>137,00</td>
<td>6,300</td>
<td>5</td>
</tr>
<tr>
<td>Day girls</td>
<td>161,00</td>
<td>3,500</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total Day</strong></td>
<td><strong>298,000</strong></td>
<td><strong>9,800</strong></td>
<td><strong>3</strong></td>
</tr>
<tr>
<td>Total Day &amp; Boarding</td>
<td>357,500</td>
<td>34,000</td>
<td>10</td>
</tr>
</tbody>
</table>

Source: ISCis [2004] (document ECON0014)

2) An analysis of key information for Participant schools set out in Table 2 highlights certain common features:

- all the Participant schools offer boarding facilities and for a majority of these schools in excess of 60% of the pupils at the school are boarders; a few offer boarding only;

- those schools such as Westminster School, which have only a small proportion of boarding pupils (25%), could ostensibly be considered day schools but have a boarding school ethos, and are run as a boarding school;

- there is further differentiation between boys–only, girls–only and coeducational schools; there is also a 'boys with some girls' category which indicates that there are girls in the Sixth Form only;

- a number of the schools have strong links with Christian traditions; and
• there is a wide range of academic attainment across these schools.

Table 2: Participant schools– key characteristics (1)

<table>
<thead>
<tr>
<th>School</th>
<th>Sex</th>
<th>Total pupils</th>
<th>Boys (%)</th>
<th>Boarders (%)</th>
<th>Religion</th>
<th>Average post–16 point score per student</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ampleforth College</td>
<td>Coeducational</td>
<td>545</td>
<td>91</td>
<td>90</td>
<td>RC³</td>
<td>331</td>
</tr>
<tr>
<td>Bedford School</td>
<td>Boys–only</td>
<td>636</td>
<td>100</td>
<td>36</td>
<td>C of E</td>
<td>344</td>
</tr>
<tr>
<td>Benenden School</td>
<td>Girls–only</td>
<td>476</td>
<td>0</td>
<td>100</td>
<td>C of E</td>
<td>388</td>
</tr>
<tr>
<td>Bradfield College</td>
<td>Boys (some girls)</td>
<td>595</td>
<td>80</td>
<td>86</td>
<td>C of E</td>
<td>290</td>
</tr>
<tr>
<td>Bromsgrove School</td>
<td>Coeducational</td>
<td>754</td>
<td>62</td>
<td>47</td>
<td>C of E</td>
<td>416</td>
</tr>
<tr>
<td>Bryanston School</td>
<td>Coeducational</td>
<td>651</td>
<td>58</td>
<td>88</td>
<td>C of E</td>
<td>331</td>
</tr>
<tr>
<td>Canford School</td>
<td>Coeducational</td>
<td>601</td>
<td>63</td>
<td>64</td>
<td>C of E</td>
<td>351</td>
</tr>
<tr>
<td>Charterhouse</td>
<td>Boys (some girls)</td>
<td>723</td>
<td>87</td>
<td>96</td>
<td>C of E</td>
<td>383</td>
</tr>
<tr>
<td>Cheltenham College</td>
<td>Coeducational</td>
<td>571</td>
<td>70</td>
<td>69</td>
<td>Christian</td>
<td>347</td>
</tr>
<tr>
<td>Cheltenham Ladies'</td>
<td>Girls–only</td>
<td>868</td>
<td>0</td>
<td>73</td>
<td></td>
<td>429</td>
</tr>
<tr>
<td>College</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clifton College</td>
<td>Coeducational</td>
<td>641</td>
<td>66</td>
<td>66</td>
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¹ Source: ISCis. Information as at 1 January 2004.
³ Roman Catholic.
⁴ Church of England.
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<th>School</th>
<th>Sex¹</th>
<th>Total pupils¹</th>
<th>Boys (%)¹</th>
<th>Boarders (%)¹</th>
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<td>88</td>
<td>C of E</td>
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<td>Coeducational</td>
<td>452</td>
<td>58</td>
<td>73</td>
<td>Inter–</td>
<td>386</td>
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</table>
3) Tradition and reputation are also important common features. As Table 3 shows, many Participant schools such as Eton College, Harrow School, Uppingham School, St Edward's School, Oundle School and Rugby School rank amongst the ‘traditional’ boarding schools founded more than a century ago. Many of these schools have extensive grounds or, where they are located in a town, such as King’s School Canterbury or Westminster, are housed in historic buildings. They have long standing reputations, as evidenced by the number of entries in Who’s Who in 1986, and can attract pupils from a wide catchment area. They all provide ‘full boarding’ facilities and offer a broad education not only in terms of the academic subjects offered at ‘A’ level but also in terms of the sporting and recreational activities they offer their pupils. This is illustrated by the following replies to the OFT’s requests for information:

'We believe it is this traditional boarding and single-sex ethos, together with the breadth of education offered, that is attractive to Radley parents'\(^5\).

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\(^5\) Radley College’s response of 8 March 2004 (document SJN1111R) to question 31 of the OFT’s section 26 request for information.
This combination of full co–education and a strong boarding “ethos” is one of the key features which the School seeks to promote in distinguishing itself from other segments of the market⁶.

4) There are also more recently established schools within the Participant schools such as Millfield School (1935), Bryanston School (1928) and Worth School (1930). All these schools have a more flexible approach to boarding. At Bryanston School and Worth School pupils may go home each weekend from the end of classes on Saturday until bedtime on Sunday. Some longer established schools have also adopted more flexible boarding arrangements. For example, St Leonards–Mayfield School offers weekly boarding and there is no Saturday school whereas at Clifton College they offer weekly (5 day) and day (3 day) boarding. There are many traditional aspects to these schools such as the boarding house system, emphasis on pastoral care and the availability of a wide range of extra curricular and sporting activities. Some such as St Leonards–Mayfield School and Worth School have much smaller sixth forms but still offer a wide range of subjects at ‘A’ level.

Table 3: Participant schools – key characteristics (2)

<table>
<thead>
<tr>
<th>School</th>
<th>Tradition</th>
<th>Grounds²</th>
<th>No. of Who’s Who entries</th>
<th>No. of sports</th>
<th>No. of activities</th>
<th>Size of sixth form</th>
<th>No. of ‘A’ level subjects offered</th>
<th>Offer Latin/Classics at ‘A’ Level</th>
</tr>
</thead>
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<td>Ampleforth College</td>
<td>1802</td>
<td>H</td>
<td>71</td>
<td>24</td>
<td>17</td>
<td>266</td>
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<td>H</td>
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<td>24</td>
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<td>1923</td>
<td>244</td>
<td>–</td>
<td>18</td>
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<td>146</td>
<td>23</td>
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⁶ Repton School’s response of 12 March 2004 (document LXT461R) to question 22 of the OFT’s section 26 request for information.

⁷ Figures shown are grounds of school in acres, H = historic buildings.
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<th>Tradition</th>
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<th>No. of Who's Who entries</th>
<th>No. of sports</th>
<th>No. of activities</th>
<th>Size of sixth form</th>
<th>No. of ‘A’ level subjects offered</th>
<th>Offer Latin/Classics at ‘A’ Level</th>
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<td>23</td>
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<td>-</td>
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<td>147</td>
<td>28</td>
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<tr>
<td>Wycombe Abbey School</td>
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<td>–</td>
<td>22</td>
<td>16</td>
<td>157</td>
<td>24</td>
<td>Yes</td>
</tr>
</tbody>
</table>

**ANNEX 3 – Domicile of pupils at Participant schools**

### Table 4: Sevenoaks Schools – Domicile of Pupils

<table>
<thead>
<tr>
<th>School</th>
<th>Boarding (%)</th>
<th>County</th>
<th>Within County (%)</th>
<th>Adjacent Counties (%)</th>
<th>Others–UK (%)</th>
<th>Non–UK (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benenden School</td>
<td>100</td>
<td>Kent</td>
<td>17.0</td>
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<td>10.8</td>
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</tr>
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<td>Berkshire</td>
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<td>57.0</td>
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<td>7.3</td>
</tr>
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<td>Greater London</td>
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<td>16.6</td>
</tr>
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<tr>
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<td>16.3</td>
</tr>
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<td>–</td>
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<td>–</td>
</tr>
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<td>Bradfield College</td>
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<tr>
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<td>11.4</td>
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<td>23.5</td>
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<td>18.1</td>
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<td>12.4</td>
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<td>Derbyshire</td>
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<td>Strathamallan School</td>
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<td>Perth &amp; Kinross</td>
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<td>31.6</td>
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<td>Gloucestershire</td>
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<td>18.1</td>
<td>26.0</td>
<td>27.3</td>
</tr>
</tbody>
</table>

1 Malvern – figures based on fee database which shows location of fee payer; no breakdown for individual counties– split based on information provided.
<table>
<thead>
<tr>
<th>School</th>
<th>Boarding (%)</th>
<th>County</th>
<th>Within County (%)</th>
<th>Adjacent Counties (%)</th>
<th>Others–UK (%)</th>
<th>Non–UK (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>St. Edward’s School</td>
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<td>Oxfordshire</td>
<td>46.8</td>
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<td>22.0</td>
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<tr>
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<td>West Sussex</td>
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<td>13.1</td>
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<td>66.6</td>
<td>20.4</td>
<td>1.4</td>
<td>11.7</td>
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<tr>
<td>Bromsgrove School</td>
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<td>22.9</td>
<td>9.3</td>
<td>28.4</td>
</tr>
<tr>
<td>St. Leonards–Mayfield School</td>
<td>47</td>
<td>East Sussex</td>
<td>47.4</td>
<td>21.1</td>
<td>6.2</td>
<td>25.3</td>
</tr>
<tr>
<td>Oakham School&lt;sup&gt;2&lt;/sup&gt;</td>
<td>44</td>
<td>Rutland</td>
<td>28.2</td>
<td>30.5</td>
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<td>16.0</td>
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<tr>
<td>Dauntsey’s School</td>
<td>39</td>
<td>Wiltshire</td>
<td>76.1</td>
<td>9.0</td>
<td>4.5</td>
<td>10.3</td>
</tr>
<tr>
<td>Wells Cathedral School</td>
<td>37</td>
<td>Somerset</td>
<td>66.2</td>
<td>10.1</td>
<td>16.0</td>
<td>7.7</td>
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<tr>
<td>Bedford School</td>
<td>36</td>
<td>Bedfordshire</td>
<td>47.6</td>
<td>27.1</td>
<td>6.0</td>
<td>19.4</td>
</tr>
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<td>Sevenoaks School</td>
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<td>Kent</td>
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<td>3.2</td>
<td>18.6</td>
</tr>
<tr>
<td>Mill Hill School</td>
<td>28</td>
<td>Greater London</td>
<td>71.5</td>
<td>12.3</td>
<td>0.3</td>
<td>15.9</td>
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<td>88.4</td>
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<td>Truro School</td>
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<td>Cornwall</td>
<td>95.0</td>
<td>0.5</td>
<td>1.1</td>
<td>3.4</td>
</tr>
</tbody>
</table>

Source: The domicile of pupils data is collated from information supplied by each Participant school in response to requests for information by the OFT.

<sup>2</sup> Based on middle/upper school and excludes Jerwoods (years 6,7 and 8).
ANNEX 4 – Analysis of competition for day pupils amongst Participant schools: approach and summary conclusions

Introduction

1) The OFT considers that a school is likely to compete most directly for day pupils with other schools in the same catchment area that offer comparable educational services. The closer schools are to one another the greater the extent to which they are likely to compete with each other for day pupils.

2) In examining the extent to which the Participant schools compete with each other for day pupils, the OFT has adopted a two step process:

- first, identifying for each Participant school its likely catchment area for day pupils, along with the other Participant schools providing day services within it;
- second, excluding those Participant schools identified in the first step that are not comparable on one or more of the following bases:
  - in the case of single–sex schools, those Participant schools which do not offer day services to pupils of the same sex;
  - those Participant schools whose level of academic attainment was significantly higher or lower; and
  - specialist schools, such as drama, arts or music schools and schools for pupils with special needs;
- third, comparing on a case by case basis the results of the sift at steps one and two with the information provided by the Participant schools themselves.

3) Other relevant factors not captured by the above approach might include the reputation and facilities of each Participant school; its relative accessibility; its size and selectivity criteria; the level of incomes in the area; and the total number of children in the area that are within the right age (and sex) cohort for the school.

Step one – identification of Participant schools within the same catchment area

4) In examining the likely catchment areas for the Participant schools, the OFT used as its starting point geographical mapping techniques on the basis that, unless parents are prepared to move to a different area, a school’s prospective day pupils will be drawn from its locality and the extent of its exact catchment area will be strongly influenced by the distance/time that it takes pupils to travel to and from school. This will in turn be influenced by whether the school is in an urban or rural setting.

1 See document ECON0004 for full spreadsheet of OFT analysis.
2 For the geographical mapping Mapinfo Professional 7.2 and Drivetime 6.0 were used. The underlying road data is the Streetline 2003 road network. The speeds are based on the standard Streetline matrix of off–peak road speeds. The distances given are by road, rather than as the crow flies, and are those associated with the fastest drive time between two points.
5) Whilst there is insufficient information to determine exactly where prospective pupils are drawn from for each of the 46 Participant schools that offer places to day pupils, the OFT considers it reasonable to start by looking in each case at those schools that fall within a 60 minute drive time and comparing the results with the schools' own competitor analysis and the other information provided by the schools.

**Step two – exclusion of non-comparable Participant schools**

6) To ensure that the day services provided by the schools identified in Step one are comparable, three main selection criteria were used: one, applicable to single-sex schools only and based on gender, and two others related to the schools' level of academic attainment and to whether the schools are specialist, respectively.

7) In the case of single-sex Participant schools, the other schools identified in Step one were sifted first according to whether or not they offered day services to pupils of the same sex. Thus, in the case of say 'boys-only' Participant schools, 'girls-only' Participant schools identified in Step one were removed from the sample and vice versa.

8) In order to identify schools that are likely to be most similar, and hence to represent the most significant competitive constraint, the results were further sifted for academic attainment using DfES data on the average post-16 point score per student in 2003. The OFT has treated as 'comparable' only those schools whose levels of academic attainment, measured by their post-16 public examination results, are within a range of +100 to −100 of each other's average post-16 point score per student. Thus for example, in the case of Sevenoaks School, which had an average post-16 point score per pupil of 322 in 2003, only schools with an average score per pupil of between 222 and 422 were included in the sift. This sift criterion is supported by the fact that where the Participant schools have identified, either explicitly or in documents provided in response to OFT enquiries, one or more schools as being competitors for day pupils, in only three instances was the difference in 'A' level points greater than 100. The difference between the school under consideration and its least similar competitor in academic terms averaged 63 points. GCSE results and pupil/teacher ratios were also used to help identify competitors though no explicit limits were used.

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3 Of the Participant schools, four do not have any day pupils: Benenden School, Eton College, Harrow School and Radley College.

4 Treating a 60 minute drive time as an upper boundary receives support from the fact that 62% of the Participant schools with day pupils either cited in their responses to OFT enquiries at least one school which is a drive time of 40 minutes or more away from them as being a competitor or this could be inferred from documentary evidence supplied by them.

5 For this purpose the OFT has used the ISCis classifications of school by gender.

6 Department for Education and Skills.

7 The post-16 point score per student refers to the average point score for 16, 17 or 18 year olds who, in 2002/03, were entered for at least one GCE/VCE 'A' level. The average score calculation is based on the cumulative achievement of students over two years. The points awarded at 'A' level are: A = 120 points, B = 100 points, C = 80 points, D = 60 points, E = 40 points. Source: [http://www.dfes.gov.uk/performancetables/16to18_03.shtml](http://www.dfes.gov.uk/performancetables/16to18_03.shtml). See also note 5 of Annex 2, above.

8 Some specialist schools have been sifted out as they are likely to have a more restricted intake of pupils based on particular talents or special needs: see paragraph 9) below.

9 Sedbergh and Casterton, Mill Hill and Westminster, Epsom and Westminster.
Some specialist schools, such as drama, arts or music schools and schools for pupils with special needs have also been sifted out as they are likely to have a more restricted intake of pupils based on particular talents or special needs.

Step three – cross-check against information provided by the Participant schools themselves

The results of the sift at Steps one and two were then analysed drawing upon responses to the OFT’s section 26 Notices\(^\text{10}\) and other available market information. The detailed results of this analysis for each Participant school are set out in Annex 5 to this Decision. This analysis facilitated a cross check to assess the extent to which other Participant schools that have been identified as being comparable on the criteria used at step 2 and as falling within the 60 minute drive time have similar characteristics to those indicated as being competitors in other sources. In certain cases the Participant schools identified other Participant schools as being their competitors in the day market either directly in their responses to the OFT’s section 26 Notices or in internal documents. In addition market surveys conducted by the Participant schools on a number of occasions provide information concerning who they consider to be their competitors at a local level. The OFT has further tested the robustness of these results by cross checking them against the information supplied by other Participant schools. This has allowed the OFT to determine with some confidence those instances where a clear direct competitive relationship exists between different Participant schools in the provision of day services.

Cross checking the results in this way is important as the available mapping techniques use off-peak drive times, the only comprehensive dataset available. This is made less problematic, however, by the fact that many boarding schools require day pupils to be in school by 8.30 a.m. and have school days that extend to 6.00 p.m., and sometimes beyond. This means that the use of off-peak drive times is less likely to distort the results than if this analysis was being applied to day-only schools. Moreover, prospective parents will be located throughout the area surrounding a school and so, for any two schools under consideration, journey times to both schools would for some pupils be significantly less than the total distance between the two schools. It should also be noted that in some areas other forms of transport, such as rail or underground, may be available which can reduce journey times and widen catchment areas. Many of the schools also provide their own bus services meaning that pupils can travel independently of their parents and are not dependent on the availability of local transport services.

Summary of results

The detailed results of the above analysis are set out on a school by school basis in Annex 5 to this Decision and are summarised in Table 5 in this Annex.

Table 5 lists for each of the 46 Participant schools with day pupils, competing Participant schools within its day market based on a 60 minutes drive time boundary. This shows that for 36 Participant schools there is at least one competing Participant school and in many cases several Participant schools are sufficiently close to them to draw pupils from the same catchment area. The distances and drive times from each

\(^{10}\) Dated 9 February 2004 (documents SMG 001 to SMG 043).
Participant school picked up in the sift are shown and the school names are highlighted where there is supporting evidence of competition between them for day pupils. Column three of Table 5 lists the furthest (measured in terms of drive time) non–Participant schools directly identified by the Participant schools in responses to the OFT enquiries as being competitors for day pupils. Column four of Table 5 lists the furthest (measured in terms of drive time) non–Participant schools identified in other documentary evidence provided in response to OFT enquiries as being competitors for day pupils. These two columns provide some indication of the size of catchment areas for these schools. However it should be noted that many schools in responding to OFT enquiries concerning who they considered were their competitors for day pupils did not identify specific schools and the table can only draw on those responses that did so.

Table 6 shows, for each Participant school, its share of the total number of day places at comparable independent fee–paying senior schools within a variety of drive times from that school, combined with those of other comparable Participant schools within the same drive time. This provides an indication of the sensitivity of the results to differing assumptions regarding whether schools of a certain distance apart are likely to have similar catchment areas for day pupils. The results show that even if the drive times are restricted to less than 50 minutes, 26 Participant schools have another Participant school within their catchment area. This falls by only 2 to 24 Participant Schools if the drive time assumption is reduced still further to less than 45 minutes. There is nothing in the competitor analysis evidence presented by the Schools to suggest that such drive times assumptions are unreasonable. Indeed, some Schools indicate that they have much larger catchment areas than these drive times would imply.

The OFT considers that the strongest competitive constraint will come from those schools that are most similar. In considering both the summary in Table 5 and the share of supply figures in Table 6, it should be noted that the Participant schools all have established traditions and reputations which may set them apart from other boarding schools offering day places and from day only schools. The competitive constraint exerted by non–Participant independent schools may therefore be weaker than that exerted by other Participant schools. In certain areas there may also be maintained schools with a comparable level of academic attainment but the OFT considers it unlikely that this factor will exert a competitive constraint on the fee setting behaviour of independent fee–paying schools, especially in areas where such schools are heavily oversubscribed.

There are 9 Participant schools where, on the basis of the above approach, no other Participant school has been identified as being a direct competitor for day pupils within the same local market. Those Participant schools are: Ampleforth College, Gresham’s School, Repton School, Royal Hospital School, Sedbergh School, Shrewsbury School, Strathallan School, Truro School and Westminster School.

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11 Information used includes: i) where the school itself mentions another Participant school as being a competitor in its response to the OFT’s enquiries; ii) where information provided by the school in its response to the OFT’s enquiries either mentions another Participant school as being a competitor for day pupils or indicates that the school considers another Participant school as being such a competitor; iii) where that school is mentioned by another Participant school, or information is provided by another Participant school in response to the OFT’s enquiries which shows that it considers that it is a competitor for day pupils; iv) where the school itself mentions in response to OFT enquiries another non–Participant school which is further away than those Participant schools picked up in the sift.
17) In all but one of these cases, this is due to their geographic remoteness from the other Participant schools. In the case of Westminster School, on the other hand, this is a result of its high level of academic attainment, such that neither of the other Participant schools within a 60 minute drive time have a level of academic attainment that is comparable with Westminster School. Thus, whilst Epsom College and Mill Hill School are within a 60 minute drive time, Westminster has an average ‘A’ level point score of 469, whereas Mill Hill School has an average point score of 308 and Epsom College an average of 347. It should be noted, however, that whilst Westminster School may not be constrained by Mill Hill School and Epsom College as a result of its higher academic standards, Westminster School is likely to exercise some competitive constraint on Mill Hill School and Epsom College, at least in respect of those pupils that meet Westminster School’s selection requirements.

18) Finally, notwithstanding the above, the OFT notes that all 45 Participant schools that offer day services, including the nine schools mentioned in paragraph 16) above, submitted day fee, as well as boarding fee information to the Sevenoaks Survey. All 46 schools also received information through the Survey concerning each other’s intended day fee increases. Moreover, as described in Section II of this Decision\textsuperscript{12}, the internal documents of two of the nine schools which, on the basis of the OFT’s analysis, would appear not to have close competitors for day pupils amongst the other Participant schools, indicate that the results of the Sevenoaks Survey were nevertheless used to benchmark their day fees with those of other Participant schools.

\textsuperscript{12} Ampleforth College and Strathallan School, at, respectively, paragraphs 364 and 1067.
Table 5: Summary of analysis of competition for day pupils amongst Participant schools

<table>
<thead>
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<th>Participant school</th>
<th>Participant schools picked up by geographical mapping</th>
<th>Furthest (mins) non–Participant independent school identified as being a competitor by Participant school</th>
<th>Furthest (mins) non–Participant independent school identified as being a competitor in documents provided by Participant school&lt;sup&gt;13&lt;/sup&gt;</th>
</tr>
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<tbody>
<tr>
<td>Ampleforth College</td>
<td>Dundle School 30 miles 48 mins</td>
<td>St Peter’s 20 miles 44 minutes</td>
<td></td>
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<tr>
<td></td>
<td>Mill Hill School 46 miles 56 mins</td>
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<td></td>
<td>Rugby School 49 miles 58 mins</td>
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<tr>
<td>Bedford School</td>
<td>Wellington College 22 miles 35 mins</td>
<td>Haberdashers’ Aske’s School for Boys 42 miles 51 mins</td>
<td></td>
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<tr>
<td></td>
<td>St. Edward’s School 28 miles 55 mins</td>
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<td></td>
<td>Marlborough College 35 miles 48 mins</td>
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<tr>
<td>Bradfield College</td>
<td>Cheltenham Ladies’ College 34 miles 42 mins</td>
<td>Abingdon School 22 miles 42 mins</td>
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<td></td>
<td>Cheltenham College 36 miles 44 mins</td>
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<td></td>
<td>Rugby School 46 miles 51 mins</td>
<td></td>
<td></td>
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<tr>
<td>Bromsgrove School</td>
<td>Canford School 14 miles 29 mins</td>
<td>Warwick School 26 miles 32mins</td>
<td>King Edward’s School 15 miles 29 mins</td>
</tr>
<tr>
<td></td>
<td>Sherborne School 23 miles 43 mins</td>
<td></td>
<td></td>
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<tr>
<td>Bryanston School</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Clayesmore School 9 miles 21 mins</td>
<td></td>
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</tr>
</tbody>
</table>

<sup>13</sup> Information contained in document provided by Participant school in response to section 26 Notice dated 9 February 2004, including internal management documents and market research.
<table>
<thead>
<tr>
<th>Participant school</th>
<th>Participant schools picked up by geographical mapping</th>
<th>Furthest (mins) non–Participant independent school identified as being a competitor by Participant school</th>
<th>Furthest (mins) non–Participant independent school identified as being a competitor in documents provided by Participant school</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canford School</td>
<td>Canford School 14 miles 29 mins.</td>
<td>King Edward VI School (Southampton)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Winchester College 39 miles 58 mins.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sherborne School 32 miles 59 mins.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Charterhouse</td>
<td>Cranleigh School 9 miles 22 mins.</td>
<td></td>
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<tr>
<td></td>
<td>Wellington College 17 miles 47 mins.</td>
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<td></td>
<td>Epsom College 23 miles 40 mins.</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Woldingham School 37 miles 59 mins.</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Worth School 43 miles 60 mins.</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Wycombe Abbey School 44 miles 58 mins.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Sevenoaks School 45 miles 59 mins.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Winchester College 42 miles 60 mins.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

14 Whilst the section 26 response (document LXT3134R) does not use the words ‘day market’, its response indicates that ‘Bryanston is geographically the closest coeducational independent school to us that might be considered a general competitor’.
<table>
<thead>
<tr>
<th>Participant school</th>
<th>Participant schools picked up by geographical mapping</th>
<th>Furthest (mins) non–Participant independent school identified as being a competitor by Participant school</th>
<th>Furthest (mins) non–Participant independent school identified as being a competitor in documents provided by Participant school</th>
</tr>
</thead>
</table>
| Cheltenham College                 | Cheltenham Ladies’ College  
1 miles 3 mins  
Malvern College  
27 miles 43 mins  
Bromsgrove School  
36 miles 44 mins  
Clifton College  
41 miles 53 mins |                                                                                                    |                                                                                                    |
| Cheltenham Ladies’ College (CLC)   | Cheltenham College  
1 miles 3 mins  
Bromsgrove School  
34 miles 42 mins  
Clifton College  
41 miles 52 mins |                                                                                                    | Dean Close  
2 miles 5 mins                                                                                     |
| Clifton College                    | Wells Cathedral School  
24 miles 46 mins  
Cheltenham College  
41 miles 52 mins  
Cheltenham Ladies College  
41 miles 52 mins  
Millfield School  
44 miles 57 mins | Badminton School  
2 miles 6 mins                                                                                   |                                                                                                    |
| Cranleigh School                   | Charterhouse  
9 miles 22 mins  
Epsom College  
26 miles 47 mins  
Worth School  
28 miles 50 mins  
Lancing College  
29 miles 59 mins  
Wellington College  
36 miles 59 mins |                                                                                                    |                                                                                                    |
| Dauntsey’s School                  | Marlborough College  
19 miles 33 mins | King Edward’s, Southampton  
41 miles 73 mins                                                                                   |                                                                                                    |
<table>
<thead>
<tr>
<th>Participant school</th>
<th>Participant schools picked up by geographical mapping</th>
<th>Furthest (mins) non–Participant independent school identified as being a competitor by Participant school</th>
<th>Furthest (mins) non–Participant independent school identified as being a competitor in documents provided by Participant school</th>
</tr>
</thead>
</table>
| Downe House School | Marlborough College 24 miles 38 mins  
Wycombe Abbey School 43 miles 52 mins | | |
| Eastbourne College | St Leonards School 24 miles 38 mins  
Mayfield School 21 miles 42 mins  
Lancing College 31 miles 59 mins | Hurstpierpoint 30 miles 53 mins | St Mary’s Hall 20 miles 42 mins |
| Epsom College | Woldingham School 12 miles 31 mins  
Sevenoaks School 25 miles 32 mins  
Worth School 23 miles 36 mins  
Charterhouse 23 miles 40 mins  
Tonbridge School 30 miles 44 mins  
Cranleigh School 26 miles 47 mins  
Wellington College 34 miles 47 mins | Royal Grammar School, Guildford 19 miles 31 mins | |
| Gresham’s School | | | |
| Haileybury | Mill Hill School 23 miles 36 mins  
Sevenoaks School 48 miles 59 mins | Bishop’s Stortford College 15 miles 29 mins | Haberdashers’ Aske’s Boys School 23 miles 37 mins |
| King’s School Canterbury | Tonbridge School 43 miles 60 mins  
Sevenoaks School 48 miles 59 mins | Kent College 2 miles 6 mins | |

13. Downe House School
14. Eastbourne College
15. Epsom College
16. Gresham’s School
17. Haileybury
18. King’s School Canterbury
<table>
<thead>
<tr>
<th>Participant school</th>
<th>Participant schools picked up by geographical mapping</th>
<th>Furthest (mins) non–Participant independent school identified as being a competitor by Participant school</th>
<th>Furthest (mins) non–Participant independent school identified as being a competitor in documents provided by Participant school</th>
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<tbody>
<tr>
<td>Lancing College</td>
<td>Worth School</td>
<td>Ardingly College 24 miles 52 mins</td>
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<tr>
<td></td>
<td>Cranleigh School</td>
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</tr>
<tr>
<td></td>
<td>Eastbourne College 31 miles 59 mins</td>
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<tr>
<td>Malvern College</td>
<td>Cheltenham College 27 miles 43 mins</td>
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<tr>
<td>Marlborough College</td>
<td>Dauntsey’s School 19 miles 33 mins</td>
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<td></td>
<td>Downe House</td>
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<tr>
<td></td>
<td>Bradfield College 36 miles 48 mins</td>
<td></td>
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<tr>
<td>Mill Hill School</td>
<td>Haileybury</td>
<td>City of London School 11 miles 47 mins</td>
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<tr>
<td></td>
<td>Bedford School 46 miles 56 mins</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Millfield School</td>
<td>Wells Cathedral School 8 miles 17 mins</td>
<td></td>
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<tr>
<td></td>
<td>Sherborne School 19 miles 37 mins</td>
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<td></td>
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<tr>
<td></td>
<td>Clifton College 44 miles 57 mins</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oakham School</td>
<td>Uppingham School 6 miles 11 mins</td>
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<tr>
<td></td>
<td>Oundle School 25 miles 41 mins</td>
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<tr>
<td>Participant school</td>
<td>Participant schools picked up by geographical mapping</td>
<td>Furthest (mins) non–Participant independent school identified as being a competitor by Participant school</td>
<td>Furthest (mins) non–Participant independent school identified as being a competitor in documents provided by Participant school</td>
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<td>-------------------------------------------------------------------------------------------------</td>
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<tr>
<td>Oundle School</td>
<td><strong>Uppingham School</strong>&lt;br&gt;18 miles 34 mins&lt;br&gt;<strong>Oakham School</strong>&lt;br&gt;25 miles 41 mins&lt;br&gt;<strong>Bedford School</strong>&lt;br&gt;30 miles 48 mins</td>
<td>Kimbolton School&lt;br&gt;19 miles 33 mins</td>
<td>Dame Alice Harpur&lt;br&gt;30 miles 49 mins</td>
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<tr>
<td>Repton School</td>
<td>Trent College&lt;br&gt;16 miles 28 mins</td>
<td></td>
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<tr>
<td>Royal Hospital School</td>
<td>St Joseph’s College&lt;br&gt;7 miles 19 mins</td>
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<tr>
<td>Rugby School</td>
<td><strong>Bromsgrove School</strong>&lt;br&gt;46 miles 51 mins&lt;br&gt;<strong>Stowe School</strong>&lt;br&gt;33 miles 51 mins&lt;br&gt;<strong>Bedford School</strong>&lt;br&gt;49 miles 58 mins&lt;br&gt;<strong>Uppingham School</strong>&lt;br&gt;34 miles 58 mins</td>
<td>Warwick School&lt;br&gt;19 miles 34 mins</td>
<td></td>
</tr>
<tr>
<td>St Edward’s School</td>
<td><strong>Stowe School</strong>&lt;br&gt;26 miles 44 mins&lt;br&gt;<strong>Bradfield College</strong>&lt;br&gt;28 miles 55 mins</td>
<td>Abingdon School&lt;br&gt;9 miles 22 mins</td>
<td></td>
</tr>
<tr>
<td>St Leonards– Mayfield School</td>
<td><strong>Sevenoaks School</strong>&lt;br&gt;20 miles 38 mins&lt;br&gt;<strong>Eastbourne College</strong>&lt;br&gt;21 miles 42 mins</td>
<td>Moira House Girls School&lt;br&gt;22 miles 43 mins</td>
<td></td>
</tr>
<tr>
<td>Sedbergh School</td>
<td></td>
<td>Barnard Castle&lt;br&gt;38 miles 60 mins</td>
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<tr>
<td>Participant school</td>
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<td>------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Sevenoaks School</td>
<td><strong>Tonbridge School</strong> 6 miles 15 mins</td>
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<tr>
<td></td>
<td><strong>Woldingham School</strong> 18 miles 32 mins</td>
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<tr>
<td></td>
<td>St Leonards– Mayfield School 20 miles 38 mins</td>
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<td></td>
<td>Epsom College 26 miles 33 mins</td>
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<td></td>
<td>Worth School 31 miles 39 mins</td>
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<tr>
<td></td>
<td>Charterhouse 45 miles 59 mins</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td><strong>King’s School Canterbury</strong> 48 miles 59 mins</td>
<td></td>
<td></td>
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<tr>
<td>Sherborne</td>
<td><strong>Millfield School</strong> 19 miles 37 mins</td>
<td>King’s Bruton 14 miles 29 mins</td>
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<tr>
<td></td>
<td>Bryanston School 23 miles 43 mins</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Wells Cathedral School 26 miles 47 mins</td>
<td></td>
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<tr>
<td></td>
<td>Canford School 32 miles 59 mins</td>
<td></td>
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<tr>
<td>Shrewsbury School</td>
<td></td>
<td>Wolverhampton Grammar School 30 miles 50 mins</td>
<td></td>
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<tr>
<td>Stowe</td>
<td>St Edward’s School 26 miles 44 mins</td>
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<td></td>
<td>Rugby School 33 miles 51 mins</td>
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<tr>
<td>Strathallan School</td>
<td></td>
<td>Loretto School 54 miles 74 mins</td>
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<td>Participant school</td>
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<td>Furthest (mins) non–Participant independent school identified as being a competitor by Participant school</td>
<td>Furthest (mins) non–Participant independent school identified as being a competitor in documents provided by Participant school</td>
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<tr>
<td>-------------------</td>
<td>------------------------------------------------------</td>
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<td>--------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Tonbridge School</td>
<td><em>Sevenoaks School</em> 6 miles 15 mins</td>
<td>St Paul’s School 46 miles 81 mins</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Epsom College 30 miles 44 mins</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Worth School 36 miles 49 mins</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td><em>King’s School Canterbury</em> 43 miles 60 mins</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Truro School</td>
<td>Truro High School 1 miles 5 mins</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uppingham School</td>
<td><em>Oakham School</em> 6 miles 11 mins</td>
<td>King’s Wimbledon 31 miles 54 mins</td>
<td></td>
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<tr>
<td></td>
<td>Dundle School 18 miles 34 mins</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Rugby School 34 miles 58 mins</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wellington College</td>
<td>Charterhouse 17 miles 47 mins</td>
<td></td>
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<td></td>
<td>Bradfield College 22 miles 35 mins</td>
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<td></td>
<td>Epsom College 34 miles 47 mins</td>
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<tr>
<td></td>
<td>Winchester College 37 miles 49 mins</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td><em>Cranleigh School</em> 36 miles 59 mins</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wells Cathedral School</td>
<td>Millfield School 8 miles 17 mins</td>
<td></td>
<td>Taunton School 27 miles 49 mins</td>
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<tr>
<td></td>
<td>Clifton College 23 miles 43 mins</td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Sherborne School 26 miles 47 mins</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Westminster School</td>
<td>Note&lt;sup&gt;15&lt;/sup&gt;</td>
<td>St Paul’s School 6 miles 27 mins</td>
<td></td>
</tr>
</tbody>
</table>

<sup>15</sup> It should be noted that although Tonbridge School and Mill Hill School are sifted out on grounds of distance and academic results respectively they both mention Westminster School as a competitor in the day market.
<table>
<thead>
<tr>
<th>Participant school</th>
<th>Participant schools picked up by geographical mapping</th>
<th>Furthest (mins) non–Participant independent school identified as being a competitor by Participant school</th>
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<tbody>
<tr>
<td>Winchester College</td>
<td>Wellington College 37 miles 49 mins</td>
<td></td>
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<tr>
<td></td>
<td>Canford School 39 miles 58 mins</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Charterhouse 42 miles 60 mins</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Woldingham School</td>
<td>Epsom College 12 miles 31 mins</td>
<td></td>
<td>St Catherine’s School 36 miles 57 mins</td>
</tr>
<tr>
<td></td>
<td>Sevenoaks School 18 miles 32 mins</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Charterhouse 37 miles 57 mins</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Worth School</td>
<td>Epsom College 23 miles 36 mins</td>
<td>Brighton College 24 miles 46 mins</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Lancing College 26 miles 50 mins</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>Charterhouse 37 miles 57 mins</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Wycombe Abbey School</td>
<td>Downe House School 43 miles 52 mins</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Charterhouse 44 miles 58 mins</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Notes:**

- **Red** = mentioned in response to OFT enquiries as competing for day pupils
- **Green** = identified in documents provided in response to OFT enquiries as competing for day pupils
- **Yellow** = identified by the highlighted Participant school as competing for day pupils
### Table 6: Day Market Analysis: Sensitivity Analysis

Participant schools’ share of day places at independent fee-paying schools offering comparable educational services\(^\text{16,17}\)

<table>
<thead>
<tr>
<th>Participant school</th>
<th>&lt;40 mins</th>
<th>&lt;45 mins</th>
<th>&lt;50 mins</th>
<th>&lt;55 mins</th>
<th>&lt;60 mins</th>
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</thead>
<tbody>
<tr>
<td>Ampleforth</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>No Sevenoaks Survey schools in 60 mins</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bedford</td>
<td>3.0%</td>
<td>2.5%</td>
<td>2.3%</td>
<td>1.7%</td>
<td>1.8%</td>
</tr>
<tr>
<td>Benenden</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>No day pupils</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bromsgrove</td>
<td>5.9%</td>
<td>5.5%</td>
<td>6.6%</td>
<td>6.5%</td>
<td></td>
</tr>
<tr>
<td>Bryanston</td>
<td>33.0%</td>
<td>21.7%</td>
<td>14.8%</td>
<td>13.9%</td>
<td>10.4%</td>
</tr>
<tr>
<td>Canford</td>
<td>21.6%</td>
<td>21.6%</td>
<td>15.3%</td>
<td>11.8%</td>
<td>10.2%</td>
</tr>
<tr>
<td>Charterhouse</td>
<td>1.8%</td>
<td>3.6%</td>
<td>3.6%</td>
<td>3.1%</td>
<td>4.3%</td>
</tr>
<tr>
<td>Cheltenham</td>
<td>8.5%</td>
<td>16.7%</td>
<td>12.9%</td>
<td>11.1%</td>
<td>8.7%</td>
</tr>
<tr>
<td>Cheltenham Ladies’ College</td>
<td>12.5%</td>
<td>19.7%</td>
<td>19.7%</td>
<td>23.3%</td>
<td>20.8%</td>
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<tr>
<td>Clifton</td>
<td></td>
<td>6.0%</td>
<td>9.4%</td>
<td>10.2%</td>
<td></td>
</tr>
<tr>
<td>Cranleigh</td>
<td>3.1%</td>
<td>2.0%</td>
<td>4.2%</td>
<td>3.5%</td>
<td>4.1%</td>
</tr>
<tr>
<td>Dauntseys</td>
<td>24.3%</td>
<td>9.5%</td>
<td>8.7%</td>
<td>8.4%</td>
<td>8.1%</td>
</tr>
<tr>
<td>Downe House</td>
<td>2.5%</td>
<td>1.9%</td>
<td>1.4%</td>
<td>2.1%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Eastbourne</td>
<td>14.5%</td>
<td>14.5%</td>
<td>10.6%</td>
<td>12.4%</td>
<td></td>
</tr>
<tr>
<td>Epsom(^\text{18})</td>
<td>3.8%</td>
<td>3.6%</td>
<td>3.9%</td>
<td>3.6%</td>
<td>3.2%</td>
</tr>
</tbody>
</table>

\(^{16}\) Based on data on day pupil numbers for the academic year 2003/2004 supplied by ISCis. The shares are calculated as the proportion of independent senior day places that comparable Participant schools hold of all the independent senior day places within the drivetime in question measured from a given Participant school.

\(^{17}\) It should be noted, however, that in calculating the total number of day places for the purposes of the table only schools that are non-comparable in the limited sense defined in paragraph 1) above have been excluded. It is likely that amongst the schools included for the purpose of the table there will be a number that compete less directly with the Participant school in question, such that the table will understated the Participant schools’ market share if only those schools that are most closely comparable were included. Relevant factors that are not reflected in the figures in Table 6 might include such things as the size of the school, the range of facilities and activities offered, its ethos, etc.

\(^{18}\) These share figures do not include day places offered by Westminster School (a 48 minute drive time away). If these are added, the share figures become 4.9% (50 minute drive time); 4.5% (55 minute drive time) and 4.0% (60 minute drive time).
<table>
<thead>
<tr>
<th>Participant school</th>
<th>&lt;40 mins</th>
<th>&lt;45 mins</th>
<th>&lt;50 mins</th>
<th>&lt;55 mins</th>
<th>&lt;60 mins</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eton</td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Greshams</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Haileybury</td>
<td>4.9%</td>
<td>4.0%</td>
<td>3.2%</td>
<td>2.7%</td>
<td>2.5%</td>
</tr>
<tr>
<td>Harrow</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>King’s Canterbury</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>26.3%</td>
</tr>
<tr>
<td>Lancing</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Malvern</td>
<td>7.3%</td>
<td>6.0%</td>
<td>5.0%</td>
<td>4.8%</td>
<td></td>
</tr>
<tr>
<td>Marlborough</td>
<td>42.8%</td>
<td>42.8%</td>
<td>39.3%</td>
<td>16.0%</td>
<td>6.0%</td>
</tr>
<tr>
<td>Mill Hill&lt;sup&gt;19&lt;/sup&gt;</td>
<td>2.3%</td>
<td>2.0%</td>
<td>1.7%</td>
<td>1.7%</td>
<td>2.3%</td>
</tr>
<tr>
<td>Millfield</td>
<td>34.6%</td>
<td>20.2%</td>
<td>19.3%</td>
<td>15.7%</td>
<td>9.7%</td>
</tr>
<tr>
<td>Oakham</td>
<td>34.3%</td>
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<td>11.1%</td>
<td>8.2%</td>
</tr>
<tr>
<td>Oundle</td>
<td>7.5%</td>
<td>18.4%</td>
<td>13.7%</td>
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<td>11.7%</td>
</tr>
<tr>
<td>Radley</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Repton</td>
<td></td>
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<td></td>
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<tr>
<td>Royal Hospital</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Rugby</td>
<td></td>
<td></td>
<td></td>
<td>4.4%</td>
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</tr>
<tr>
<td>St Edward’s</td>
<td>4.3%</td>
<td>3.7%</td>
<td>3.1%</td>
<td>3.2%</td>
<td></td>
</tr>
<tr>
<td>St Leonards–Mayfield</td>
<td>36.9%</td>
<td>21.5%</td>
<td>20.0%</td>
<td>13.8%</td>
<td>13.2%</td>
</tr>
<tr>
<td>Sedbergh</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sevenoaks</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sherborne</td>
<td>51.2%</td>
<td>55.8%</td>
<td>64.8%</td>
<td>49.0%</td>
<td>44.6%</td>
</tr>
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<td>Shrewsbury</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stowe</td>
<td>25.1%</td>
<td>9.7%</td>
<td>7.0%</td>
<td>5.0%</td>
<td></td>
</tr>
</tbody>
</table>

<sup>19</sup> These share figures do not include day places offered by Westminster School (a 44 minute drive time away). If these are added, the share figures become 3.4% (45 minute drive time); 3.0% (50 minute drive time); 2.8% (55 minute drive time) and 3.4% (60 minute drive time).
<table>
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<tr>
<th>Participant school</th>
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<th>&lt;45 mins</th>
<th>&lt;50 mins</th>
<th>&lt;55 mins</th>
<th>&lt;60 mins</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strathallan</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>No Sevenoaks Survey schools in 60 mins</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tonbridge</td>
<td>24.0%</td>
<td>25.5%</td>
<td>13.4%</td>
<td>9.7%</td>
<td>9.0%</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uppingham</td>
<td>22.4%</td>
<td>16.5%</td>
<td>15.4%</td>
<td>9.6%</td>
<td>10.5%</td>
</tr>
<tr>
<td>Wellington</td>
<td>1.7%</td>
<td>1.2%</td>
<td>2.5%</td>
<td>2.1%</td>
<td>2.2%</td>
</tr>
<tr>
<td>Wells</td>
<td>14.9%</td>
<td>10.4%</td>
<td>9.2%</td>
<td>8.2%</td>
<td>7.8%</td>
</tr>
<tr>
<td>Westminster</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>No comparable Sevenoaks Survey schools in 60 mins</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Winchester</td>
<td></td>
<td></td>
<td>1.7%</td>
<td>1.5%</td>
<td>3.4%</td>
</tr>
<tr>
<td>Woldingham</td>
<td>8.2%</td>
<td>5.6%</td>
<td>4.0%</td>
<td>3.5%</td>
<td>3.2%</td>
</tr>
<tr>
<td>Worth</td>
<td>7.9%</td>
<td>14.0%</td>
<td>21.1%</td>
<td>24.1%</td>
<td>24.4%</td>
</tr>
<tr>
<td>Wycombe Abbey</td>
<td></td>
<td>0.4%</td>
<td>0.5%</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Average</strong></td>
<td><strong>16.7%</strong></td>
<td><strong>14.1%</strong></td>
<td><strong>11.7%</strong></td>
<td><strong>9.1%</strong></td>
<td><strong>9.0%</strong></td>
</tr>
</tbody>
</table>
ANNEX 5 – Analysis of competition for day pupils amongst Participant schools (by Participant school)

Introduction

1) This annex details on a school by school basis the OFT’s analysis of the competition for day pupils amongst the 46 Participant schools that provide day services\(^{20}\). Note that all pupil numbers (unless otherwise stated) are from ISCis\(^{21}\) data and relate to 2003/4. The average post–16 point score per student (referred to as ‘A’ level points) and GCSE results\(^{22}\) are sourced from DfES and relate to 2002/3. Also used as a comparator is the pupil/teacher ratio (the full–time equivalent pupil roll divided by the number of full–time equivalent teachers) – these are as at January 2004\(^{23}\).

Ampleforth College

2) Ampleforth College is a boys boarding school which admits girls in the Sixth Form. Established in 1802, the school grew beside the Benedictine monastery in a stretch of Yorkshire countryside a mile from the local village. In 1900, Ampleforth became an abbey and the College was formally constituted as a Roman Catholic boarding school. Four out of every five of its students are Roman Catholics but others from Christian families are admitted after interview. It is geographically isolated but, as the previous head pointed out, ‘the half hour it takes to get boys here daily from York is as long as many London day school runs\(^{24}\)’. Ampleforth College is a full boarding school and with the exception of one weekend in September it does not have exeats\(^{25}\). It has 545 pupils (266 in the Sixth Form of which 48 are girls), 10% are day pupils. Average ‘A’ level points per pupil are 331 (45 points for GCSEs) and the teacher pupil ratio is 7.2:1.

3) A survey of parents of day boys and day boarders\(^{26}\) indicates that more than half of boys travel six miles or less to school, and more than 80 per cent travel eight miles or less. The average is 6.7 miles. A survey of parents\(^{27}\) who chose to send their child to another school indicated that most parents considered two schools in addition to Ampleforth with almost as many considering one other school or three other schools. In response to the question of which school did they eventually select Eton* remained a clear favourite among Ampleforth rejectors, Winchester* and Worth* were in second place followed by Marlborough* and Uppingham* in third place.

4) The sift does not pick up another Participant school within a 60 minute drive time away, which reflects its geographic location.

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\(^{20}\) A Participant school which is identified in the individual competitor analysis for a school is denoted by the ‘*’ symbol in the text below. The four Participant schools that do not provide day services are Benenden School, Eton College, Harrow School and Radley College.

\(^{21}\) See http://www.isc.co.uk/ and document ECON0014.

\(^{22}\) Source: http://www.dfes.gov.uk/performancetables/schools_03.shtml.

\(^{23}\) Source: DfES Independent Schools’ Survey (document ECON0015).


\(^{25}\) Exeats are weekends when boarding pupils are allowed to leave school and return home.

\(^{26}\) Ampleforth College: First Report for Ampleforth College Based on Questionnaire for Parents of Day Boys and Day Boarders: (Reference D1) – April 1997 (document LXT1660). Day boarders are not defined in the report but from the School Prospectus it would seem that day pupils go home after classes to do private studies while day boarders stay on later in the evenings.

\(^{27}\) Ampleforth College: Second Report for Ampleforth College on Research of Parents of Registered Boys who chose to send them to another school. (Reference R2)– April 2002 (document LXT1653).
Bedford School

5) Bedford School is a boys-only independent school, founded in 1552, and located in 50 acres of land, within the centre of Bedford. It has 636 pupils (243 in the Sixth Form), 64% are day pupils and offers the International Baccalaureate alongside its 'A' level curriculum. The school notes that ‘As a boarding/day school, with a substantial cohort of both, we are unusual. As we have Saturday school, we are best compared with schools that have the same five and a half day week and (as boarding schools) an unignorable number of day pupils. We are, in that sense, most similar to Haileybury’\textsuperscript{28}. Average 'A' level points per pupil are 344 (54 points for GCSEs) and the teacher pupil ratio is 8.5:1.

6) Bedford School’s response to the OFT section 26 Notice\textsuperscript{29} indicates that competitors for day places are Bedford Modern School, St Alban's School and to a lesser extent Wellingborough, Kimbolton and Haberdashers’ Aske’s School. All these schools are picked up by the sift. The furthest away are St Albans School and Haberdashers’ Aske’s School at 34 miles and 42 miles, 44 minutes and 51 minutes drive time away respectively\textsuperscript{30}.

7) Bedford School’s Marketing Plan\textsuperscript{31} identifies Bedford Modern School amongst its primary competitors indicating that it has tended to represent the greatest local threat. Bedford Modern is picked up in the sift and is only 1 mile in distance (5 minutes drive time away). The report also lists amongst its other primary regional competitors St Albans, Rugby*, Oundle*, Haileybury*, Uppingham*, Oakham*, and The Leys. The report lists as secondary competitors: Bishops Stortford, Haberdashers’ Aske’s School, The Perse, Stowe School*, Kimbolton, Berkhamstead Collegiate School, Wellingborough and Aldenham. State schools mentioned include Sharnbrook School, Aylesbury Grammar, Wootton Upper and Bucks Grammar.

8) The sift indicates that Oundle School* is just within 30 miles (48 minutes drive time away) from Bedford School. Oundle School* is a coeducational boarding school with over 1,000 pupils (22% are day pupils) and like Bedford School offers a full range of recreational and sporting facilities. As indicated in Bedford School's Marketing Plan Oundle School* is identified as one of Bedford School's primary regional competitors. Academic results are comparable to those at Bedford School with 'A' level points per student being 397 (50 points for GCSEs) and the pupil/teacher ratio is 6.2:1. Two other schools are picked up by the sift, Mill Hill School* and Rugby School*, as just within 60 minutes drive time away. Mill Hill School* is a similar size to Bedford School (608 pupils) but has a slightly lower level of academic attainment. Rugby School* is a larger school (781 pupils) and has a slightly higher level of academic attainment at 'A' level (average points per pupil 390).

\textsuperscript{28} Bedford School: response dated 11 March (document LXT2498R) to question 19 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG003).

\textsuperscript{29} Bedford School: response to dated 11 March (document LXT2498R) to question 19 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG003).

\textsuperscript{30} Competitor analysis prepared for Haileybury by RSAcademics Ltd (2002) (document LXT161) notes that Bedford School’s location and transport links facilitate a larger catchment area than Haileybury.

Bradfield College

9) Bradfield College is a boys boarding school which admits girls in the Sixth Form; it was founded in 1850 and is set in 200 acres. It is located in the village of Bradfield, close to the Reading junction of the M4. Bradfield College has 595 pupils (51% in the Sixth Form), 14% are day pupils. Average 'A' level points per pupil are 290 (45 points for GCSEs) and the teacher pupil ratio is 7.9:1. Day pupils are fully integrated members of one of the boarding houses.

10) Bradfield College states in its response to the OFT’s section 26 Notice that 'Bradfield College aims to position itself as a boarding school (with some day places) offering an all round education. In practice this means offering extensive extra–curricular activities as well as high quality teaching'. Furthermore the school notes that Bradfield does not actively seek to encourage applications for day places. 'However, Bradfield is attractive to some parents considering a day place, in cases where they would rather opt for the advantages of a day education within a boarding school ethos'. No specific schools are mentioned in Bradfield College’s response; it merely states that it 'attracts pupils from all over the United Kingdom and beyond'.

11) A draft report of the Public Relations, Marketing and Strategy Committee (the draft report) notes that at 13+ entry, the alternative choices to Bradfield College most frequently mentioned are Wellington College*, Marlborough School* and Charterhouse School*. 'As far as these three competitors are concerned we would have certain advantages and disadvantages in comparison with each. Fee levels are much the same in all. The basic ethos of each school is similar. All three competitor schools could well be considered excellent – we are competing in the top boarding division wherever we are pitted against them'. While Marlborough College* and Charterhouse School* are predominantly boarding schools, Wellington College* has a similar proportion of day pupils (15%) as Bradfield College.

12) As regards local competition for day places at Bradfield College, the draft report identifies 'Pangbourne, The Oratory, Reading Blue Coat, Abingdon, Leighton Park and the local maintained schools, particularly Reading School, a free grammar school'. Fees at these schools are lower and the draft report states: 'In general; Bradfield is seen as a much more expensive and prestigious option compared with others. As things stand with our current concentration on boarding pupils, none of the local schools is really a direct competitor except for the occasional day pupil.'

13) The sift shows that Wellington College* is 22 miles away with an estimated drive time of 35 minutes. Wellington College* like Bradfield College is principally a boys school but admits girls in the Sixth Form and has a similar proportion of day pupils to Bradfield College. It is a slightly larger school, with 769 pupils but has a fairly similar sized Sixth Form and slightly higher level of academic attainment. As mentioned above, Wellington College* is recognised by Bradfield College as one of its three main competitors and its close proximity means that it is likely to draw day pupils from the same pool. Marlborough College* which is a coeducational school (4% day) is shown at 35 miles

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Marlborough College* has a somewhat higher level of academic attainment, average 'A' level points per pupil are 379 (55 points for GCSEs) but the pupil/teacher ratio is similar at 8.0:1. St Edward’s School*, which is a coeducational school is also picked up by the sift at 28 miles (55 minutes drive time away) from Bradfield College. St Edward’s School* is a similar size school with a somewhat higher level of academic attainment (average 'A' level points per pupil are 339 (56 points for GCSEs).

**Bromsgrove School**

14) Bromsgrove School is a coeducational independent school catering for boarding and day students (53% are day pupils). It was founded in the seventeenth century and is set in a self-contained 100 acre campus. The school has 754 pupils (340 in the Sixth Form). Boy boarders constitute 29% of the total (219 pupils) and boy day pupils 33% (252 pupils). Girl boarders form 18% (138 pupils) and girl day pupils 19% (145 pupils). Average 'A' level points per pupil are 416 (42 points for GCSEs). The pupil/teacher ratio is 10.2:1. All day pupils are allocated to houses which are run on the same lines as boarding houses.

15) Bromsgrove School’s response to the OFT’s section 26 Notice34 provides a long list of competitors for day places. All the schools mentioned by Bromsgrove School are picked up in the sift. Amongst these the furthest away is Warwick School which is 26 miles (32 minutes drive time) away. The response also includes a list of 20 boarding school competitors which includes: Bloxham School (Oxford), Dean Close (Cheltenham), Ellesmere College (Shropshire). The response also includes Participant schools: Cheltenham College*, Cheltenham Ladies’ College*, Malvern College*, Millfield School*, Repton School* and Rugby School*.

16) An annual fee comparisons table prepared by the bursar gives a possible indication of some competitor schools. The fee comparison table for 2000/0135 shows proposed fee increases for day schools Alice Ottley, Royal Grammar School, Kings, King Edward’s School, Solihull and Warwick. For day/boarding schools fee changes are shown for Dean Close, Cheltenham College*, Malvern*, Oakham School*, Repton School*, Shrewsbury School*, Wycliffe, Ellesmere and Wrekin.

17) The sift indicates Cheltenham Ladies’ College*, a girls-only school, which is 34 miles away (42 minutes drive time away) from Bromsgrove School. Cheltenham Ladies' College* is a boarding and day school with around 868 pupils and a pupil/teacher ratio of 7.2:1. Like Bromsgrove, Cheltenham Ladies’ College offers a wide variety of sporting, academic and recreational facilities, and has a similar average 'A' level points score of 429 (55 points for GCSEs). Cheltenham College*, a coeducational boarding and day school with 571 pupils and a pupil/teacher ratio of 8.5:1 within 36 miles (44 minutes drive time away) from Bromsgrove School, is also picked up by the sift though it has a lower average 'A' level points score of 347. Rugby School* is also picked up in the sift at just over 50 minutes drive time away and is a similar sized school with broadly similar levels of academic attainment.

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35 Annual Fee Comparisons – 2000/01 (document JXS0813).
Bryanston School

18) Bryanston School is a coeducational boarding school (58% boys) founded in 1928 with the aim of combining what was best in the old public school tradition with what had been proved to be sound in more modern educational systems. It has 651 pupils (263 in the Sixth Form), 12% are day pupils and is located in 200 acres. A day pupil is at school from 8:30 until 21:00 or even 22:00. Many day pupils eat breakfast at the school and all are provided with a bed. Average 'A' level points per student are 331 (50 for GCSEs) and the pupil/teacher ratio is 7.4:1.

19) Bryanston School’s response to the OFT’s section 26 Notice does not specifically indicate which schools are boarding or day pupil competitors. The response states that, 'In terms of the education they offer and their geographical location, Canford* and Marlborough* are probably Bryanston’s strongest competitors; they are similar to the extent that they are independent, coeducational schools for ages 13 to 18. Parents may also consider Sherborne*, Millfield*, Bedales, Clayesmore and a number of other schools, including ones in the maintained sector'.

20) Market research prepared for Bryanston School by Russell Spiers does not make a distinction between day and boarding competitors but it indicates that, of those respondents who had considered other schools, those they cited most frequently as being seriously considered were, in order of frequency: Marlborough College*, Canford School*, Sherborne School*, Millfield School* and Bedales. The same schools were cited by current parents in response to the question ‘best alternative schools’. Those respondents who had decided which Senior School they would most like their oldest child to attend were asked to name their preferred Senior School. The top four in order of frequency of response were Bryanston School*, Sherborne School*, Canford School* and Marlborough College*.

21) In the sift both Canford School* and Sherborne School* are captured, with the former only 13 miles away (28 minutes drive time away) and the latter 22 miles away (43 minutes drive time away). Canford School* is a coeducational school with a fairly similar number of pupils (601) and size of Sixth Form (262). Sherborne School* is a boys–only school with a slightly smaller number of pupils (543) and Sixth Form (204). Both Canford School* and Sherborne School* have quite similar levels of academic attainment to Bryanston School and low pupil/teacher ratios of 8.3(8.4):1. Canford School* is considered by Bryanston School to be amongst its strongest competitors and Canford School* itself identifies Bryanston School as a competitor in its day market. Sherborne School* is also shown in market research to be a school that is frequently considered by parents alongside Bryanston School although no distinction is made between day and boarding competitors. There is support for a wide catchment area in that King Edward VI School (Southampton), a day pupils only school within 32 miles (55 minutes drive time away) is listed amongst schools considered by prospective parents.

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Canford School

22) Canford School is a coeducational school, founded in 1923 in Wimborne, Dorset. Canford School is set in 300 acres of informal parkland— including an arboretum. The school has 601 pupils (63/37 boy/girl split) with 262 pupils in the Sixth Form. Day pupils account for 36% of total pupils. Average 'A' level points per pupil are 351 (54 points for GCSEs) and the pupil/teacher ratio is 8.4:1. Day pupils belong to one of three mixed day houses. Day pupils attend school for the full day, for both study and additional activities, from 08:15 to 18:00 or later. Day pupils are expected, depending on the event or the activity and when required, to come to school on a Saturday and occasionally on a Sunday38.

23) A 13+ Parents survey undertaken by Ratcliffe Hall Ltd39 indicated that parents on average considered 4.6 schools, visited 3.6 schools and registered a child at 1.9 schools. Whilst not distinguishing whether parents sought day or boarding places the survey indicated the frequency that other schools were visited: Bryanston School* (34%), Sherborne School* (20%), Marlborough College* (18%), Talbot Heath (11%), Winchester College* (10%), Clayesmore (9%), Poole Grammar School (8%), Kings Bruton (8%), Godolphin School (7%), Millfield School* (7%), Milton Abbey (7%), St Swithin’s (6%), Dauntsey’s School* (6%), Lancing College* (6%), Monkton Combe (6%), Cranleigh School* (5%), King Edward (Southampton) (5%) and Bedales (5%).

24) A similar survey for 13+ Applicant Parents40 indicated that parents on average considered 6 schools, visited 4.5 schools and registered their child at two schools. Again no distinction is made as to whether boarding or day places were sought but the survey indicates the frequency that other schools were visited: Bryanston School* (31%), Marlborough College* (29%), Sherborne School* (18%), Millfield School* (13%), King Edward VI (11%), Milton Abbey (11%), Clayesmore (11%), Cranleigh School* (11%), Winchester College* (10%), Kings Bruton (9%), St Swithin’s (8%), Wellington College* (8%), Charterhouse* (8%), Godolphin School (7%), Bradfield College* (7%), Bedales (6%), Downe House School* (6%), Poole Grammar (5%), Monkton Combe School (5%) and others.

25) Surveys of Comparators’ Fees (April 2000 and April 2001) which is attached to the minutes of a Meeting of the Governing Body on 3rd June 200041 shows increases in proposed fees for the following schools: Winchester College*, Bryanston School*, Sherborne School*, Marlborough College*, Bradfield College*, Lancing College*, King’s College Taunton and Blundells.

26) Canford School’s response to the OFT’s section 26 Notice42 states ‘that 400 pupils (out of 600) are from very local areas and this is, we believe, unique amongst boarding/day

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41 Survey of Comparators’ Fees April 2000 Agenda Item 9, Governing Body Meeting, 3 June 2000 (LXT3158).
coeducation schools in our area or in the South. We do not see other schools as competitors except in academic attainment. Bryanston* is geographically the closest coeducational independent school to us that might be considered a general competitor. However we think that they attract a different parental market to us…. Parents might look at Marlborough*, Winchester*, Sherborne* and Bryanston*, as well as Canford*.

27) The sift picks up Bryanston School* which is only 13 miles away (28 minutes drive time away). Bryanston School*, as noted above, is also a coeducational school of similar size Sixth Form and with comparable academic levels of attainment and is identified above as a competitor to Canford School. Sherborne School* is also picked up by the sift and at 32 miles is just under 60 minutes away. Both these Participant schools are picked up in the parental surveys as being frequently visited and whilst these surveys do not distinguish between day and boarding pupils it would seem likely that any local parents might consider both. Winchester College* (at 39 miles and 58 minutes) is also picked up in the sift. This is a slightly larger coeducational school (703 pupils) with a higher level of academic attainment at 'A' level (407 points). Winchester is primarily boarding but has 21 day pupils (2.9%).

Charterhouse

28) Charterhouse is a boys boarding school which admits girls in the Sixth Form. Founded in 1611 the school moved from London to its current 215 acre site near Godalming in Surrey in 1872. Charterhouse has 723 pupils (87/13 boy/girl split) with 335 pupils in the Sixth Form. Day pupils (known as day boarders) account for 3.6% of total pupils. The Good Schools Guide* describes the school as 'mostly boarders with a limited number of day boarders' who comprise the children of teachers and a small number of pupils that live very locally. Day boarders are allocated to boarding houses and spend a large proportion of time, between 8:30 and 21:00, during the week at school. They have to attend classes on a Saturday morning, some participate in sporting activities on a Saturday afternoon and they can also be required to attend some Sunday activities such as Chapel services. Average 'A' level points per student are 383 (51 for GCSEs) and the pupil/teacher ratio is 7.9:1.

29) Charterhouse’s response to the OFT’s section 26 Notice* indicates that it ‘does not regard itself as in competition with other schools. Charterhouse is one of a number of leading boarding schools and parents are able to make a choice for their son/daughter based on academic results and facilities offered. However we do know that some prospective parents also consider schools like Eton*, Harrow*, Winchester*, Cranleigh*, Radley* and Wellington*’. The school does not have a marketing committee and has not commissioned any consumer/parent surveys.

30) The sift picks up Cranleigh School*, which is 9 miles (22 minutes drive time) away. Cranleigh School is a coeducational school with slightly fewer pupils (604 pupils) but comparable levels of academic attainment (average ‘A’ level points per student are 374 (52 for GCSEs)). Cranleigh School*, as indicated below, includes Charterhouse amongst

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five schools listed in a table comparing boarding and day fees. Wellington College* is also shown in the sift, is 17 miles (47 minutes drive time) away and a boys boarding school which admits girls in the Sixth Form. Wellington College* has a similar number of pupils (769 pupils) but a slightly lower level of academic attainment at 'A' level (average 'A' level points per student are 337 (50 for GCSEs)). Epsom College* is at a distance of 23 miles (40 minutes drive time away) from Charterhouse. Epsom College* is a coeducational school with a similar number of pupils (695 pupils, 312 in Sixth form) and broadly similar levels of academic attainment (average 'A' level points per student are 347 (50 for GCSEs)). Woldingham School*, a girls–only Roman Catholic School, and smaller than Charterhouse (529 pupils) is picked up in the sift at 37 miles, 59 minutes drive time away. Worth School*, a boys–only Roman Catholic school, is picked up at 43 miles (60 minutes drive time) away and is a much smaller school (441 pupils). Wycombe Abbey School*, a girls–only school is picked up at 44 miles (58 minutes drive time away) and has a higher level of academic attainment (average 'A' level points per student are 473 (61 for GCSEs)). Sevenoaks School* is also picked up by the sift, as it is 45 miles (59 minutes drive time) away from the school. Sevenoaks School* is a larger school (978 pupils) and has a higher proportion of day pupils (66%). Winchester College* is also picked up at 42 miles (60 minutes drive time). This school is of similar size and also has a small proportion of day pupils (2.9%). Winchester has a slightly higher level of academic attainment at 'A' level (407 points) but is lower at GCSE (40 points).

**Cheltenham College**

31) Cheltenham College is a coeducational school founded in 1841 located in the town of Cheltenham. It occupies a 70–acre site in a conservation area near the town centre. Cheltenham College has 571 pupils (70/30 boy/girl split) with 248 pupils in the Sixth Form. Day pupils account for 31% of total pupils. Average 'A' level points per pupil are 347 (45 points for GCSEs). The pupil/teacher ratio is 8.5:1. All pupils are put in houses on entry – three houses for girls (including one for day girls) and five boarding, one day, for boys.

32) Cheltenham College’s response to the OFT’s section 26 Notice states that they 'consider that a large number of schools in the independent sector are in competition, as evidenced by the wide–ranging origins of their UK pupils... For day pupils, parents may consider schools within a radius of up to 20 miles from home. This therefore places any school within a radius of approximately 40 miles as open to consideration'.

33) The sift shows that in terms of distance Cheltenham Ladies’ College* is the closest Participant school competitor at 0.6 miles away. Cheltenham Ladies’ College* is a girls–only school and slightly larger than Cheltenham College with 868 pupils (284 pupils in the Sixth Form) with a somewhat higher level of academic attainment. Documents supplied by Cheltenham Ladies’ College* in its response to OFT enquiries show that it considers Cheltenham to be a day market competitor. Local competitors shown in the sift include Dean Close (2 miles), St Edward's School (2 miles) and King's School (8 miles). Malvern College*, another coeducational school, is picked up in the sift at 27 miles in distance (43 minutes drive time away from Cheltenham). This is a similar size school to Cheltenham College and whilst fairly similar at GCSE level has a

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higher level of academic attainment at ‘A’ level. As indicated above, Bromsgrove School* is also picked up in the sift, as is Clifton College* which is somewhat further away at 41 miles (53 minutes drive time).

*Cheltenham Ladies’ College*

34) Cheltenham Ladies’ College is a girls–only school, established in 1853, located in Cheltenham. The school has 868 pupils (284 in the Sixth Form). Boarders represent 73% of pupils. The College has a strong academic tradition with average ‘A’ level points per pupil of 429 (55 points for GCSEs) and a low pupil/teacher ratio of 7.2:1. Day girls have their own base, Eversleigh House, which has common rooms, coffee–making facilities, study rooms and a resources room.

35) Cheltenham Ladies’ College has supplied a Fee Strategy report47 which compares day fees and makes specific reference to the day fees at Dean Close and Cheltenham College* and describes them as local schools. The report also draws comparisons with day fees in other girls–only boarding schools: Downe House School*, Sherborne Girls School and Wycombe Abbey School*, as well as some coeducational day/boarding schools such as Marlborough College* and King’s School Canterbury*.

36) The sift picks up Cheltenham College* and Dean Close as being the nearest competitors. Cheltenham College is more similar than Dean Close in size and academic attainment to Cheltenham Ladies’ College. As indicated above, documents supplied in response to OFT enquiries show that Cheltenham Ladies’ College considers Cheltenham College* to be a competitor for day pupils. The King’s School (Worcester) is shown at 23 miles (31 minutes drive time away) from Cheltenham Ladies’ College and is also similar in size but has a lower level of academic attainment. Malvern College* is sifted out on the grounds that it has a much lower level of academic attainment. Bromsgrove School* is also picked up by the sift, as indicated above, as is Clifton College* (41 miles, 52 minutes drive time away). Clifton College is a coeducational school and has a lower level of academic attainment than Cheltenham Ladies’ College.

*Clifton College*

37) Clifton College is a coeducational school which provides continuous education from ages 3 to 18 years. In the Upper School (ages 13–18 years) there are a total of 641 pupils (267 in the Sixth Form) of whom 66% are boys; 34% of pupils are day pupils. The college has a prime urban site in Clifton close to Bristol, famous for its campus overlooking the Close. Every pupil, day or boarding, is based in a house and there is a strong house ethos. Clifton College has a reasonable level of academic attainment. Average ‘A’ level points per pupil are 339 (44 points for GCSEs), given a wide ability intake (cut–off is 50% at Common Entrance). The pupil/teacher ratio is 8.7:1

38) Clifton College’s response to the OFT’s section 26 Notice48 notes that there is a Saturday school and day pupils all belong to day houses. The latter have study areas,

47 A/9 Fees: Part of evidence provided by Cheltenham Ladies’ College as part of its Leniency application (document LXT1028).
changing facilities and recreational amenities. In addition the houses are supported by a
Housemaster or Housemistress plus additional staff. This is one of Clifton College’s
unique selling points in the competitive Bristol day market. As regards the local day
market the response indicates that Clifton College’s Upper school day fees are
approximately twice those of its local day school ‘competitors’ (Bristol Grammar, Queen
Elizabeth’s Hospital, Redland High, Red Maids etc). ‘We are not offering the same
product and we are therefore not in the same market. With regard to boarding and
looking locally, Badminton is a single sex school and not, therefore, in the same market.
Whereas, Queen Elizabeth’s Hospital is very much smaller than ourselves’.

The sift picks up all the local day school competitors mentioned above but also Wells
Cathedral School*. Wells Cathedral School* is 24 miles (46 minutes drive time) away.
Whilst Well Cathedral School* is slightly smaller the level of academic attainment is
broadly similar and the pupil/teacher ratio is low at 8.1:1. Cheltenham Ladies’ College*
and Cheltenham College* are both picked up by the sift at 41 miles, 52 minutes drive
time away from Clifton College*. The former is girls-only and more academic than
Clifton College whilst the latter is coeducational and pupils attain a similar level of
academic attainment. Millfield School* is also shown in the sift at 44 miles (57
minutes drive time) away but is a much larger school with slightly lower levels of
academic attainment.

Cranleigh School

Cranleigh School is a coeducational school founded in 1865. It is set in 200 acres near
the small town of Cranleigh in Surrey and is within one hour’s journey of London. There
are 604 pupils (237 in the Sixth Form) of which 66% are boys. 29 per cent of pupils
are day pupils while 60% are domiciled in Surrey. Cranleigh School states* that the
education on offer to day and boarding pupils is the same. There is no distinction and
consequently day pupils are often required to stay late in the evening. There is school
on Saturday for all pupils. Average ‘A’ level points per pupil are 374 (52 points for
GCSEs), despite a wide ability intake (cut-off is 55% at Common Entrance). The
pupil/teacher ratio is 7.5:1.

In Cranleigh School’s response to the OFT’s section 26 Notice*, it states that parents
consider a wide range of schools and that it is the education and pastoral care on offer
which is of far greater significance than price. Internal documents suggest that certain
schools are considered to be closer competitors than others. The Current Comparisons
table in the school’s Budget 2000/01 lists the following schools’ boarding and day fees:
‘Charterhouse, Bradfield, Wellington, Bryanston and Epsom’* and states that ‘I have
not been able to conduct a proper survey of expected rises; those to whom I have
spoken are talking of 5–6% as a start point’. A note by the bursar for the school’s
Budget 2002/03 lists fees for the following schools: Bradfield College*, Charterhouse
School*, Epsom College*, Eton College*, Radley College*, Wellington College* and
Winchester College* and notes that Cranleigh School’s fees are the 23rd highest in the
country.

*Cranleigh School’s response dated 12 March 2004 (document LXT164R) to question 18 of the OFT’s section 26

*Cranleigh School’s response dated 12 March 2004 (document LXT164R) to question 19 of the OFT’s section 26
42) The sift shows that in terms of distance Charterhouse* is the closest Participant school competitor at 9 miles (22 minutes drive time away). Charterhouse is a boys boarding school (4% day) which takes girls in the Sixth Form. Charterhouse has a similar level of academic attainment to Cranleigh (average 'A' level points per pupil are 383 (51 for GCSEs)). Epsom College* is at a distance of 26 miles (47 minutes drive time away) from Cranleigh School. Epsom College* is a coeducational school with 695 pupils (50% day), hence it is likely that parents that are looking for day places might consider both schools. The level of academic attainment is broadly comparable with that at Cranleigh School and Epsom College’s pupil/teacher ratio is low (7.7:1). Charterhouse* and Epsom College* as shown above are both schools that are amongst five schools listed by the school in a table comparing day and boarding fees. Worth School* a boys-only Roman Catholic school is picked up at 28 miles (50 minutes drive time) away and is a much smaller school (441 pupils). Lancing College*, a coeducational school at 29 miles away, and Wellington College*, a boys boarding school with girls in the Sixth Form at 36 miles away, are picked up in the sift (both have a 59 minute drive time). Wellington College* is larger (769 pupils) than Cranleigh School and has similar levels of academic attainment, whereas Lancing College* is much smaller (448 pupils) and GCSE results are slightly lower (average points per pupil 46 for GCSEs). Both schools have outstanding recreational and sporting facilities, emphasise breadth of educational experience and take in a broad range of abilities.

Dauntsey’s School

43) Dauntsey’s, founded in 1542, is a coeducational school located in 100 acres in rural Wiltshire. The school states that 'We are one of the few schools that aim for an equal balance of boys and girls and day and boarding pupils. This is a key marketing message'. The school has 686 pupils (56/44 boy/girl split) with 212 pupils in the Sixth Form. Day pupils account for 61% of total pupils. The day pupils' day lasts from 08:25 to 17:30 on Mondays to Fridays and they finish classes at 12:45 on Saturdays. Average 'A' level points per student are 346 (51 for GCSEs) and the pupil/teacher ratio is 8.2:1.

44) Dauntsey’s School's response to the OFT's section 26 Notice notes that 'Every State and Independent school is a competitor in a way but perhaps the best indication of who are our competitors are set out in the marketing report commissioned by the school which reflects what schools parents see as our competitors.' A list is then provided of the schools that they consider they are competing with. Amongst these the furthest away is King Edward’s School in Southampton (41 miles, 74 minutes drive time away) which is a day school. This suggests that the catchment area for Dauntsey’s School’s day pupils is widely drawn and that Marlborough College* which is picked up in the sift (19 miles, 33 minutes drive time away) is likely to be within the same day market. Marlborough College* is a coeducational school with 857 pupils (4% day). Academic results are comparable to those at Dauntsey’s School, 'A' level points per student are 379 (55 points for GCSEs) and the teacher pupil ratio is 8.0:1.

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51 Dauntsey’s School's response dated 17 February 2004 (document LXT3850R) to question 18 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG011).
52 Dauntsey’s School's response 17 February 2004 (document LXT3850R) to question 19 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG011).
Downe House School is a girls–only school which was founded by Miss Olive Willis in Charles Darwin’s home, Downe House in Kent. The Girls’ Day School Trust guide indicates that the school moved in 1921 to a 110–acre site in the village of Cold Ash, on a wooded ridge 5 miles north of Newbury. The school has 533 pupils, with 139 pupils in the Sixth form and 16 day pupils (3% of total pupils). In September 2000 a new structure of the day was introduced with 40 minute lessons and an earlier finish time of 18:00. Average 'A' level points per pupil are 463 (59 for GCSEs) and the pupil/teacher ratio is 6.0:1.

Downe House School’s response to the OFT’s section 26 Notice indicated that for boarding services, Benenden*, Cheltenham Ladies’ College*, Marlborough*, Oundle*, Rugby*, Sherborne School for Girls, St Mary’s Calne and Wycombe Abbey* were competitor schools. As regards day competitors the response remarked that, ‘the number of day pupils is so small that the day fee is not relevant to our planning’. They considered Benenden*, Cheltenham Ladies’ College*, Sherborne School for Girls, St Mary’s Calne, and Wycombe Abbey as being similar schools*. They noted that parents are likely to consider some or all of the boarding schools together with some of the London day schools, such as North London Collegiate and St Paul’s Girls School.

A parents’ questionnaire analysis in 2003, which had a 69% response rate, indicated that the majority of parents visited between 3–4 schools and that the types of school visited were girls boarding (70%), coeducational (7%), day (11%) and mixture (11%). The most significant factors that influenced the final decision were (in no particular order) reputation, location, academic standards, pastoral care and atmosphere of school.

The minutes of a Finance & General purposes Committee meeting on 19 March 2001 noted that, ‘The Bursar produced the latest benchmarking figures from the Lacrosse Tendency group of schools (our competitors)’. Attached to the minutes is a schedule comparing Downe House’s current and proposed fees for boarders with those of other schools namely: Benenden*, Cheltenham*, Malvern*, Roedean, Sherborne* and Wycombe*.

Marlborough College*, a coeducational school is picked up in the sift (24 miles and 38 minutes drive time away). Marlborough College* has a slightly lower level of academic attainment than Downe House School (average ‘A’ level points per pupil are 379 (55 for GCSEs)) but is well endowed with creational and sporting facilities. Wycombe Abbey School*, a girls–only school, is shown at 43 miles (52 minutes drive time) away. Wycombe Abbey School* has comparable levels of academic attainment (the average ‘A’ level points per pupil are 473 (61 for GCSEs) and it has a similar pupil/teacher ratio.
As a girls–only boarding school it is geared like Downe House School to provide recreational and sporting facilities pursued by girls.

**Eastbourne College**

50) Eastbourne College is a coeducational day/boarding school situated in the middle of Eastbourne, close to the sea. Founded as a boys school in 1867, Eastbourne became fully coeducational in 1995. There are 576 pupils (241 in the Sixth Form) with boys accounting for 65% of pupils. The boarding/day split is 48/52. Described by the Good Schools Guide as a niche market for local families that prefer the boarding option, the majority of parents live within commuting distance.

51) The ISI report notes that the maintenance of the full boarding ethos and the special arrangements made for the day pupils in their houses are regarded by Eastbourne College as two of its distinctive strengths. Day pupils have their own houses and can stay over if necessary. All pupils stay at school until after prep in the evening. There is a full programme of lessons and matches on Saturdays, and day pupils are required to attend two chapel services each term on Sundays. The report mentions that the school has a broad spread of ability in its intake (with a low pass mark at Common Entrance), as might be expected in a town school in which more than half the pupils are boarders. The report notes that despite this, standards achieved in public examination are high with average 'A' level points per pupil at 322 (49 points for GCSEs). The pupil/teacher ratio is 9.1:1.

52) An independent market study marketing report describes the school's day market as 'Eastbourne and its environs'. This market is depicted as a map which shows the penetration of ACORN types (parent profiles) in Eastbourne and surrounding areas such as Seaford, Newhaven, Peacehaven, Rottingdean, Hailsham, Heathfield, Bexhill, Hastings and Battle.

53) Eastbourne College identifies six main competitors: Moira House Girls' schools, St Bedes, Brighton College, Hurstpierpoint College, Lancing College* and Tonbridge School*. A further four schools are included in a table of performance of day competitors presented annually to Eastbourne's Council Meeting. These are Newlands Manor, Roedean, St Leonards–Mayfield School* and St Mary's Hall School. The sift picks up all the schools listed by Eastbourne College with the exception of Tonbridge School* which is sifted out due to distance.

54) Amongst the Participant schools St Leonards–Mayfield School*, a girls–only school is the nearest at 21 miles (42 minutes) away and has similar levels of academic attainment with average 'A' level points per pupil of 340 (52 points for GCSEs). As indicated above, St Leonards–Mayfield* is listed in a table comparing performance of day competitors. Lancing College*, a coeducational school, which is just over 30 miles away for Eastbourne College: Good Schools Guide 2004– Lucas Publications (document ECON0036).


61 Eastbourne College: Appendix 4 of Papers for the Council Meeting to be held on Friday 28 November 2003 (document JXS0359D).
away (59 minutes drive time away), is included in the sift and is also mentioned by Eastbourne College as a competitor in the day market.

**Epsom College**

55) Epsom College is a coeducational school founded in 1855 and located in 80 acres on Epsom Downs. The total number of pupils is 695 (312 in the Sixth Form) with a 50/50 day/boarding split. There is a long tradition of boarding but with an increasing proportion of day pupils. Options for boarding arrangements include full, weekly and day boarding. Day pupils go home each evening at around 18:00. Day boarders are members of a boarding house and stay for supper and prep and then go home. The 13+ entry requirement is 60% at Common Entrance (although pupils may enter with 55%). If a pupil obtains 55% he or she may be asked to sit the Epsom College Test in January, preceding entry. Average 'A' level points per pupil are 347 (50 for GCSEs) and the pupil/teacher ratio is 7.7:1.

56) Epsom College’s response to the OFT’s section 26 Notice\(^\text{62}\) indicates that the following are considered as being competitors: City of London Freeman’s School, Royal Grammar School in Guildford, all the local Girls’ Day School Trust schools (Wimbledon, Guildford, Croydon), Reigate Grammar, Whitgift and Trinity School. For day pupils, Royal Grammar School in Guildford, King’s College School in Wimbledon and City of London Freemen’s School offer similar facilities for pupils. Epsom College lists amongst the main differences between itself and other schools, ‘Extensive on–campus grounds which are very different from the GDST\(^\text{63}\) schools and other girls only schools’. It also says that it has a broad and specialist staff ensuring that all areas are dealt with professionally.

57) Given Epsom College’s proximity to London, the sift picks up, in addition to the schools indicated by Epsom College, quite a number of local senior independent fee–paying schools. Amongst the Participant schools Woldingham School*, a girls–only Roman Catholic school, is the nearest at 12 miles (31 minutes drive time away) and has a comparable level of academic attainment (average 'A' level points per pupil are 355 (51 for GCSEs)). Sevenoaks School* is 25 miles (32 minutes drive time) away and is a larger school with over 900 pupils and has a similar level of academic attainment (average 'A' level points per pupil are 322 (54 for GCSEs)). Worth School*, a boys–only Roman Catholic school is shown at 23 miles (36 minutes drive time) away and, with only 441 pupils, is a much smaller school than Epsom College. Charterhouse*, a boys boarding school with girls in the Sixth form, is shown at 23 miles (40 minutes drive time) away and, is a similar size to Epsom College (723 pupils) but has a much smaller proportion of day pupils (4%). Tonbridge School* is also picked out at 30 miles (44 minutes drive time) away from Epsom College and is a similar sized school but has a higher level of academic attainment. Wellington College* is also shown in the sift at 34 miles (47 minutes drive time) away, and is a boys boarding school which admits girls in the Sixth Form and has a smaller proportion of day pupils (15%) than Epsom College. Cranleigh School* is shown at 26 miles (47 minutes drive time) away, and is a similar sized school (604 pupils), has comparable levels of academic attainment and, as

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\(^\text{62}\) Epsom College’s response dated 8 March 2004 (document LXT305R) to question 19 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG014).

\(^\text{63}\) Girls’ Day School Trust.

\(^\text{64}\) See also note 5 of Annex 2, above.
indicated in the section on Cranleigh School above, is considered to be a competitor school for Epsom College.

**Gresham’s School**

58) Gresham’s School is a coeducational school set in 170 acres of Norfolk landscape. The school is a Church of England Foundation but is open to all religious denominations. Gresham’s School was established in 1555 by Sir John Gresham, a wealthy landowner who was also Lord Mayor of London. Formerly a boys school, Gresham’s became coeducational in the 1970s. There are 509 pupils (205 in the Sixth Form) with boys accounting for 57% of pupils. There are 204 day pupils, representing 43% of pupils. The school prospectus notes that, ‘In essence our school has a boarding ethos: classes end relatively late on most afternoons, evening activities abound and, for most, weekends are full and busy, as well as relaxing’. Average ‘A’ level points per pupil are 331 (44 for GCSEs) and the pupil/teacher ratio is 8.4:1.

59) Gresham’s School’s response to the OFT’s section 26 Notice indicates that all boarding schools in the UK could be regarded as competing for Gresham’s boarding pupils. However, since the majority of Gresham’s boarding pupils reside in East Anglia, the main competitors for boarding at 13+ are other private schools in the area, many of whom are not in the Sevenoaks survey. These include Culford, Ipswich, Oakham*, Oundle*, Uppingham*, The Leys, Felsted, Framlingham, King’s School Ely and Wymondham College. At 16+, the list expands to include the Further Education Colleges in Norwich and King’s Lynn, the Sixth Form Centre in Fakenham and the Sixth Form College in Cambridge.

60) The sift does not pick up another Participant School within a 60 minute drive time from Gresham’s School due to its geographic location. However amongst its list of day competitors it includes Norwich High School for girls, a day school, which is 24 miles (52 minutes drive time) away suggesting that its catchment area may in fact be larger.

**Haileybury**

61) Haileybury is a coeducational school established in 1862. It was formerly used as the East India College, which between 1809 and 1859 was the training ground for boys destined to govern India, and is located in 500 acres, between Hertford and Hoddesdon, 20 miles north of central London and close to the A10 Cambridge Road. Total pupil numbers are 714 (271 in the Sixth Form) with a 61/39 boarding/day split. The 13+ entry requirement is 50–55% at Common Entrance and the average ‘A’ level points per pupil are 323 (47 points for GCSEs). The pupil/teacher ratio is 8.4:1. Haileybury’s website mentions that, “Controlled numbers of day pupils (about 30% in total in the Main School) are also welcomed into the school on the understanding that they are supportive of the school’s boarding school ethos. The majority of the day

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65 Gresham’s School’s response dated 18 March 2004 (document JXS0089R) to question 19 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG015).
pupils will be current or former Lower School pupils. Day places for entrants into the Main School, at 13+ or at Sixth Form level, are especially limited.'

62) Haileybury’s response to the OFT’s section 26 Notice\(^{67}\) indicates that they see, ‘Haileybury as benefiting from the ‘prestige and tradition’ of some of the best known boarding schools whilst offering the boarding ‘flexibility’ of a number of ‘less prestigious’ schools’. As regards its competitive position\(^{68}\), Haileybury remarks that, ‘Haileybury is a coeducational school, based on a strong boarding ethos which has adapted its boarding regime to suit the needs of a modern family. The College is selective but not greatly so’. The response indicates that parents consider a large range of schools and lists some for each entry age at 11+, 13+ and 16+. The lists include all categories, such as state secondary schools and Sixth Form colleges. Amongst the schools specifically mentioned are: Bishop’s Stortford College, St Edmunds Ware, Princess Helena College, Felsted, Queenswood, Uppingham*, Harrow*, Oundle*, Rugby*, Sevenoaks*, Ardingly and Oakham*.

63) An internal document\(^{69}\) notes that, ‘The day market resides essentially within the 15 miles radius’ of the school where pupils can easily travel as day pupils to and from the school, either under their own steam or by taking advantage of the school’s bus provision. This corresponds with market research showing the geographic distribution of day pupils, and according to which 55% live less than 5 miles from the school, 83% live within 10 miles and 97% live within 15 miles of the school\(^{70}\).

64) Research undertaken with focus groups of current parents\(^{71}\) notes that, ’The first point is that Haileybury competes – to an extent – with two types of school; those day and boarding schools which are relatively close geographically such as Haberdashers’, St Albans, Bedford*, Queenwood and Aldenham and the boarding schools in the Midlands – primarily Oundle* and Uppingham**

65) Mill Hill School* is the only Participant School shown in the sift. Mill Hill School* is 23 miles (36 minutes drive time) away from Haileybury. The level of academic attainment is fairly similar, as average ‘A’ level points per pupil are 308 (46 points for GCSEs) at Mill Hill School*. Mill Hill School* is slightly smaller than Haileybury but has a reasonably large Sixth Form (221 pupils). Research mentioned above suggests that the day market is widely drawn, as Haberdashers’ Aske’s Boys School, which is a day-only school, is listed as a competitor and is 23 miles (37 minutes drive time) away from Haileybury. This lends support to the view that it is likely that the catchment areas for Haileybury and Mill Hill overlap.

\(^{67}\) Haileybury’s response dated 1 March 2004 (document LXT001R) to Question 22 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG016).

\(^{68}\) Haileybury’s response dated 1 March 2004 (document LXT001R) to Question 19 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG016).

\(^{69}\) Marketing and Promotion Plan, C.41/01 FGP.43/01 (document LXT113), included in evidence supplied by Haileybury.

\(^{70}\) Demographic Analysis of Haileybury Parents, prepared by RSAcademics Ltd 2002 (document LXT155), included in evidence supplied by Haileybury.

\(^{71}\) Focus Groups with current parents (1): Senior School Report prepared by RSAcademics (page 13) (document LXT156), included in evidence supplied by Haileybury.

\(^{72}\) Oundle School and Uppingham School are both Participant schools.
66) King's School Canterbury is set in the middle of Canterbury by the Cathedral. King's School Canterbury is a coeducational school founded as a monastic school by St Augustine in 597 and re-founded by Henry VIII in 1541. Weekly Sunday worship and many of the school's occasions take place in the Cathedral. King's School Canterbury has 788 pupils, split 55/45 boy/girl and 78/22 boarding/day. The total number of pupils in the Sixth Form is 327. Entry at 13+ is via the Common Entrance Exam but King's School Canterbury has stated that, 'we are not and never have been narrowly selective'. Average 'A' level points per pupil are 402 (54 for GCSEs) and the pupil/teacher ratio is 8.2:1.

67) In its response to the OFT's section 26 Notice, King's School Canterbury notes that, '[i]n respect to independent day places, we might consider Tonbridge School* as a competitor (although that school takes boys, only) and Sevenoaks School*: to some lesser extent Kent College, Canterbury and St Edmund's School, Canterbury (each of which is aimed at a different academic segment)'. The response indicates that King's School Canterbury has no conscious strategy, remarking that, 'The School, being the oldest in the country, has a historic status and the School aims for high academic results, with a strong tradition for high standards in music and sporting facilities'.

68) A day fees comparison table for the Proposed Budget for 2004/5 lists the following Participant schools and also shows day/boarding ratios for each school: Winchester College*, Sherborne School*, Tonbridge School*, Charterhouse*, Marlborough College*, Bryanston School*, Westminster School*, Wellington College* and Sevenoaks School*. While these are principally the day school fees of a selection of Participant schools, it is notable that the schools selected are different from those under the boarding fee category, presumably reflecting that they are more relevant for King's School Canterbury's consideration of the appropriate level of their day fees.

69) The sift shows Tonbridge School* at 43 miles (60 minutes drive time) away from King's School Canterbury. Tonbridge School, whilst a boys–only school, is a similar size school and has a similar level of academic attainment with an 'A' level score per pupil of 415 (57 points for GCSEs) and a pupil/teacher ratio of 8.1:1. Sevenoaks School*, which is a coeducational school, appears in the sift at 48 miles (59 minutes drive time) away from King's School Canterbury. Sevenoaks School* has a similar level of academic attainment at GCSE but has slightly lower 'A' level point scores than King's School Canterbury. As indicated above, both these schools are mentioned by King's School Canterbury as competitors for day places.

77 See also note 5 of Annex 2, above.
Lancing College

70) Lancing College is a coeducational school located high in the Sussex Downs in a 550-acre site overlooking the sea. It was founded in 1848 by the Revd Nathaniel Woodward and boasts the largest school chapel in the world (open to the public). Lancing College has 448 pupils (202 pupils in the Sixth Form), with a 72/28 boy/girl split and a 61/39 boarding/day split. Average 'A' level points per pupil are 358 (46 for GCSEs). Entry is via the Common Entrance exam (50% pass mark); state pupils are assessed separately. The pupil/teacher ratio is 7.5:1.

71) Lancing College is geared towards boarding pupils with many activities occurring during the evening, although day pupils are allowed to go home at 18:00. However, during the week they are encouraged to stay after that time to participate in activities and complete their homework. A marketing report presented to a meeting of the Governing Body of Lancing College Ltd noted that 'whilst Lancing has a major day pupil constituency with most boarders returning home at weekends, the communications systems in place at Lancing are that of an exclusively boarding school'.

72) In its response to the OFT's section 26 Notice Lancing College noted that 'the boarding market is increasingly local and so the main schools with which we compete are Eastbourne College*, Ardingly College, Hurstpierpoint College, Worth School* and Cranleigh School*. A very small number will consider the King's School, Canterbury* and Charterhouse*. The day market competitors are Brighton College, Hurstpierpoint College and Ardingly College'. As regards its market strategy the response indicates that, 'The College sells itself on the basis that it is a boarding community which provides a "boarding day" for day pupils with the activities and the facilities that go with this'.

73) The sift picks up Worth School* as the closest Participant school competitor at 26 miles (50 minutes drive time) away. Worth School* is a Roman Catholic boys-only school with similar levels of academic attainment as Lancing College. The sift also shows Cranleigh School* and Eastbourne College* as being competitors. Both schools are coeducational and have pupil/teacher ratios of 7.5:1 and 9.1:1 respectively. They are located at just under one hour’s drive time away and their distances from Lancing College are 29 and 31 miles respectively. Cranleigh School* has an average 'A' level points score of 374 and Eastbourne College* is 322, compared to 358 for Lancing College. Both schools are slightly larger than Lancing College. Cranleigh School* has 604 pupils and Eastbourne College* has 576 pupils, but their Sixth Forms are more comparable to Lancing College with the schools having 237 pupils and 241 pupils respectively compared with Lancing College’s 202 pupils. As indicated above, Eastbourne College* identifies Lancing College as a competitor and includes the school in a table of performance of day competitors.

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78 See document AXZ487
79 Minutes of the Meeting of the Governing Body of Lancing College Limited: Friday 12 October 2001 (document MDB0065i).
Malvern College

74) Malvern College is a coeducational school founded in 1865, located on the slopes of the Malvern Hills. The total number of pupils is 542 (263 in the Sixth Form) with a 77/23 boarding/day split and 66/34 boy/girl split. The majority of pupils join at age 13 by taking the Common Entrance Exam or, if they are not at a school which prepares them for Common Entrance, then they can take Malvern College’s own entrance tests in English, Mathematics and Science. There is also entry into the Sixth Form mainly to study the International Baccalaureate. Average 'A' level points per pupil are 294 (48 points for GCSEs) and the pupil/teacher ratio 7.7:1. The Good Schools Guide\textsuperscript{82} indicates that day pupils are either day boarders and stay till around 21:00, or day pupils who do prep at home and stay until 18:15 – the latter have a day house, while the former are slotted into the actual boarding houses and can be accommodated for Bed and Breakfast whenever parents require it. Malvern College operates on a three week cycle, whereby every third week, the school weekends at Friday lunchtime.

75) In response to questions raised as part of its cooperation under the OFT’s leniency policy\textsuperscript{83} Malvern College noted that it is one of 3 boarding/day schools in the area. Over 30\% of pupils are from overseas, with a high predominance of pupils coming from Germany to complete the International Baccalaureate syllabus. Malvern College is the only college in this area to offer this particular course. The response goes on to state that, ‘By way of comparison, Worcester has 3 high–quality independent day schools. In relative terms, our day cadre is small – comprising not only of true day pupils but also the children of members of the teaching staff’.

76) The sift picks up Cheltenham College\textsuperscript{*} as a competitor in the day market. Cheltenham College\textsuperscript{*} is also a coeducational day/boarding school and is located 27 miles (43 minutes drive time) away from Malvern College. They are both similar sized schools but Cheltenham College\textsuperscript{*} is slightly more academic with average 'A' level points per pupil of 347 (45 points for GCSEs). The 'A' level points comparison may be less relevant given that 50\% of the Sixth Form do the International Baccalaureate. Cheltenham Ladies’ College\textsuperscript{*} is sifted out on the grounds of having a much higher level of academic attainment with an average 'A' level point score of 429 points and 55 points for GCSEs.

Marlborough College

77) Marlborough College was founded in 1843 as a school of 200 primarily to provide education for the sons of clergymen. It rapidly expanded and numbers have continued to increase to reach 857 in 2004. The College is predominantly a boarding school, with 822 boarders and 35 day pupils. The College\textsuperscript{84} has indicated that of the day pupils since 2002 more than 50\% in any one year have been children of staff in receipt of a concession of 78\% of the day fee. The College first admitted girls into the Sixth form in 1968 and from age 13 in 1989. By 2004 girls accounted for 36\% of total pupils. Average 'A' level points per pupil are 379 (55 points for GCSEs) and the pupil/teacher ratio is 8.0:1.

\textsuperscript{83} Letter to the OFT dated 21 October 2004 (document TXD3109).
\textsuperscript{84} Marlborough College’s response dated 27 February 2004 (document AXZ603R) to Question 26 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG020).
Marlborough College, in its response to the question\textsuperscript{85} regarding which schools are considered as being competitors when setting fees, states that 'No school is seen as a competitor when setting fees either for boarding places or day places. There is no one school that is comparable with Marlborough given its individual character as a fully coeducational boarding school in the south west of England. Our experience is that prospective parents focus on the particular characteristics of a school: location; coeducational or not; academic reputation; breadth of activities (sports, other extra-curricular activities) and they will compare the school with others that have comparable attributes or a range of attributes depending on their priorities.

The Market Trends Survey\textsuperscript{86} prepared for the school by Ratcliffe Hall Ltd identifies Marlborough College as a Division 1, coeducational boarding school with the most similar school being King's School, Canterbury*. It makes a distinction between the single-gender Division 1 schools; these are listed as Eton*, Harrow*, Winchester*, Westminster*, Shrewsbury*, Wellington* and then Radley* for boys and Wycombe Abbey* and Cheltenham Ladies' College* for girls. [...].\textsuperscript{87}

The sift picks up Dauntsey's School* at 19 miles (33 minutes drive time) away. As indicated above, Dauntsey's School* has a comparable level of academic attainment with an average 'A' level points per pupil score of 346 (51 points for GCSEs) and a similar teacher pupil ratio 8.2:1. They both offer a full range of recreational and sporting facilities. Downe House School* is shown at 24 miles (38 minutes drive time) away. Downe House School* is a girls-only school and the overall level of academic attainment is higher, with average 'A' level points per pupil of 463 (58 points for GCSEs) and a low pupil/teacher ratio of 6:1. Bradfield College*, a boys boarding school with girls in the Sixth Form, is picked up slightly further away, at 36 miles (48 minutes drive time) away. Bradfield College’s* level of academic attainment is somewhat lower than that of Marlborough College with average 'A' level points per pupil of 290 (45 points for GCSEs) but, as indicated above, it offers extensive extra-curricular activities.

**Mill Hill School**

Mill Hill School is a coeducational school located in a 120-acre parkland site in North London. Mill Hill School was founded as a non-conformist Christian Foundation in 1807. It has 608 pupils (221 in the Sixth Form), with a split of 72/28 boy/girl and 28/72 boarding/day. Mill Hill School operates a six day school week for day pupils; each day pupil is a member of a day house with its own house master, study and recreational facilities, modelled on the boarding school ethos. School starts with registration every morning at 08:20. Lessons begin at 08:50. Each day varies somewhat in the number of lessons, but Mondays and Tuesdays finish at 17:30, Wednesdays, Thursdays and Fridays at 16:30, and Saturdays at 15:45 (lessons in the morning, sports/activities in the afternoon). Average 'A' level points per pupil are 308 (46 points for GCSEs). The pupil/teacher ratio is 9.9:1.

\textsuperscript{85} Marlborough College’s response dated 27 February 2004 (document AXZ603R) to Question 27 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG020).
\textsuperscript{87} Marlborough College’s response dated 27 February 2004 (document AXZ603R) to Question 28 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG020).
82) In its response to the OFT’s section 26 Notice\(^\text{88}\) Mill Hill School indicates that from information that it has collected in recent years the following boarding schools are considered as alternative choices to Mill Hill School: Haileybury*; Oundle School*; Millfield School*; Uppingham School*; King’s School, Canterbury*; Roedean; Harrow School*; Royal Russell; Bedford School*; Gordonstoun School; Clifton College and Royal Grammar School (High Wycombe). It notes that these schools are largely boarding with few, if any, day pupils.

83) It also lists a number of independent day schools as competitors including, for boys: Highgate; City of London; St. Albans; University College School; Merchant Taylors; Aldenham; Haberdashers’ Aske’s School for Boys; Portland Place; Westminster School*; Immanuel College and Woodside Park. For girls, they list: St Mary’s Bushey; Channing South Hampstead, North London Collegiate school; St Mary’s Hampstead, Kingswood; Royal School, Hampstead; Haberdashers’ Aske’s School for Girls; Portland Place; Immanuel College; Woodside Park; Queens College; and The Mount (Mill Hill).

84) In addition they indicate that there is a wide variety of State school alternatives to Mill Hill School. These include Queen Elizabeth’s School (Boys and Girls), Mill Hill County High School, the Latymer School, Edmonton and the Oratory.

85) Table 1 in Annex 5 shows that of those schools listed by Mill Hill School the furthest in terms of drive time is City of London School which is 47 minutes (11 miles) away. Some of the other schools they mention are sifted out on academic grounds or due to distance or the specialist nature of the school. Despite this, given its location in part of London the sift picks up a wide variety of independent fee-paying schools. Amongst the Participant schools, Westminster School* although identified as a boarding school competitor by Mill Hill school, is sifted out due to its much higher level of academic attainment (469 ‘A’ level points and 60 GCSE points). Haileybury* and Bedford School* both appear in the sift, the former at 23 miles (36 minutes drive time) away and the latter at 46 miles (56 minutes drive time) away. Both are fairly similar sized schools to Mill Hill School with Haileybury* the most similar in terms of academic attainment (323 ‘A’ level points, 46 GCSE points). Bedford School* has a slightly higher level of academic attainment (344 ‘A’ level points, 54 GCSE points). Haileybury* is listed in the section 26 response as one of the alternative choices to Mill Hill, and given its geographic location it is likely that their catchment areas overlap.

**Millfield School**

86) Millfield School is a coeducational school founded in 1935 situated in the rural southwest of England in the small town of Street, Somerset close to the historic town of Glastonbury. The total number of pupils is 1258 (558 in the Sixth Form) with a 74/26 boarding/day split. There are five day houses (3 for boys and 2 for girls). Day pupils are involved in all school day activities apart from the evening meal. They are asked to register before school on a daily basis as determined by their day Houseparents\(^\text{89}\). Millfield School has an all ability intake and utilises Common Entrance

\(^{88}\) Mill Hill School’s response dated 8 March 2004 (document AXZ001R) to Question 19 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG022).

\(^{89}\) Millfield School Website: 26 October 2005 (document ECON0033).
to determine sets for core subjects. Average 'A' level points per pupil are 313 (45 points for GCSEs) and the pupil/teacher ratio is 7.4:1.

87) In its response to the OFT's section 26 Notice\textsuperscript{90} Millfield School states that, 'Millfield is in the unusual position of having no direct competitors as such, being non–selective, coeducational, international, independent, boarding (and day) school. Probably the most accurate depiction of Millfield’s competition is as listed in the School’s last external Parent survey'. The survey response shows the frequency that other schools were considered by parents\textsuperscript{91}: Sherborne School* (27%), Bryanston School* (22%), Marlborough College* (18%), Wells Cathedral School* (15%), King’s College, Taunton (12%), Kings Bruton (11%), Canford* (9%), Shiplake School (9%), Bedales (8%), Rugby School* (7%), Kelly College (7%), Clayesmore (7%), Wellington College* (6%), Charterhouse* (6%), Taunton School (6%), Stowe School* (6%), Clifton College* (6%) and Bradfield College* (6%), with the remaining schools being visited by less than 5% of parents. It should be noted however that this survey did not make a distinction between parents of day pupils or boarders.

88) The sift shows Wells Cathedral School*, which is also a coeducational school, as the closest Participant school competitor at only 8 miles (17 minutes drive time) away. Wells Cathedral School* is considerably smaller and specialises in music rather than sports. As indicated by the parents survey results, however, it is frequently considered by prospective parents. Sherborne School* is also picked up by the day market sift. Sherborne School* is 19 miles (37 minutes drive time) away. Whilst a boys–only school, and again not as large as Millfield School*, it is often considered by prospective parents and compares favourably in terms of academic attainment. Average 'A' level points per pupil are 351 (50 points for GCSEs). Clifton College*, which is also a coeducational school with fairly similar levels of academic attainment, is also picked up in the sift at 44 miles (57 minutes drive time) away.

\textit{Oakham School}

89) Oakham School is a coeducational boarding school set in the village of Oakham in Rutland and founded in 1584 by Robert Johnson, Archdeacon of Leicester. At first Oakham was a small local boys school until the 1970s when it became coeducational with equal numbers of boys and girls. The Girls’ Day School Trust\textsuperscript{92} guide notes that the practice of Christianity is an essential part of the life of the community and there are regular chapel services. Oakham School has 1037 pupils (347 in the Sixth Form), split 50/50 boy/girl and 44/56 boarding/day. Entry at 13+ is via Common Entrance and a 55% pass mark is required. Oakham School has its own exam for pupils from the state sector. Sixth Form entry is with 7 respectable GCSEs (including B or better in 'principal subjects')\textsuperscript{93}. Average 'A' level points per pupil are 337 (51 points for GCSEs) and the pupil/teacher ratio is 7.2:1.

\textsuperscript{90} Millfield School’s response dated 26 February 2004 (document TXD1507) to Question 19 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG021).
\textsuperscript{92} Entry for Oakham School, GDST Guide: 2004 (document ECON0039).
90) Day pupils benefit from participation in a full boarding environment but are designated to a day house. Day boarders have the same benefits as day pupils plus two nights per week boarding. By arrangement with the relevant housemaster it is possible to ‘trade’ nights into other weeks – thus for example it might be possible not to board one week, but to board for four nights the following week94.

91) In its response to the OFT’s section 26 Notice95 Oakham School notes that, ‘Assuming the parents of day children live within a 20 mile radius, the choice of school type are wide-ranging. There are a great many prep schools in the vicinity for younger children, and independent day schools at secondary level exist throughout the catchment area. The fees for these various schools vary considerably, and parents are therefore faced with a wide-ranging choice of school-type, curriculum mix, and fee structure. Examples might include, but are certainly not limited to, Loughborough, Leicester, Trent, Wellingborough, Stamford, Nottingham High, Grantham Kings and Witham Hall (for 11–13 year olds)96. Parents who prefer to send their children to a school primarily because of its boarding ethos, whether or not they wish their children to board or attend on a daily basis, also have a very wide choice. Locally obvious choices might include Uppingham*, Oundle*, Rugby* and Repton* but the parents of boarding children will tend to make comparisons with other schools nationally or internationally for their own reasons97.

92) The sift picks up Uppingham School* which is a coeducational boarding school and 6 miles (11 minutes drive time) away from Oakham School. Uppingham School is slightly smaller (724 pupils) but has a similar size Sixth Form and comparable academic results (average ‘A’ level points per pupil of 349 (49 points for GCSEs)). Oundle School* (25 miles, 41 minutes drive time away) is also picked up by the sift. Oundle School* is a similar size to Oakham School, both in terms of total pupils and the size of the Sixth Form (1068 pupils with 399 pupils in the Sixth Form). In terms of academic attainment Oundle School* has a slightly higher average ‘A’ level points per pupil of 397 (50 points for GCSEs) with a slightly lower pupil/teacher ratio of 6.2:1.

Oundle School

93) Oundle School, located near Peterborough, is a coeducational school founded in 1556 by Sir William Laxton. It is the third largest boarding school in the country and has its own prep school (Laxton Jnr) which is the source of many senior day pupils. Oundle School has 1068 pupils (399 in the Sixth Form), split 58/42 boy/girl and 78/22 boarding/day. The average ‘A’ level points per pupil is 397 (50 points for GCSEs) and the pupil/teacher ratio is 6.2:1.

94) In its response to the OFT’s section 26 Notice98 Oundle School mentions the following competitors which it describes as ‘The Midlands boarding schools’: Rugby School*,

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95 Oakham School’s response dated 8 March 2004 (document AXZ096R) to Question 19 of the OFT section 26 Notice dated 9 February 2004 (document SMG023).
96 All the independent secondary schools in these areas are picked up by the sift.
97 Uppingham School, Oundle School, Repton School and Rugby School are all Participant schools.
98 Oundle School’s response dated 5 March 2004 (document AXZ742R) to Question 27 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG024).
Uppingham School*, Oakham School*, Repton School*, Stowe School* and Gresham’s School*. For day pupils, the following are described as competitors: Stamford School, Wellingborough and Kimbolton School.

In addition a paper setting out 'School Fee Policy' lists in its table for school fees 2000–2001 under local schools, Bedford School*, Bedford High School, Bedford Modern School, Dame Alice Harpur, Kimbolton, Northampton High, Oakham, Oundle, Peterborough High, Stamford High, Stamford School, The Perse (boys), The Perse (girls), Uppingham* and Wellingborough. The paper notes that, 'any proposals put forward for the fee structure at Oundle should not lose touch with day fee levels in the area. For example, had we a day fee set at 70% of the current boarding fee, day pupils would be charged £11340 per annum, £5500 more than Stamford, £4650 more than The Perse, £4270 more than Kimbolton, £2430 more than Oakham*, £1660 more than Rugby* and identical with Uppingham**'.

The analysis of a parents' survey, whilst not making any distinction between boarding and day pupils, notes that, '[t]he striking thing here is the wide range of schools that Oundle* is compared with – both geographically and by type (56 different schools mentioned). Our main competitors on this evidence are Rugby*, Uppingham*, Oakham* and Greshams*'.

96) Uppingham School* is the closest Participant School at 18 miles (34 minutes drive time) away. Uppingham School* is a coeducational boarding school with fewer pupils than Oundle school (724 pupils, 332 in the Sixth Form) and a small proportion of day pupils (2%). Academic results at 'A' level are slightly lower (average 'A' level points per pupil of 349 but similar at GCSE 49 points). The sift also picks up Oakham School* (25 miles, 41 minutes drive time away). As indicated above, Oakham School* is similar in size to Oundle School and has the same level of academic attainment at GCSEs (51 points per pupil) but slightly lower at 'A' levels (average 337 points per pupil). As indicated above, both Uppingham School* and Oakham School* are included in a day fee comparison undertaken by Oundle, and Oakham School* has itself identified Oundle School* as being a competitor in the day market. Bedford School*, a boys–only school, is also picked up in the sift (30 miles, 48 minutes drive time away) and is listed as a local school in the Schools Fees Comparison table prepared by Oundle School.

Bedford School* itself, in documents supplied to the OFT, identifies Oundle School* as a primary regional competitor. The sift picks up the non–Participant schools that Oundle School identifies as competitors, Kimbolton School (19 miles, 33 minutes drive time away) and Dame Alice Harpur School (30 miles, 49 minutes drive time away). Dame Alice Harpur School is further away than any of the Participant schools shown in the sift, therefore it is reasonable to assume that the latters' catchment areas overlap.

Repton School

97) Repton School is a coeducational boarding school (60% boys) set on the banks of the river Trent in the village of Repton, Derbyshire. The school was founded in the 16th Century though has roots in a medieval monastery which still forms part of the buildings. The total number of pupils is 553 of which 260 pupils are in the Sixth Form. There are 119 day pupils, representing 22% of total pupils. The school went fully

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100 Analysis of Parents Consultation Survey: July 2001 (document TXD1377).
coeducational in 1991. Repton School has close links with Repton Preparatory School (Foremarke Hall) from where the school gets approximately 50% of its 13+ intake\textsuperscript{102}. The school describes itself\textsuperscript{103} as 'primarily a boarding school and seeks to maintain a high proportion of boarders (70+ %)'. They explain that 'some parents may prefer their children to be day pupils because (a) they live close enough to the school to make this feasible (despite the long school day of 8.30 a.m. to 9.00 p.m.), and (b) they prefer daily contact, and/or (c) they prefer the cheaper day fee. Therefore, the school attempts to maintain a balance between boarding and day pupils which maintains the boarding 'ethos' of the school whilst catering to the needs of local parents.' The average 'A' level points per pupil is 361 (45 for GCSEs) and the pupil/teacher ratio is 8.6:1.

Repton School in its response to the OFT's section 26 Notice\textsuperscript{104} mentions the Russell Speirs report commissioned by its Marketing Committee\textsuperscript{105} which identifies six schools: Oundle School*, Trent College, Uppingham School*, Rugby*, Derby Grammar and Shrewsbury School* as competitors. These schools are most often cited in responses to the survey as 'having been seriously considered' or being 'viable alternatives' to Repton School. Amongst these Trent College and Derby Grammar are day–only schools. The report concludes that Oundle* is Repton's strongest competitor – it is seriously considered by a relatively large number of families and liked by three quarters of them. The report also indicates that Derby Grammar is an important competitor to Repton and that, when the results are adjusted to allow for the fact that Shrewsbury* is a boys school and could only be cited by 65% of the research sample, it is in fact liked by almost as high a percentage of the respondents as Oundle School*. However Repton School says they do not consider any particular schools as being competitors in respect of fees only but in respect of service provision generally. Whilst they agree that those schools listed in the Russell Spiers survey are their competitors they consider there are other options available to prospective parents. These include local state maintained sector secondary schools such as John Port Comprehensive School in Etwall and other maintained schools in Derby. Amongst local independent day schools they identify as competitors Derby Independent Grammar School and Derby High School. They also identify some local and regional independent day and boarding school competitors such as Denstone College, Trent College, Abbot's Bromley and Worksop College.

Royal Hospital School

The Royal Hospital School is a coeducational full boarding school founded in 1712. The school's website indicates that Greenwich Hospital owns and maintains the Royal Hospital School as part of its charitable support to seafarers and their dependants.

\textsuperscript{102} Repton School's response dated 12 March 2004 (document LXT461R) to Question 20 of the OFT's section 26 Notice dated 9 February 2004 (document SMG025).
\textsuperscript{103} Repton School’s response dated 12 March 2004 (document LXT461R) to Question 18 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG025).
\textsuperscript{104} Repton School’s response dated 12 March 2004 (document LXT461R) to Question 19 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG025).
Priority is given to the children of seafaring families – namely the children of parents who are serving or have served in the Royal Navy, Royal Marines and Merchant Navy, and also grandchildren. A limited number of places are available to the children of non-seafarers. Total number of pupils is 857 of which 199 pupils are in the Sixth form. The school indicates\(^{106}\) that ‘the number of day pupils at the school is a very small percentage of the school’s population (presently the school has 689 boarders and only 4 day pupils). There is no set mechanism for setting the day fees for day pupils. A small reduction is applied to take into account the fact that whilst day pupils enjoy most of the facilities available to boarders they do not require overnight accommodation or evening meals’. The school website\(^{107}\) contains an announcement that ‘[t]he governors of the Royal Hospital School are pleased to announce the admission of day pupils to the school from September 2006’. Average ‘A’ level points per pupil are 332 (47 for GCSEs) and the pupil/teacher ratio is 8.0:1.

101) In its response to the OFT’s section 26 Notice\(^{108}\) Royal Hospital School states that the school does not consider any particular schools as its competitors when setting fees for either boarding or day places. The boarding school most similar to the school is Christ’s Hospital School followed by other large full boarding schools such as Oundle* and Uppingham*. Day schools that might be viewed as competitors are Ipswich High School, Ipswich School and St Joseph’s College. The response also indicates that there is no clear pattern to the other schools considered by parents of prospective pupils (no distinction given as to whether they may be boarders or day) but these might include Christ’s Hospital, Framlingham, Felsted, Culford and Uppingham*.

102) There is no Participant School within a 60 minute drive time of Royal Hospital School, reflecting its geographic location in south east Suffolk.

Rugby School

103) Rugby School is a coeducational school founded in 1567 situated in the middle of the town of Rugby. The total number of pupils is 781 (339 in Sixth Form), with a 76/24 boarding/day split. Boarding was introduced around 1667 and since that time Rugby School has continually built, developed and modified to meet the changing needs, and growth in size, of the pupil population. Originally for boys–only, the school first admitted girls into the sixth form in 1975, opening three sixth form houses for girls in 1976, and went fully coeducational in 1993. Saturday is a normal school day for all pupils. Day pupils have their own house. The headmaster is quoted as saying ‘This is not a highly selective single–sex boarding school but a broad church where everyone is encouraged to achieve their full potential’\(^{109}\). Average ‘A’ level points per pupil are 390 (54 points for GCSEs) and the pupil/teacher ratio is 7.6:1.

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\(^{106}\) Royal Hospital School’s response dated 19 March 2004 (document JXS0088A) to Question 18 of the OFT section 26 Notice dated 9 February 2004 (document SMG026).

\(^{107}\) Royal Hospital School’s website at www.royalhospitalschool.org on 26 October 2005 (document ECON0032).


In its response to the OFT’s section 26 Notice\(^\text{10}\) Rugby School indicates that it considers that fees are only one of many factors considered by parents in selecting a particular school. They consider that it is possible to identify the schools that are most similar to Rugby School as other coeducational boarding schools and mention the following: King’s Canterbury School*, Marlborough College*, Oundle School* and Uppingham School*. Parents of prospective Rugby School pupils consider these schools, as well as single–sex options: (for boys) Eton College*, Radley College*, Shrewsbury School* and Winchester College*; (and for girls); Benenden School*, Cheltenham Ladies' College*, Downe House School* and Wycombe Abbey School*.

The response indicates that, for prospective day pupils, local independent fee–paying day schools such as Warwick, King Henry VIII, Northampton High School and Princethorpe might be considered an option, though they provide an experience which is different from that provided by Rugby School\(^\text{11}\). 'This is because a day pupil in a boarding school such as Rugby has a very different cultural and social experience than a pupil in a uniquely day school, works longer hours (including weekends) and has greater availability of pastoral care throughout his or her time at the School'\(^\text{12}\). Rugby School also notes that there are two state day schools which have enjoyed a consistently high reputation over the years: Lawrence Sheriff School for boys and Rugby High School for girls.

The sift picks up Stowe School* (33 miles, 51 minutes drive time away) and Bromsgrove School* (46 miles, 51 minutes drive time away). The latter is most similar as it is a coeducational school with 754 pupils and has similar levels of academic attainment at ‘A’ levels (average ‘A’ level points per pupil of 416 albeit with slightly lower levels of attainment at GCSEs (42 points)). Stowe School* is a boys school that admits girls in the Sixth Form and is a smaller school (592 total pupils) albeit with a fairly similar sized Sixth Form. Bedford School* is also shown in the sift (49 miles, 58 minutes drive time away). Bedford School* is a boys–only school, slightly smaller than Rugby School* (636 pupils) with fairly similar levels of academic attainment at GCSEs but slightly lower at ‘A’ levels (average ‘A’ level points per pupil of 344, 54 points for GCSEs). Uppingham School* is 34 miles (58 minutes drive time) away from Rugby School. Uppingham School* is a coeducational school of similar size to Rugby School but has a much smaller proportion of day pupils (2%).

**St Edward’s School**

St Edward’s School is a coeducational school located in North Oxford with 90 acres of pitches. It was founded in 1863 and has 634 pupils (253 in the Sixth Form), split 65/35 boy/girl and 72/28 boarding/day. St Edward’s School adheres to a full boarding model. Day pupils are spread among the boarding houses and are expected to participate fully in all aspects of school life. This is reflected in the long school day. All pupils arrive by 08:30 and do not depart until after prep is finished at 21:00. Day pupils are allowed to go home after they have completed their commitments on a Saturday. Many however also come in on a Sunday to enjoy some of the many activities which

\(^{10}\) Rugby School’s response dated 8 March 2004 (document TXD1378R) to Question 27 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG027).

\(^{11}\) All the local independent schools mentioned in the response are picked up by the sift.

\(^{12}\) Rugby School’s response dated 8 March 2004 (document TXD1378R) to Question 27 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG027).
take place. Entry at 13+ is via Common Entrance requiring a 50% pass mark, while
16+ entry requires 5 GCSE’s at grade B or above and an internal test and interview.
Average 'A' level points per pupil are 339 (56 points for GCSEs) and the pupil/teacher
ratio is 7.8:1.

108) In its response to the OFT’s section 26 Notice\textsuperscript{113} St Edward’s School noted that with
regard to day places 'we do not believe that there is any sufficiently similar school to be
regarded as a competitor when setting fees'.\textsuperscript{114} The response then provides evidence
from a survey conducted in December 2002 by RSAcademics\textsuperscript{115} showing which schools
had been considered by parents of current pupils, as well as parents of pupils who have
committed to join St Edward’s School. The parents of current day pupils mentioned:
Abingdon, Magdalen College School, Oxford High School and Radley College\textsuperscript{*116}.
Parents of pupils who had committed to join St Edward's (which makes no distinction
between prospective day and boarding pupils) mentioned: Bryanston School*, Eton
College*, Millfield School*, Radley College*, Rugby School*, Stowe School*, Harrow
School*, Magdalen College School, Marlborough College*, Oundle School*, Uppingham
School*, Winchester College*, St Paul’s School, Sherborne Girls School,
Charterhouse*, Oakham School*, Haileybury*, Headington and Sevenoaks School*.
Parents of non joiners (which makes no distinction between day and boarding pupils)
mentioned Abingdon, Stowe*, Bradfield*, Bryanston School*, Radley College*, Eton
College*, Sherborne School*, Cheltenham College*, Harrow School*, Magdalen College
School, Millfield School*, Headington School, Marlborough College*, Tudor Hall, St
Mary’s Calne, Oxford High School, Malvern College*, Bloxham School, Uppingham
School*, Wycombe Abbey School* and Shrewsbury School*.

109) Stowe School* (26 miles, 44 minutes drive time away) a boys school which admits
girls in the Sixth Form is the closest Participant school. Stowe School* is a similar size
(592 pupils) but has a lower level of academic attainment (Average 'A' level points per
pupil are 304 (41 points for GCSEs)). Bradfield College* is 28 miles (55 minutes drive
time) away from St. Edward’s School. Bradfield College* is a boys school (although
girls are admitted in the Sixth Form) and has a lower level of academic attainment
(Average 'A' level points per pupil are 339 (56 points for GCSEs)). As the market
research shown above indicates, Stowe School* is mentioned in the list of schools that
have been considered both by those parents of pupils who had committed to join St
Edward’s and by parents of non–joiners, whilst Bradfield College* is mentioned by
those parents of non joiners.

\textbf{St Leonards–Mayfield School}

110) St Leonards–Mayfield School is a Roman Catholic school for girls aged 11 to 18 years
located in Mayfield, East Sussex not far from Royal Tunbridge Wells. St Leonards–
Mayfield School was established in 1872 by the Congregation of the Society of the
Holy Child Jesus. The total number of pupils is 388 (124 in the Sixth Form), with a

\footnotesize
\begin{itemize}
\item \textsuperscript{113} St. Edward’s School's response dated 8 March 2004 (document TXD1681R) to Question 27 of the OFT section
\item \textsuperscript{114} St. Edward’s School’s response dated 8 March 2004 (document TXD1681R) to Question 27 of the OFT’s
\item \textsuperscript{115} Document TXD1809.
\item \textsuperscript{116} Although Radley College is mentioned by the parents of current day pupils it is 100% boarding and hence will
not enter into competition for day pupils.
\end{itemize}
47/53 boarding/day split. Day girls are accommodated in two Day Girl houses which have a common room and in the Sixth Form have their own private study rooms. All girls are assigned to one of 4 vertically-grouped competitive houses, in order to ensure complete integration of day and boarding pupils\(^{117}\). Entry at 11+, 13+ and 16+ is by St Leonards–Mayfield School's own exam, although Common Entrance is a further option for entry. The average 'A' level points per pupil are 341 (53 points for GCSEs) and the pupil/teacher ratio is 7.0:1.

111) In its response to the OFT's section 26 Notice\(^{118}\) St Leonards–Mayfield indicates it competes with other Roman Catholic girls boarding schools for boarding pupils, such as St Mary's Ascot (Berkshire), St Mary's Shaftesbury (Dorset) and Woldingham School* (Surrey). However the response notes that if parents are seeking a high quality boarding school rather than specifically a Roman Catholic one, there are many from which to choose. As regards the local day market the response indicates there are no Roman Catholic independent day schools in the area. Non–Catholic competitors for day pupils are Burgess Hill, Kent College, Moira House\(^{119}\) and state grammar schools in Tonbridge and Tunbridge Wells.

112) The sift picks up Sevenoaks School* 20 miles (38 minutes drive time) away and Eastbourne College* 21 miles (42 minutes drive time) away. These are both coeducational schools. As indicated in the section on Eastbourne College* they consider St Leonards–Mayfield School to be a competitor school and include them in a table of performance of day competitors. Sevenoaks School* is a much larger school with 978 pupils (491 girls). They are all fairly similar in terms of academic attainment\(^{120}\) with only slightly higher pupil ratios of 8.1:1 for Sevenoaks School* and 9.1:1 for Eastbourne College*.

**Sedbergh School**

113) Sedbergh School is set in the countryside of the Yorkshire Dales National Park. The school has a relatively remote location and experienced a decline in demand in the 1990s. The school was endowed as a Chantry School in 1525 by Roger Lupton, a provost of Eton, became a free Grammar School in 1551 and was reconstituted under the Endowed Schools Act of 1874. The school provides residential education in six senior houses for boys aged 13–18. A girls boarding house was opened in September 2001, followed by a further girls house in September 2002, taking the total number of girls in the senior school age 13–18 to 74\(^{121}\). All meals are provided within the individual boarding houses which is a unique feature for a northern boarding school\(^{122}\). Average 'A' level points per pupil are 304 (37 for GCSEs) and the pupil/teacher ratio is 7.4:1.

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\(^{118}\) St Leonards–Mayfield’s response dated 11 March 2004 (document TXD0772) to Question 27 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG032).

\(^{119}\) The schools mentioned are all picked up by the day market sift.

\(^{120}\) See also note 5 of Annex 2, above.


\(^{122}\) Sedbergh School’s response dated 18 March 2004 (document TXD1235) to Question 19 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG028).
114) In its response to the OFT’s section 26 Notice the school states that ‘The School is overwhelmingly boarding at senior level (96%), because of the extended nature of the school day, and the school’s geographic location’. In setting fee levels the school’s considered competition is ‘those independent and state schools located in the region, or those who offer elements similar to Sedbergh, viz boarding’. They consider that whilst schools may compete on one plane, on another plane (for example religion or educational offering) they may be non–competitive and that therefore maintained state schools can be major competitors on that second plane. The school considers that a direct competitive template is not possible but gives certain examples followed by a list of schools that surveys suggest they compete with. These include state boarding and day schools in the region, city independent single–sex and coeducational schools and day and boarding schools in the north and other boarding schools. For the day market Sedbergh School says that the competition is predominantly local state schools in Sedbergh, Kirkby Stephen, Penrith, Windermere, Kendal, Lancaster, Barrow, as well as occasionally Barnard Castle, Casterton and Windermere St Anne’s.

115) The sift does not pick up another Participant School within a 60 minute drive time of Sedbergh School due to its remote geographic location. The sift does pick up some of those schools it lists as day competitors.

Sevenoaks School

116) Sevenoaks School is a coeducational school, set in 100 acres in the heart of Southeast England, 30 minutes from London. Sevenoaks School was established in the late 14th century. It has 978 pupils (427 in the Sixth Form) with a 34/66 boarding/day split and a 50/50 boy/girl split. In the Sixth Form all pupils study the International Baccalaureate. The Sevenoaks School website indicates that it is ‘a six–day a week school. Lessons take place every morning from Monday to Saturday, and in the afternoons pupils are either in lessons or taking part in sport and other activities. The day begins at 08:30, lessons end at 16:10., but many activities go on after school until supper time for boarders at 18:00, and later in the evening for music and drama’. A highly selective entry process is adopted which also takes into account co–curricular potential (sport, music, drama etc) and personal qualities. The average ‘A’ level points per pupil are 322 (54 points for GCSEs) and the pupil/teacher ratio is 8.1:1.

117) The sift picks up Tonbridge School* as its closest Participant School competitor (6 miles, 15 minutes drive time away). Tonbridge School* is a boys–only school which is

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124 City independent single sex girl and boy day schools and coeducational schools listed: Bradford, Wakefield, Manchester, Liverpool, Hull, Newcastle upon Tyne, Durham, Chester, York, Harrogate, Shrewsbury, Carlisle, Blackburn, Bolton, Bury, Batley, Leeds and Sheffield.
125 Day and Boarding Schools in the north; Merchiston Castle, Loretto, Fettes, Gordonstoun, Durham, St Bees, Ampleforth, Giggleswick, Stonyhurst, Barnard Castle, Windermere St Anne’s, Pocklington, Ashville, Queen Margaret’s, York, Harrogate Ladies’, Caterton, Polam Hall.
126 Other boarding schools listed: Uppingham, Oundle, Rugby, Repton, Shrewsbury, Lime House, Austin Friars, Westholme, Arnold, King Edward & Queen Mary’s, Lytham, Rossall, Mount, Queen Ethelburga’s, Gateways, Bootham, Read, Ackworth, Fulneck, Rishworth, Silcoates, Woodhouse Grove, Worksop, Hymers, Stowe, Moreton Hall, Lincoln Minster, Ellesmere, Denstone, Loughborough Grammar School, Marlborough, Birkdale, St Peter’s, York, Longridge Towers, St George’s.
128 See also note 5 of Annex 2, above.
only slightly smaller than Sevenoaks School with 739 pupils (290 pupils in the Sixth Form). Tonbridge School* has a slightly higher level of academic ability with average 'A' level points per pupil of 415\textsuperscript{129} (57 points for GCSEs). Woldingham School*, a girls–only Roman Catholic school is picked up in the sift (18 miles, 32 minutes drive time away). Whilst a much smaller school (529 pupils of which 149 are in the Sixth Form), the level of academic attainment is comparable. St Leonards–Mayfield School*, another girls–only Roman Catholic school is also in the same day market albeit slightly further away (20 miles, 38 minutes drive time). As noted above St Leonards–Mayfield School*, whilst a much smaller school than Sevenoaks School, has a fairly similar level of academic attainment as Sevenoaks School (average 'A' level points per pupil are 340 (52 points for GCSEs)). The sift also picks up Epsom College* which, although it is slightly further away, has a shorter drive time (25 miles, 32 minutes drive time). Epsom College* is a similar size to Sevenoaks School (695 pupils of which 312 are in the Sixth Form) and has a similar level of academic attainment (average 'A' level points per pupil are 347 (50 points for GCSEs)). Charterhouse* is a boys school which admits girls in the Sixth Form and is 45 miles (59 minutes drive time) away. Charterhouse* is slightly smaller (723 pupils) and has a small proportion of day pupils (4%). As indicated above King’s School Canterbury* is picked up in the sift (48 miles, 59 minutes) and identified by King’s School Canterbury* as a competitor in the day market.\textsuperscript{130}

**Sherborne School**

\textsuperscript{118} Sherborne School is a boys–only school situated adjacent to the Abbey Church in the centre of Sherborne, in Dorset. The school site was originally that of Sherborne Abbey (AD 705), and some of the buildings reflect its former use. Sherborne School was founded by Edward VI as a grammar school in 1550, though its origins date back to the 8\textsuperscript{th} century and the subsequent arrival of the Benedictines in 998, who were removed by Henry VIII. Many parents choose the school for its town setting, preferring a quiet, rural town to isolation. Sherborne School also trades heavily on its proximity to Sherborne School for Girls and Leweston Girls. The Good Schools Guide states that Sherborne School has\textsuperscript{131} ‘all the advantages of a single–sex education combined with the best aspects of coeducation’.

\textsuperscript{119} Sherborne School has 543 pupils (204 in the Sixth Form), with a 92/8 boarding/day split. Its website shows that morning lessons start at 08:30 and finish at 12:45. There are no afternoon lessons on Tuesdays and Thursdays. Sports are played on Tuesday, Thursday and Friday afternoons and there are other activities for 2 hours on Wednesday afternoons. Afternoon lessons finish on Mondays at 16:00, Wednesdays at 17:50 and

\textsuperscript{129} See also note 5 of Annex 2, above.

\textsuperscript{130} Sevenoaks School stated in the Schools’ Joint Factual Statement that the use of DfES statistics to underpin academic attainment significantly understated and misrepresented the school’s academic standing and requested the insertion of the following text:

‘The average post–16 point score per student used to demonstrate academic attainment in Table 2 is derived from tables produced by the DfES for 2003. These tables are based on those taking A Level examinations. At Sevenoaks School (as indicated in paragraph 116 of Annex 5), the vast majority of pupils study for the International Baccalaureate Diploma. When the results for these pupils are taken into account, the average post–16 point score per student increases from 322 to 448. This needs to be taken into account in reading paragraph 8 of Annex 4, as well as in paragraphs 57, 69,112,116,117,138,169 and 172 of Annex 5.’ The OFT notes and records Sevenoaks School’s argument but does not consider that it alters the OFT’s conclusions for the limited purpose of market definition in this case.

Fridays at 17:55. Saturday morning lessons are until 12:30. Study time is from 19:15 to 20:45 during the week.\textsuperscript{132} The average 'A' level points per pupil are 351 (50 points for GCSEs) and the pupil/teacher ratio is 8.3:1.

In its response to the OFT's section 26 Notice, Sherborne School states that 'a boys school which offers full boarding, and cooperates in many ways with Sherborne School for Girls, we are effectively in competition with many boarding schools, both for boys only and coeducational, across the country.'\textsuperscript{134} Further, '[w]e do not identify any particular school as competitors when setting fees and the group of schools used for 'benchmarking' of fees has included coeducational schools and those with a much higher proportion of day pupils than Sherborne.'\textsuperscript{135} Sherborne School then lists the following 26 boarding schools in its response: Winchester College*; Bryanston School*; Tonbridge School*; Marlborough College*; Charterhouse*; Cranleigh School*; Canford School*; Shrewsbury School*; King’s Bruton; Harrow School*; King’s School Canterbury*; Eton College*; Haileybury*; Rugby School*; Radley College*; St. Edward’s School*; Malvern College*; Downside; Westminster School*; Millfield School*; Stowe School*; Wellington College*; Bradfield College*; Uppingham School*; Oundle School*; and King’s College Taunton. As regards competition for day places the response identifies state schools such as 'the Gryphon School in Sherborne (coeducational, ages 11 to 18), Yeovil College (16+ Sixth Form College) and other more distant independent schools such as King’s Bruton or Millfield*.'\textsuperscript{136}

The response also mentions that the last survey of prospective parents carried out by Sherborne School in 2003 showed that of 120 respondents, they made visits to about 50 other schools. Those visited by the greatest number of respondents were Canford School* (27), Marlborough College* (22), Bryanston School* (21), Winchester College* (16), Eton College* (17), Charterhouse School* (12), Radley College* (13), Harrow School* (11), King’s Taunton (7), Cranleigh School* (7), Millfield School* (6), Uppingham School* (5), Wellington College* (5), Stowe School* (5), King’s Bruton (4). A Marketing paper looking at 'Threats; Strengths of Competitors' submitted by Sherborne School in its response makes the following remarks 'Marlborough*, Canford*, Bryanston* – now all busy with most prospective parents visiting all these schools. Better location. All co–ed. Main single–sex competitors – Radley*, Tonbridge*, Winchester*, Charterhouse* (girls in 6th form), Wellington College* (girls in 6th form)'.

Four Participant schools, which are all coeducational are picked up by the sift. The sift picks up Millfield School* as the closest Participant school competitor (19 miles, 37 minutes drive time away). Millfield School is a much larger school but has slightly lower levels of academic attainment and as indicated above, is identified as a competitor in the day market by Sherborne. Bryanston School* and Wells Cathedral School* are also identified (22 miles and 43 minutes drive time away, 26 miles and 47 minutes drive time away respectively). Bryanston School* and Wells Cathedral School* are more

\textsuperscript{132} Sherborne School website: 5 April 2005 (document ECON0020).
\textsuperscript{133} Sherborne School’s response dated 15 March 2004 (document TXD0258R) to Question 19 of the OFT section 26 Notice dated 9 February 2004 (document SMG029).
\textsuperscript{134} Ibid.
\textsuperscript{135} Ibid.
\textsuperscript{136} Ibid.
\textsuperscript{137} Sherborne School: Prospective Parents’ Questionnaire – 2003 (document TXD0453).
similar sized schools to Sherborne School and also have fairly similar levels of academic attainment. Canford School* is somewhat further away (32 miles, 59 minutes drive time away) but is probably the most comparable in terms of size (601 pupils) and academic attainment (average 'A' level points 351, 54 points for GCSEs).

Shrewsbury School

123) Shrewsbury School is a boys–only boarding school founded in 1552 by King Edward VI located in Shrewsbury, Shropshire. In 1882 it moved to its present site above the river Severn. The school has 687 pupils (292 in the Sixth Form) and has a 19/81 day/boarding split. The Independent Schools Inspectorate Report\(^{138}\) indicates that the school draws many boys from its own locality, because it is keen to honour its obligation to the town as its sixteenth century Grammar School. However, it recruits a significant proportion of its intake each year from most other areas of England, Wales and Scotland, including the Home Counties and Birmingham, Manchester and Liverpool. In sustaining its numbers and the calibre of its entry, Shrewsbury competes not only with similar independent schools in the Rugby Group but also with the great city day schools\(^{139}\). The Good Schools Guide remarks that the school is famous for rowing (facilities on the Severn, representation at national level), and strong on cricket and most games\(^{140}\). The average 'A' level points per pupil are 364 (51 points for GCSEs) and the pupil/teacher ratio is 7.2:1.

124) In its response to the OFT's section 26 Notice enquiries\(^{141}\) the school states that it is effectively a boarding school that accepts day pupils. Day pupils are located in two day houses which have comparable facilities to the school's boarding houses but without the sleeping facilities. The school’s day–to–day routine requires day pupils to attend the school on six, or sometimes even seven days per week, often until late in the evening. They note that the heavy reliance on boarders distinguishes the school from other independent day schools. ‘However the School does seek to attract day pupils, which means that the School must take account of local parents’ presumed ability to pay when setting day fees’.

125) The response indicates that the school considers that it seeks to attract pupils on three different levels. Nationally it considers its main 'competitors' to be Eton*, Harrow*, Winchester*, Radley*, Rugby*, Oundle* and Marlborough*. Regionally – the school considers its main 'competitors' to be Malvern*, Repton*, Uppingham*, Cheltenham* and Stowe*. In the local/day market, the school considers its main 'competitors' to be Wolverhampton Grammar School, Wrekin College, Ellesmere and Oswestry (although the school does not consider that any of these schools are similar to it in terms of status or quality). The response also notes that ‘In terms of day pupils, the school is the only independent boys' secondary school in Shrewsbury, so local parents who want


\(^{139}\) Shrewsbury School website: 27 October 2005 provides map showing wide geographic area from which boarders are drawn (document ECON0031).


\(^{141}\) Shrewsbury School’s response dated 10 March 2004 (document TXD0189R) to Question 18 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG030).
independent day education for their sons most choose the school or travel twice daily to Oswestry, Wrekin or Ellesmere'.

126) No other Participant school has been picked up in the sift because of the school’s geographic location. The furthest competitor mentioned in its response is Wolverhampton Grammar School which is 30 miles (50 minutes drive time) away from the school.

**Stowe School**

127) Stowe School is an independent day and boarding school for boys aged between 13 and 18 years which admits girls into the Sixth Form. The school was founded in 1923 by the purchase of Stowe House, once the home of the Dukes of Buckingham and Chandos. It is set in 750 acres of landscaped garden and parkland. Girls were first admitted in September 1974\(^{142}\). The school has 592 pupils (291 in the Sixth Form), with a 84/16 boy/girl and 88/12 boarding/day split. The ISI report indicates that entry is based on the results of the Common Entrance examination (requiring a 50% pass mark), the 13+ scholarship examination or the school’s own assessment tests for those pupils entering from maintained schools or from overseas. Once in Year 9, all pupils take the appropriate Middle Years Information System (MidYIS)\(^{143}\) Test which suggests that the intake is well above national levels but below that for maintained selective schools. The average ‘A’ level points per pupil are 304 (41 points for GCSEs) and the pupil/teacher ratio is 7.0:1.

128) In its responses to the OFT’s section 26 Notice enquiries\(^ {144}\) Stowe School does not supply a list of competitors as it states that ‘*our client is distinguishable from many other schools in that it does not exclusively focus on academic results or sporting achievement. Rather, it encourages a breadth of mind and learning which maximised the opportunities for its pupils to fulfil their aims and potential, whatever that might be….The school has a national and international pupil base and does not consider itself to be in direct competition with any particular schools. It may and does share characteristics with other schools, but in terms of its overall position it is unique*’.

129) The 2004 Strategic Marketing Review noted that ‘*Stowe is known and appreciated for managing a wider ability range without a hothouse atmosphere*’\(^ {145}\). The review indicated that when registering parents were ‘*just browsing*’ or had registered at a number of different schools, or were looking at ‘*a counterweight to Eton*’\(^ *\). The majority of current pupils had contacted Stowe School as a result of two factors: firstly, on the recommendation from their prep school head and; secondly some parents were using Stowe School as a fallback or alternative, if their child failed to attain entry to Eton College\(^ *\) or Harrow School\(^ *\). The strategic review identifies a list of competitor schools, defining a competitor to Stowe School as ‘*a School which appears on the same mental list as Stowe when parents, their children and those who influence them are in the process of assessing the desirability of a school*’.

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\(^{143}\) The MidYIS Tests are designed to measure developed ability and (as far as possible) are not curriculum based.

\(^{144}\) Stowe School’s response dated 11 March 2004 (document SJN0382R) to Question 27 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG033).

130) Paragraph 4.1 of the Marketing Review summarises Stowe’s main competitors as single–sex boarding schools including: Eton College*, Harrow School*, Radley College*, Shrewsbury School* and Sherborne School*.

131) Coeducational boarding schools identified include: Marlborough College*, Rugby School*, Uppingham School*, Oundle School*, St Edward’s School*, Bryanston School* and Cheltenham College*. Those competitors with a coeducational Sixth Form have been identified as: Bradfield College* and Wellington College*. The Marketing review states that ‘Stowe’s main rivals at the moment appear to be Eton*, Radley* and Harrow* followed by Marlborough*, Uppingham* and Rugby* and then Wellington*, Shrewsbury*, St Edward’s* and Oundle*’.

132) The sift shows St Edward’s School* (26 miles, 44 minutes drive time away) as the closest Participant school to Stowe School. St Edward’s School* is a coeducational school and is of a similar size to Stowe School (634 pupils). St Edward’s School* has a slightly higher level of academic attainment (average ‘A’ level points per pupil are 339 (56 points for GCSEs)) and a similar teacher pupil ratio of 7.8:1. Rugby School*, which is a coeducational school is also picked up by the sift (33 miles, 51 minutes drive time away). Rugby School* is a somewhat larger school (781 pupils) and has a higher level of academic attainment (average ‘A’ level points per pupil are 390 (54 points for GCSEs)).

**Strathallan School**

133) Strathallan School is an independent boarding and day school for boys and girls aged 10 to 18 located just a few miles south of Perth in Scotland. The school was founded in 1912 and is based in an 18th century castle in 150 acres of rural Perthshire. The school is inter–denominational. The day starts at 08:15 for all pupils. There are a total of 452 pupils with a 73/27 boarding/day split. There are 95 pupils in the Sixth Form and although their results are not published by the DfES they do offer both the Scottish Highers and 'A' levels. Sixty to seventy per cent of pupils take ‘A’ levels.

134) Strathallan School in its response to the OFT’s section 26 Notice lists the schools it considers to be competitors when it sets fees. For boarding: Fettes College, Glenalmond College, Merchiston Castle School, Loretto School, Gordounstoun, St Leonards and Sixth Form College. For Day: Fettes College, Glenalmond College, Merchiston Castle School, Loretto School and Ardvreck because they provide similar day pupil facilities. It should be noted that Ardvreck is a prep school and hence not picked up in the sift but the other day schools are picked up by the sift (with the exception of Loretto School, which is 53 miles (74 minutes drive time away)).

135) There is no Participant School within a 60 minute drive time of Strathallan School reflecting the fact that it is the only Scottish School that participated in the survey.

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Tonbridge School

Tonbridge School is a boys–only school occupying an extensive site of about 150 acres on the northern edge of the town of Tonbridge, and is largely self–contained within that site. The school was established in 1553. It has 739 pupils (290 in the Sixth Form) with a 57/43 boarding/day split. There are seven boarding houses and five day boy houses, each with a complement of about sixty boys. Each day house has its own separate dining room either within the house or in the Orchard Centre. Tonbridge School has a high level of academic attainment and average 'A' level points per pupil are 415 (57 points for GCSEs). The pupil/teacher ratio is 8.1:1. The school’s aim is 'to promote and maintain to equal strength the ‘three legs of the tripos’ the academic, the sporting and the cultural, making the School wholly distinct'. They indicate that the ‘main difference between Tonbridge and otherwise comparable schools are its traditional, structured nature, the insistence in equal value attached to ‘the three legs of the tripos’, the strength of the house system reinforced by individual house catering. We do indeed value and invest in these differences, which are attractive to prospective parents'.

In its response to the OFT's section 26 Notices Tonbridge School identifies competitor schools 'in the sense of schools which prospective parents tell us at interview they are most likely to consider alongside Tonbridge, are (in rough order of precedence): Boarding: Eton*, Winchester*, Radley*, Charterhouse*, Harrow*, Marlborough*, King’s Canterbury*. Day: Sevenoaks*, Westminster*, St Paul’s*, King’s Canterbury*, Dulwich*.'

The sift picks up Sevenoaks school* (6 miles, 15 minutes drive time away) as the nearest Participant school competitor. Sevenoaks School*, a coeducational school, is slightly larger (978 pupils) but has similar academic results at GCSE (54 average points per pupil) level but slightly lower results at ‘A’ level (321 average points per pupil). Epsom College* is also in the sift (30 miles, 44 minutes drive time away). Epsom College* is a similar size school (695 pupils, 312 in Sixth Form) albeit that it is not quite as academic as Tonbridge School. Worth School* (36 miles, 49 minutes drive time away) is also shown in the sift. Worth School is a boys–only Roman Catholic school, much smaller (441 pupils) and less academic than Tonbridge School. The King’s School Canterbury* is also picked up by the sift (43 miles, 60 minutes drive time away). King’s School Canterbury* is a coeducational school, is of a similar size (788 pupils) and also has a high level of academic attainment (average ‘A’ level points per pupil are 402 (54 points for GCSEs)).

Truro School

Truro School is the only large independent school in Cornwall. The school is a coeducational boarding/day school with 818 pupils (a 61/39 boy/girl split) of which 10% are boarders. There are 238 pupils in the Sixth form. Founded in 1880, the school is located on the ridge overlooking the River Truro and the Cathedral, with views of the

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138) See also note 5 of Annex 2, above.
139) See also note 5 of Annex 2, above.
sea. The school has a Methodist Foundation and, while welcoming those of all faiths and none, it is conscious of its tradition. Truro School used to have a higher percentage of boarders. 40% of entry is from its prep school 'Treliske'. The school day starts at 08:50 until 15:45 which is then followed by activities until 17:00 when most day pupils go home. However the Library is open until 17:45. The average 'A' level points per pupil are 338 (50 points for GCSEs) and the pupil/teacher ratio is 10.7:1.

140) In its response to the OFT's section 26 Notices\(^{150}\) Truro School states 'that Truro School is the only HMC school in Cornwall, and the only co–ed independent school. There are 820 pupils aged 11–18 in the school, of whom only 85 are boarders: of these 10–15% are part of a well established Truro/Germany connection, and well over half come from families who either live in or have family connections in Cornwall, and who are essentially weekly boarders'. They consider that they essentially serve a Cornish market, and do not see themselves as competing with independent schools outside Cornwall, except to an extent at sixth form level. Unless a family is looking in particular at single–sex girls schools (of which there is one nearby, Truro High School), or are considering long–distance boarding, or are interested in a much smaller scale school, Truro School is the only real choice for families seeking independent education in Cornwall.

141) The Truro School Development Plan contains Fee Comparison day and boarding fees for the following schools: Truro Hill School (girls–only), Edgehill, Exeter, Kelly College, Plymouth College and Shebbear College\(^{151}\). Some indication of Truro’s competitors can also be seen in the e–mail of 29 April 2002 which lists fees for Truro High School, Plymouth College, West Buckland, St Josephs, Grenville, Kelly, Queens Taunton, Exeter, Edgehill, Maynard and Bolitho\(^{152}\).

142) 'The Finance – Risk Assessment' paper points to continued strength of local economies which is exhibited by the increased level of professional workforce coming into the immediate area which is a natural source of Independent School pupils. 'Pupil numbers remain buoyant, although it is possible that the size of the necessary fee increase for 2003/2004 may place a strain on this – particularly on the more traditional source of parents. Nevertheless the levels of fees set by the school remains competitive in the region and the school retains a dominant position in Cornwall. This position is threatened by increasing investment in some areas of the Maintained Sector– in particular Truro College\(^{153}\).'

143) The sift does not pick up another Sevenoaks school within a 60 minute drive time of Truro School, which is unsurprising given that the school is the only large independent school in Cornwall.

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\(^{150}\) Truro School's response dated 4 March 2004 (document SJN0081R) to Question 22 of the OFT's section 26 Notice dated 9 February 2004 (document SMG036).

\(^{151}\) Truro School Development Plan Fee Comparisons Table 2002/2003 (document SJN0093).

\(^{152}\) Document SJN0095.

Uppingham School

144) Uppingham School is a coeducational boarding school. Founded in 1584, the school – in the words of the prospectus – ‘had a quiet time for nearly three centuries’ until the arrival as headmaster in 1853 of Edward Thring, who in effect invented the idea of all-round education. Set on a hill in a small market town within England’s smallest county of Rutland, Uppingham is first and foremost a boarding school, although it admits a small number of day pupils.154 There are a total of 724 pupils (332 in the Sixth Form) of which around 71% are boys and 2% are day pupils. The average ‘A’ level points per pupil are 349 (49 points for GCSEs) and the pupil/teacher ratio is 7.4:1.

145) In its response to the OFT’s section 26 Notice the school states that ‘Uppingham does not consider that it competes generally with other schools in terms of fees. Research conducted by MORI on behalf of Uppingham School in 1998 demonstrates that other factors are far more significant for making their choice of school. Factors such as the atmosphere of the school, academic standards, range of interests and activities, quality of the staff, quality of the pastoral care, and the Headmaster, are considered by parents as much more important than fees’. They note that ‘Uppingham is one of only a few full boarding schools in Britain. Schools which are most similar are therefore full or predominately boarding schools. Given the predisposition of parents to choose a boarding school within two hours of their place of residence, and the comparative scarcity of full boarding schools, we believe that Rugby* and Oundle* both offer a product which substantially matches our own: biggish coeducational boarding schools in the middle of England. Oakham*, which is very close to us, is different enough not to attract many who might consider Uppingham (market research concluded in 1998 that Oakham is not popular amongst our parents – see Coeducational Market Report by Russel Speirs, answer 35). Oundle* is our major competitor to judge from what current parents say when they visit. Those looking at us might also consider Repton or Harrow or Stowe (see MORI report, answer 35)’.

146) The Coeducation Market Report indicates that Uppingham’s key competitors are: Oundle*, Oakham*, Rugby*, Haileybury*, Repton*, Stowe*, The Leys, Eton* and Greshams. The Report identifies Oundle* as its greatest threat – it is visited by a third of its new parents and liked by many of them. According to the Report, Oakham*, while visited by 20% is generally not popular among Uppingham parents. Rugby* is visited as often as Oakham* and is generally popular. According to the Report, the remaining schools are less important competitors, but as a group, still worth of attention.

147) The sift indicates that Oakham School* is the nearest Participant school 6 miles (11 minutes drive time) away. Oakham School* which is also a coeducational school is slightly larger than Uppingham School (1,037 pupils) but has similar levels of academic attainment (average ‘A’ level points per pupil are 337 (51 points for GCSEs)). Oakham School* describes Uppingham School as amongst locally obvious choices for those

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parents who prefer to send their children to a school primarily because of its boarding ethos, whether or not they wish their child to board or attend on a daily basis. Uppingham School considers that whilst Oakham School* is the closest geographically Oundle School is their major competitor. Oundle School* at 18 miles (34 minutes drive time) away is also coeducational and a larger school (1,068 pupils) with slightly higher levels of academic attainment (average 'A' level points per pupil are 397 (50 points for GCSEs). Rugby School* at 34 miles (58 minutes drive time) away, a coeducational school, is the same size as Uppingham School and has slightly higher levels of academic attainment (average 'A' level points per pupil are 390 (54 points for GCSEs)).

**Wellington College**

148) Wellington College is a boys school with girls in the Sixth Form situated in a 400 acre woodland estate in Crowthorne, Berkshire about 35 miles to the South West of London. Wellington College, granted its Royal Charter in 1853 as the 'Royal and Religious Foundation of The Wellington College', the national memorial to the Great Duke, was opened in 1859. There are a total of 769 pupils (342 in the Sixth Form) of which around 93% are boys and 15% day pupils (many of these become boarders as they advance through the school). Day pupils are spread among the boarding houses and thus play a full part in the life of the school. The Good Schools Guide 2004\(^{157}\) remarks that 'for a school that many parents consider alongside Eton* and Radley*, exam results are less good than one would expect. Has always emphasised breadth over swotting and takes in a broad ability range. And GCSE results are improving so things are looking up for the future'. Average 'A' level points per pupil are 337 (50 points for GCSEs), and the pupil/teacher ratio is 8.1:1.

149) In its response to the OFT’s section 26 Notice\(^{158}\) Wellington College states that 'by the time that prospective parents decide to visit Wellington College and perhaps a number of alternative schools, they have already bought into the idea of providing their child with an education at an all–in cost in excess of £100,000 over five years. The fee differential between the schools they visit plays little, if any part, in their final decision. … Wellington competes with other schools in environment, ethos, facilities, welfare and all round education that Wellington is able to offer at a broadly similar order of magnitude'.

150) In its response, Wellington College further states that it must keep its fees in line with other boarding schools in Southern England as 'Wellington is not a specialist sports or music school with extensive specialist facilities in one or more fields as a few schools can claim – to justify the higher cost. So, Wellington monitors and ranks the boarding fees of 22 other boys only or co–educational boarding schools in England, and within that number 11 (marked *\(^{159}\)) of the schools within an hour's drive of Wellington are

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\(^{159}\) The OFT notes that Wellington College has used the symbol ‘*’ in this quotation. As set out at note 1 of this annex, above, the OFT has used this symbol to denote a Participant school which is identified in the individual competitor analysis for a school. Consequently, the quotation in this paragraph contains some asterisks that denote Participant schools and some asterisks that denote school’s within an hour’s drive of Wellington College. To distinguish between the two different uses of the asterisk in this quotation, the OFT has underlined the asterisks inserted by Wellington College, which therefore appear as ‘*’.

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151) The furthest of the non–Participant day schools listed above is King’s Wimbledon which is picked up by the sift and is 31 miles (54 minutes drive time) away from Wellington College. In terms of drive times all but one of the Participant schools picked up by the sift have drive times that are shorter than this, lending support to them being in the same day market. Charterhouse* a boys boarding school with girls in the Sixth form is 17 miles (47 minutes drive time) away and has a broadly comparable level of academic attainment. The sift picks up Bradfield College* at 22 miles (35 minutes drive time) away which is also a boys school that admits girls in the Sixth Form. Bradfield College* is a slightly smaller school with 595 pupils but has a similar sized Sixth Form (304 pupils). The level of academic attainment at Bradfield College* (average ‘A’ level points per pupil are 290 (45 points for GCSEs)), is slightly lower than that at Wellington College. Epsom College* which is a coeducational school is also picked up in the sift at 32 miles (46 minutes drive time) away. Epsom College* is closer in size to Wellington College with 695 pupils and has a fairly similar level of academic attainment. Cranleigh School* is shown at 36 miles (59 minutes drive time) away from Wellington College. Cranleigh School* is a similar size to Bradfield College but has a higher level of academic attainment (average ‘A’ level points per pupil are 374 (52 points for GCSEs)). Winchester College*, a boys–only school with a small proportion of day pupils (2.9%), is also picked up at 37 miles (49 minute drive time). Winchester (702 pupils) is of a similar size to Wellington though Winchester has a higher level of academic attainment at ‘A’ level (average points per pupil are 407) though not at GCSE (40 points).

**Wells Cathedral School**

152) Wells Cathedral School is a coeducational school founded in the 12th Century in the market town of Wells. It is housed in medieval and 18th Century buildings in a conservation area around Wells Cathedral. A key distinguishing feature of Wells Cathedral School is music. The school shares this with three other independent specialist schools in England. However, Wells Cathedral state that they differ from the other specialist schools in that they embrace music within a coeducational school which also provides a very full curriculum for very many pupils who are not particularly musical160. The school has 487 pupils of which183 are in the Sixth Form. It has a 37/63 boarding/day split and a 51/49 boy/girl split. The school’s website161 states that ‘Wells remains true to its origins and long history by valuing its Christian ethos at the

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heart of everything’. The average ‘A’ level points per pupil are 319 (50 points for GCSEs), and the pupil/teacher ratio is 8.1:1

153) In its response to the OFT’s section 26 Notice\textsuperscript{162}, Wells Cathedral School states that market research carried out with existing parents in 2001 indicates that Wells has no real competitors apart from possibly Millfield School*, which is a very different school in terms of pupil numbers, facilities and ethos. However it is geographically the closest independent school to Wells Cathedral School. In terms of ethos, they state that possibly the other Cathedral schools like Hereford, King’s Ely and King’s Canterbury School* are most similar. Locally, they are not dissimilar to Prior Park, although they do not consider any of these schools as being competitors. For very musically talented children, the only schools with which Wells Cathedral School believe they compare are other Music and Dance Scheme music schools such as Chethams in Manchester, the Purcell School in London and the Yehudi Menuhin School.

In its response to the OFT’s section 26 Notice\textsuperscript{162}, Wells Cathedral School states that market research carried out with existing parents in 2001 indicates that Wells has no real competitors apart from possibly Millfield School*, which is a very different school in terms of pupil numbers, facilities and ethos. However it is geographically the closest independent school to Wells Cathedral School. In terms of ethos, they state that possibly the other Cathedral schools like Hereford, King’s Ely and King’s Canterbury School* are most similar. Locally, they are not dissimilar to Prior Park, although they do not consider any of these schools as being competitors. For very musically talented children, the only schools with which Wells Cathedral School believe they compare are other Music and Dance Scheme music schools such as Chethams in Manchester, the Purcell School in London and the Yehudi Menuhin School.

154) The response lists the schools considered by parents as being competitors. Three state maintained schools are mentioned, Kings of Wessex in Cheddar, Strode College (Sixth Form College) in Street and the Blue School. Within the independent sector, the Bruton schools, the Taunton schools, Millfield School* and possibly independent fee–paying schools located in Bath or Bristol are also cited. Wells Cathedral School states in their response that they do not consider any of these schools to be similar to them\textsuperscript{163}.

155) The sift picks up Millfield School* 8 miles (16 minutes drive time) away as the closest Participant school to Wells Cathedral School. As already mentioned, Millfield School* is a much larger school (1,258 pupils). However the level of academic attainment is broadly similar (average ‘A’ level points per pupil are 313 (45 points for GCSEs)), and the pupil/teacher ratio is 7.4:1. As indicated above, Wells Cathedral School considers that it has no real competitors apart from possibly Millfield School*. Clifton College* which is a coeducational school is picked up by the sift at 23 miles (43 minutes drive time) away. Clifton College* is slightly larger than Wells Cathedral School and has lower levels of performance at GCSEs but slightly higher at ‘A’ levels (average ‘A’ level points per pupil are 339 (45 points for GCSEs)). Sherborne School* which is boys–only is shown at 26 miles (46 miles drive time) away. Sherborne School* is a similar sized school to Wells Cathedral School (543 pupils) and has a fairly similar level of academic attainment at GCSEs but higher performance at ‘A’ level (average ‘A’ level points per pupil are 351 (50 points for GCSEs)). Sherborne School* still has a shorter drive time than the furthest non–Participant school listed above and picked up in the sift, which is the Taunton School 27 miles (49 minutes drive time) away.

**Westminster School**

156) Westminster School is situated in the heart of London with mostly Grade I and II listed buildings. Westminster School has 705 pupils (340 in the Sixth Form) and has a 25/75 boarding/day split. Girls are admitted to the Sixth Form accounting for almost 14% of total pupils in the school. The average ‘A’ level points per pupil are 469 (60 points for GCSEs) and the pupil/teacher ratio is 7.7:1. Competition to get into Westminster is

\textsuperscript{162} Wells Cathedral School’s response dated 5 March 2004 (document JXS0834R) to Question 19 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG039).
\textsuperscript{163} Ibid.
intense. Typically about 300 boys will sit the pre-interview test which takes place 18 to 24 months before Common Entrance at age 13 for 110 places. Between 40 and 43 per cent of pupils come from Westminster Under School. For 16+ between 200 and 250 candidates, mostly girls, will sit the 16+ test for 60 places.\footnote{Westminster School’s response dated 5 March 2004 (document TXD1056R) to Question 27 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG040).}

157) In its response to the OFT’s section 26 Notice\footnote{Ibid.}, Westminster School remark that they consider they are unique due to the school’s central London location, facilities and high academic standards. The only geographically comparable school is St Paul’s boys school, which although it has a small boarding element is run as a day school i.e. few evening activities and no Saturday morning working. St Paul’s is housed in 1960s buildings and surrounded by excellent sports facilities. Westminster School’s response mentions Dulwich College but says that it does not have the equivalent academic reputation. In addition it notes that neither Dulwich College nor St Paul’s have coeducational Sixth Forms. Winchester College* and Eton* have similar academic standing to Westminster School, but they are traditional rural boys boarding schools.

158) In the school’s 2002/2003 Budget\footnote{Westminster School Draft 2002/2003 Budget (Attachment J): Fee Comparisons Table – (Attachment J1) (document TXD1106).} there is a fee comparisons table showing both boarding and day fees for the following schools: Dauntsey’s*, Downe House*, Dulwich, Epsom*, Eton*, Haileybury*, Harrow*, KCS Wimbledon, King’s Canterbury*, Marlborough*, Millfield*, Mill Hill*, Sevenoaks*, Sherborne*, St Paul’s, Tonbridge*, Winchester*, Woldingham* and Worth Abbey. With the exception of Dulwich College, KCS Wimbledon and St Paul’s these are all Participant schools.

159) The sift does not pick up another Participant School. Whilst some schools such as Mill Hill School* and Epsom College* meet the requirements regarding location they are sifted out on academic grounds. Tonbridge School* is sifted out due to distance from Westminster School. However both Mill Hill* and Tonbridge* identify Westminster School as a competitor in the day market. Westminster School is highly selective, which will limit the extent to which prospective parents of these other schools can consider them as an alternative for their child, unless they are particularly able. The sift does however pick up the schools such as St Paul’s School for boys and Dulwich College which are mentioned as competitor schools by Westminster School.

\textit{Winchester College}

160) Founded in the 14th century by William of Wykeham, Bishop of Winchester and Chancellor to Richard II, Winchester College is a boys boarding school situated in Winchester. The centre of the School is still the 14th century quad but extra buildings have been added across the ages and the boarding houses are scattered across the town. Winchester College is a full boarding school with 702 pupils (300 pupils in the Sixth Form). The ISI report\footnote{Winchester College: Independent Schools Inspectorate report dated 10–14\textsuperscript{th} November 2003 available from www.isinspect.org.uk/reports/1327_03_03r.htm.} indicates that the College prides itself on giving pupils a broad, liberal education and on stimulating interest in intellectual and cultural matters. The report indicates that it makes a high priority of academic teaching and learning but
its distinctive curriculum includes a large non-examined element. Average 'A' Level points per pupil are 407 (40 points for GCSEs).

161) Winchester College is a leniency applicant and was not required to supply information in response to an OFT section 26 notice. In response to an informal request concerning the number and nature of its day pupils Winchester College stated that it had 38 day pupils in the 2001/2002 academic year, 23 day pupils in the 2002/2003 academic year and 21 day pupils in the 2003/2004 academic year\textsuperscript{168} (although the ISCis data that the OFT has for the 2003/2004 academic year indicated that all the pupils were boarders).

162) The sift picked up Wellington College\textsuperscript{*}, a boys school with girls in the Sixth Form, at 37 miles from Winchester (a drive time of 49 minutes). Wellington is similarly sized (769 pupils) with a lower level of academic attainment at 'A' level (average points per pupil are 337) though not at GCSE (50 points). Also picked up was Canford\textsuperscript{*}, a coeducational school, at 39 miles (58 minutes drive time). Canford is slightly smaller (601 pupils) and has a lower academic attainment at 'A' level (351 points) but again not at GCSE (54 points). The final participant school identified was Charterhouse\textsuperscript{*} at 42 miles (60 minutes drive time). Charterhouse (723 pupils) is of a similar size to Winchester and also has a small proportion of day pupils (3.6%). Academic attainment at 'A' level is slightly lower (383 points) but is higher at GCSE (51 points).

\textbf{Woldingham School}

163) Woldingham School is a girls-only Roman Catholic school located in Caterham, Surrey and is set in large grounds surrounded by 700 acres of farmlands. The school was formerly the Convent of the Sacred Heart, Woldingham and was founded in 1842. It is a Catholic school in the ecumenical tradition and welcomes girls from Christian and non-Christian faiths, provided they are sympathetic to the goals and mission of the Sacred Heart. The school has 529 pupils of which 149 are in the Sixth Form, with a 81/19 boarding/day split. The ISI report\textsuperscript{169} indicates that pupils enter the school with good levels of academic attainment and go on to achieve very good results in public examinations. The average 'A' level points per pupil are 355 (51 points for GCSEs), and the pupil/teacher ratio is 7.9:1.

164) In its response to the OFT's section 26 Notice\textsuperscript{170} Woldingham School states that, 'it regards all leading girls boarding schools are competitors in terms of standards and these in alphabetical order are, Benenden\textsuperscript{*}, Cheltenham Ladies’ College\textsuperscript{*}, Downe House\textsuperscript{*}, Malvern Girls, Roedean, Sherborne Girls, St Marys Ascot, Wycombe Abbey\textsuperscript{*}. However it is important to note that these schools are not considered when setting fees.' In comparative tables shown in a recruitment trends paper the following schools are also included: New Hall, St Catherine’s Bramley, St Leonards–Mayfield School\textsuperscript{*}, St Swithuns and Sevenoaks School\textsuperscript{*}.

\textsuperscript{168} Winchester College: Letter to OFT dated 20 October 2004 (document TXD0459).
\textsuperscript{170} Woldingham School’s response dated 5 March 2004 (document SJN0662R) to Question 19 of the OFT’s section 26 Notice dated 9 February 2004 (document SMG041).
A Paper on 12+ and 13+ intake in 2002\textsuperscript{172} notes that the Headmistress of Laverock, Woldingham's main feeder school, said that her top pupils are looking at Sevenoaks School\textsuperscript{*} and Caterham. In particular she commented that Caterham have been offering increased financial incentives to day pupils, which makes it an increasingly attractive school.

In a report to the school Governors entitled 'Promoting Woldingham School'\textsuperscript{173} which looks at recruitment trends, it was noted that whilst 50% of the girls leaving Laverock had in the past gone to Woldingham School it is now split equally (33.3\%) amongst Woldingham School, Sevenoaks School and the recently coeducational Caterham. Woldingham School's location on the periphery of London on the M25 and on the railway line from Victoria via East Croydon to East Grinstead and Uckfield makes it easily accessible for girls from South West London and Surrey, which are both upwardly mobile areas.

In a 1999 survey of Woldingham School parents\textsuperscript{174}, 36\% of parents indicated that the choice of Woldingham School was made by their daughter. The Catholicity of the school is no longer a major draw. It was not high on the parents' list of priorities and only a third of parents are sending their sons to Catholic schools. Most of the parents confined their choice to girls' schools. Only 46\% of parents visited 20 coeducational schools and half of these visited Sevenoaks School\textsuperscript{*}. The survey shows Benenden School\textsuperscript{*}, rather than St Mary's Ascot as Woldingham School's main boarding competitor and provides a list of schools visited by 10 or more parents.

A report prepared by AMV Inspiration\textsuperscript{175} in July 2003 entitled 'What they think of Woldingham School' states that the staff consider that some Catholic families don't see Woldingham School as Catholic enough. They are looking for a cosy, traditionally religious feel, possibly involving nuns, weekend masses for example. St Mary's School is considered a more traditional Catholic school catering for families who desire formality. Parents considered that St Mary's Ascot was the school which attracted the 'particularly rich, particularly bright and particularly Catholic'.\textsuperscript{176} St Leonards–Mayfield\textsuperscript{*} was thought to offer much the same as Woldingham School but was generally perceived as much more traditional and rule–bound.

The sift picked up Epsom College\textsuperscript{*} at 12 miles (31 minutes drive time) away, which is a coeducational school. Epsom College\textsuperscript{*} is larger than Woldingham School (695 pupils, 312 in Sixth Form). However its level of academic attainment (average 'A' level points per pupil as 347 (50 points for GCSEs)), and a pupil/teacher ratio of 7.7:1, are very similar to those of Woldingham School. Sevenoaks School\textsuperscript{*} is also picked up by the sift at 18 miles (32 minutes drive time) away. Sevenoaks School\textsuperscript{*} has slightly better results at GCSEs (53.5) but slightly lower results at 'A' level (321 points per pupil)\textsuperscript{177} and a similar pupil/teacher ratio of 8.1:1. Sevenoaks School is mentioned several times in marketing reports as a competitor and, given its close proximity, lends weight to it

\textsuperscript{172} Paper attached to Minutes of Woldingham Marketing Development Meeting held on 8 November 2001 (document SJN0741).
\textsuperscript{174} Woldingham School: Parents Survey: Overall Results: August 1999 (document SJN0749).
\textsuperscript{175} What They Think of Woldingham School: AMV Inspiration – July 2003 (document SJN0750).
\textsuperscript{176} What They Think of Woldingham School: AMV Inspiration – July 2003, Page 26 (document SJN0750).
\textsuperscript{177} See also note 5 of Annex 2, above.
being in the same day market. Charterhouse* is also picked up by the sift at 37 miles (57 minutes drive time) away from Woldingham School. Charterhouse* is a boys boarding school that admits girls in the Sixth Form and has only a small proportion of day pupils (4%). The furthest non–Participant school identified in a recruitment trends paper is St Catherine’s Bramley 36 miles (57 minutes drive time) away which is a girls independent day school suggesting that, due to its geographic location near the M25, Woldingham School has a wide catchment area.

**Worth School**

Worth School is a boys–only Roman Catholic school. The original building is Lord Cowdray’s late 19th century house set in 500 acres of Sussex parkland. Worth School was established as a senior school in 1959 (prior to this date Worth School was a preparatory school founded in 1933 for Downside School). The school’s website178 indicates that, ‘Worth is a Benedictine school and its core purpose is to foster a Christian and Catholic way of life within the tradition and spirit of St Benedict. The School aims to keep Christ at the centre of its community life’. The school has 441 pupils of which 147 are in the Sixth Form, with a 68/32 boarding/day split. Day students arrive by 08:40 each morning and are free to leave at 18:15. A minibus service is available for those who require transport to and from the school, which covers the Tunbridge Wells area and Oxted/Godstone. The average ‘A’ level points per pupil are 330 (49 points for GCSEs), and the pupil/teacher ratio is 7.3:1.

In its response to the OFT’s section 26 Notice179 Worth School notes that ‘The School has a very strong ethos, based on the traditions of the Rule of St Benedict, which promotes the development of each pupil as an individual rather than having a determination for success in any particular area, be that academic or sporting, where this does not suit the individual pupil’. As regards competitor schools Worth School states that ‘Typically we would consider that Roman Catholic parents compare us to Roman Catholic boarding schools throughout the country if looking for a boarding place. Families who are not Roman Catholic and who are seeking boarding places and prospective day parents are considered to be more likely to look at schools within the local mid–Sussex and south Surrey area, between Reigate to the north and Brighton to the south, Horsham to the west and Tunbridge Wells to the east, including Ardingly, Brighton, Eastbourne* and Hurstpierpoint Colleges.’180 Amongst documents supplied by Worth School in its response to OFT enquiries are fee comparison tables181 which feature as comparator schools Downside, Hurstpierpoint, Ardingly, Brighton and Lancing College*. Brighton College is picked up in the sift as the furthest non–Participant school at 24 miles (46 minutes drive time) away.

Epsom College* is the closest Participant school at 23 miles (36 minutes drive time) away. Epsom College* is a coeducational school with a higher proportion of day pupils (50%) and a fairly similar level of academic attainment (average ‘A’ level points per

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181 Table on Fee Levels 2000/01 attached to papers and Agenda for Meeting of the Abbott’s Board of Governors, Comprising Both Monks and Laity: Friday 23 March 2001 (document SJN0237).
pupil are 347 (50 points for GCSEs). Lancing College* and Cranleigh School* are picked up at 26/27 miles from Worth School both a 50 minutes drive time away. They are both coeducational schools. Lancing College* is a similar size to Worth School (448 pupils) and Cranleigh School* is slightly larger (604 pupils). The latter has a slightly higher level of academic attainment (average ‘A’ level points per pupil are 374 (52 points for GCSEs)). Sevenoaks School* is also picked up in the sift and although 30 miles away is only 40 minutes drive time away from Worth School. Sevenoaks School* is a much larger school and has better results at GCSEs but similar results at ‘A’ level (average ‘A’ level points per pupil are 321182 (53 points for GCSEs)). Tonbridge School* is shown in the sift at 36 miles (49 minutes drive time) away and, like Worth School, is a boys-only school but has a much higher level of academic attainment (average ‘A’ level points per pupil are 415 (57 points for GCSEs)). Charterhouse* is also picked up by the sift at 43 miles (60 minutes drive time) away from Worth School. Charterhouse* is a boys boarding school that admits girls in the Sixth Form and has only a small proportion of day pupils (4%).

Wycombe Abbey School

173) Wycombe Abbey School was founded as an independent boarding school for girls in 1896 and it continues in this tradition. The school is set in 160 acres of parkland and occupies the original Abbey buildings, dating from 1798, as well as modern purpose built accommodation. Wycombe Abbey is founded on the Anglican faith, though it also caters for pupils of other faiths or none183. The school’s website indicates that there are a few day girls. The school says that the fact that they are called ‘day boarders’ indicates the school’s commitment to ensuring their full integration into the life of the school. Day boarders may choose to arrive in time for breakfast, should stay for supper in school on most days, and must attend events in the evenings and at the weekend184. The average ‘A’ level points per pupil are 473 (61 points for GCSEs), and the pupil/teacher ratio is 6.6:1.

174) In its reply to the OFT’s section 26 Notice185 Wycombe Abbey School’s response to the question ‘Which schools do you consider as competitors in setting fees..’ is that ‘it is difficult to say that any school is our competitor in this respect. Close comparators might [but only for some purposes] be Downe House*, Cheltenham Ladies’ College* and to a lesser extent Benenden* because of similarities in the education and facilities offered, but we do not usually know which schools potential or current parents consider for their daughters.’ The section 26 response outlines those factors that influence parents in choice of a school and then lists competitors in the broadest sense to be as follows: for day pupils at 13+, the grammar schools, as well as other independent day schools, both coeducational and girls-only; at Sixth form, day schools and Sixth form colleges in the girls’ home town/city. The school concludes that ‘by definition, the schools most similar to Wycombe Abbey are the other girls’ senior boarding schools’.

182 See also note 5 of Annex 2, above.
175) Downe House School* is the nearest Participant School at 43 miles (52 minutes drive time) away. As indicated above Downe House School* as a girls–only boarding school is a close comparator school offering the same range of sporting and recreational facilities and a similarly high level of academic attainment. Average 'A' level points per pupil are 463 (58 for GCSEs). Charterhouse*, a boys boarding school (3% day) with girls in the sixth form, is picked up at 44 miles (58 minutes drive time) away. Charterhouse*, albeit that it has a slightly lower level of academic attainment (average 'A' level points per pupil are 383 (51 for GCSEs)), offers a vast array of sporting and recreational facilities.

**Conclusion**

176) In conclusion, to determine those Participant schools that are likely to compete most intensely with each other for day pupils it has been necessary to adopt a case by case approach. This reflects the fact that the competitive constraints that a school faces in the market for day services are likely to be specific to its locality and other factors that determine the extent to which current and prospective parents view these schools as competitors. The results show that for 36 Participant schools there is at least one other comparable Participant school and in many cases several such Participant schools that are sufficiently close to them to draw pupils from the same catchment area.

177) There are 9 Participant schools where no other Participant school has been identified as being a close competitor for day pupils within the same local market. Those Participant schools are: Ampleforth College, Gresham’s School, Repton School, Royal Hospital School, Sedbergh School, Shrewsbury School, Strathallan School, Truro School and Westminster School. In the case of one of these, Westminster School, this is due to the fact that its level of academic attainment is significantly higher than those of the other Participant schools that are within a 60 minute drive time away. It should be noted, however, that whilst Westminster School may not be constrained by these other Participant schools, Westminster School is likely itself to exercise some competitive constraint over them, at least in respect of those prospective pupils that meet Westminster School’s selection requirements.

178) These nine schools all submitted day fee, as well as boarding fee information to the Sevenoaks Survey and received information through the Survey concerning the intended day fee increases of other Participant schools. Furthermore, as described in Section II of this Decision, the internal documents of two of the nine schools indicate that the results of the Sevenoaks Survey were nevertheless used to benchmark their day fees with those of other Participant schools.

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186 Mill Hill School and Epsom College.
187 Paragraphs 364 and 1067 above.
188 Ampleforth College and Strathallan School.
### ANNEX 6 – the Parties’ replies to the OFT’s requests for turnover information

1. The table below sets out the relevant and total turnover figures submitted by the Parties identified at paragraph 11 of this Decision.

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Ampleforth College³</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• St Laurence Education Trust, a company limited by guarantee</td>
<td>[…][C]</td>
<td>14,391,095</td>
</tr>
<tr>
<td>• Ampleforth Abbey Trustees, a company limited by guarantee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• The Community of St Laurence of the English Congregation of Black Monks of the Order of St Benedict</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

¹ Where there is more than one Party in respect of the same Participant school and separate turnover figures have been provided for each Party, a total turnover figure for all the related Parties which the OFT considers form a single undertaking relating to that Participant school is also recorded in this table. This is consistent with paragraph 3 of the Schedule to the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (SI 2000/309), as amended by the Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004 (SI 2004/1259). Where the Parties have submitted a single, global, turnover figure, only that single turnover figure is recorded. The turnover figures recorded will not necessarily take account of any other undertakings which prepare separate accounts that may nevertheless form part of the same undertaking.

² Unless otherwise stated in relation to a particular school, all figures in the table are for the 2004/2005 business year. For schools with both boarding and day pupils, the relevant turnover figure is the combined total of boarding and day relevant turnover.

³ See documents TC01d and TC01e. Ampleforth College did not provide the OFT with separate figures for each Party.
<table>
<thead>
<tr>
<th></th>
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</thead>
<tbody>
<tr>
<td><strong>Bedford School</strong>&lt;sup&gt;4&lt;/sup&gt;</td>
<td>…[C]</td>
<td>41,198,000</td>
</tr>
<tr>
<td>• The trustees of The Bedford Charity (The Harpur Trust), an unincorporated charitable trust</td>
<td>…[C]</td>
<td></td>
</tr>
<tr>
<td><strong>Benenden School</strong>&lt;sup&gt;5&lt;/sup&gt;</td>
<td>…[C]</td>
<td>10,988,692</td>
</tr>
<tr>
<td>• Benenden School (Kent) Limited</td>
<td>…[C]</td>
<td></td>
</tr>
<tr>
<td><strong>Bradfield College</strong>&lt;sup&gt;6&lt;/sup&gt;</td>
<td>…[C]</td>
<td>13,596,659</td>
</tr>
<tr>
<td>• The Warden and Council of Saint Andrew’s College Bradfield, a company incorporated by Royal Charter</td>
<td>…[C]</td>
<td></td>
</tr>
<tr>
<td><strong>Bromsgrove School</strong>&lt;sup&gt;7&lt;/sup&gt;</td>
<td>…[C]</td>
<td>14,607,221</td>
</tr>
<tr>
<td>• Bromsgrove School, a company limited by guarantee</td>
<td>…[C]</td>
<td></td>
</tr>
</tbody>
</table>

<sup>4</sup> See document TC02c and TC02d. The relevant turnover figure is a combined figure which represents (i) relevant turnover generated by Bedford School, the school subject to the OFT enquiry, plus (ii) the relevant turnover generated by two other senior schools run by the same Party, namely Bedford High School and Dame Alice Harpur School, together with turnover generated by the International Study Centre also run by that Party. The Bedford Charity had argued that only (i) should be treated as relevant turnover and that (ii) should be excluded from relevant turnover. The OFT considers that both (i) and (ii) fall within the definition of relevant turnover and has therefore included the combined figure for (i) and (ii) in this table.

<sup>5</sup> See document TC03a.

<sup>6</sup> See document TC04b.

<sup>7</sup> See document TC05a.
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Bryanston School¹³</td>
<td></td>
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</tr>
<tr>
<td>• Bryanston School Incorporated</td>
<td>[...][C]</td>
<td>13,711,801</td>
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<tr>
<td>Canford School¹¶</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Canford School Limited</td>
<td>[...][C]</td>
<td>10,878,561</td>
</tr>
<tr>
<td>Charterhouse School¹⁰</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• The Governing Body of Charterhouse School, a body corporate</td>
<td>[...][C]</td>
<td>15,798,256</td>
</tr>
<tr>
<td>Cheltenham College¹¹</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• The President and Council of Cheltenham College, a body corporate</td>
<td>[...][C]</td>
<td>14,694,508.70</td>
</tr>
</tbody>
</table>

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¹ See documents TC06a and TC06b.
² The turnover figures provided by Canford School for the business year 2003/2004 were not stated to be either relevant turnover or total turnover. In the above table the OFT has recorded the gross fee income figure provided by Canford School in the relevant turnover column; this does not include any other non-fee income which may form part of the undertaking’s turnover for the purposes of the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (SI 2000/309), as amended by the Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004 (SI 2004/1259). In the total turnover column, the OFT has recorded the net income figure – less investment income and interest – taken from the financial statements together with directors’ and auditors’ reports for Canford School Limited for Canford School’s 2003/2004 business year.
³ See document TC08a.
⁴ See document TC09d.
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Cheltenham Ladies’ College</strong>&lt;sup&gt;12&lt;/sup&gt;</td>
<td><img src="image.png" alt="Image" /></td>
<td><img src="image.png" alt="Image" /></td>
</tr>
<tr>
<td>• The Cheltenham Ladies’ College, a body corporate</td>
<td><img src="image.png" alt="Image" /></td>
<td>18,747,000</td>
</tr>
<tr>
<td><strong>Clifton College</strong>&lt;sup&gt;13&lt;/sup&gt;</td>
<td><img src="image.png" alt="Image" /></td>
<td><img src="image.png" alt="Image" /></td>
</tr>
<tr>
<td>• The Clifton College, a body corporate</td>
<td><img src="image.png" alt="Image" /></td>
<td>18,465,356</td>
</tr>
<tr>
<td><strong>Cranleigh School</strong>&lt;sup&gt;14&lt;/sup&gt;</td>
<td><img src="image.png" alt="Image" /></td>
<td><img src="image.png" alt="Image" /></td>
</tr>
<tr>
<td>• Cranleigh School, a company limited by guarantee</td>
<td><img src="image.png" alt="Image" /></td>
<td>13,925,000</td>
</tr>
<tr>
<td><strong>Dauntsey’s School</strong>&lt;sup&gt;15&lt;/sup&gt;</td>
<td><img src="image.png" alt="Image" /></td>
<td><img src="image.png" alt="Image" /></td>
</tr>
<tr>
<td>• The trustees of the Dauntsey School Foundation, an unincorporated charitable trust&lt;sup&gt;16&lt;/sup&gt;</td>
<td><img src="image.png" alt="Image" /></td>
<td>10,123,197</td>
</tr>
</tbody>
</table>

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<sup>12</sup> See document TC10b.
<sup>13</sup> See documents TC11c.
<sup>14</sup> See document TC12b.
<sup>15</sup> In the table above, in lieu of relevant and total turnover figures from Dauntsey’s School, the OFT has recorded the gross fee income figure provided by Dauntsey’s School in the relevant turnover column; this does not include any other non–fee income which may form part of the undertaking’s turnover for the purposes of the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (SI 2000/309), as amended by the Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004 (SI 2004/1259). In the total turnover column, the OFT has recorded the total incoming resources figure taken from the Dauntsey School Foundation Governors’ Report and Financial Statements For the Year Ended 31 August 2005.
<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td><strong>Downe House School</strong>¹⁷</td>
<td>![]+[</td>
<td>C]</td>
</tr>
<tr>
<td>- Downe House School, a company limited by guarantee</td>
<td>![]+[</td>
<td>C]</td>
</tr>
<tr>
<td><strong>Eastbourne College</strong>¹⁸</td>
<td>![]+[</td>
<td>C]</td>
</tr>
<tr>
<td>- Eastbourne College (Incorporated)</td>
<td>![]+[</td>
<td>C]</td>
</tr>
<tr>
<td><strong>Epsom College</strong>¹⁹</td>
<td>![]+[</td>
<td>C]</td>
</tr>
<tr>
<td>- Epsom College, a company limited by guarantee</td>
<td>![]+[</td>
<td>C]</td>
</tr>
<tr>
<td>- The Royal Medical Foundation of Epsom College, an incorporated charity</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong>:²⁰</td>
<td>![]+[</td>
<td>C]</td>
</tr>
<tr>
<td><strong>Eton College</strong>²¹</td>
<td>![]+[</td>
<td>C]</td>
</tr>
</tbody>
</table>

¹⁶ Responsibility for running the school, together with most of the assets and liabilities of the Dauntsey School Foundation, was transferred in August 2006 to Dauntsey’s School, a newly incorporated company limited by guarantee. Both Dauntsey’s School and the Dauntsey School Foundation are Parties to this Decision. The most recently available turnover figures relate to the period before the school’s reorganisation, however.

¹⁷ See document TC14b.

¹⁸ See document TC15b.

¹⁹ See document TC16h.

²⁰ See note 1 above.
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>The Kynge’s College of Our Ladye of Eton beside Windesore, otherwise called Eton College, an exempt charity founded by Royal Charter</td>
<td>[…][C]</td>
<td>[…][C]</td>
</tr>
<tr>
<td>Gresham’s School, a company limited by guarantee</td>
<td>[…][C]</td>
<td>6,996,607</td>
</tr>
<tr>
<td>The trustees of Gresham’s School Trust, an unincorporated charitable trust</td>
<td>[…][C]</td>
<td>0</td>
</tr>
<tr>
<td>The Wardens and Commonalty of the Mistery of Fishmongers of the City of London, a company incorporated by Royal Charter</td>
<td>[…][C]</td>
<td>229,311</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td>[…][C]</td>
<td><strong>7,225,918</strong></td>
</tr>
</tbody>
</table>

21 See document TC17e. The figures relating to Eton College are for the 2003/2004 business year given that Eton College changed its business year in 2005 and figures for the business year ending in 2005 were not available at the time of the OFT’s request for relevant and total turnover information.

22 See documents TC20a and TC20d. The OFT notes that the turnover figures for the Fishmongers Company relate to the business year 1 January to 31 December 2004 rather than the 2004/2005 business year. Gresham’s School has a different business year and its turnover figures relate to its 2004/2005 business year.

23 See note 1 above.

24 The figures for Haileybury are for the business year 2003/2004 and exclude non–fee income which may form part of the undertaking’s turnover for the purposes of the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (SI 2000/309), as amended by the Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004 (SI 2004/1259); see document TC21c.
<table>
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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>The Governors of Haileybury, a body corporate</td>
<td>[…][C]</td>
<td>19,362,750</td>
</tr>
<tr>
<td>Harrow School²⁵</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• The Keepers and Governors of the Possessions, Revenues, and Goods of the Free Grammar School of John Lyon, within the town of Harrow–on–the–Hill, a body corporate</td>
<td>[…][C]</td>
<td>24,819,000</td>
</tr>
<tr>
<td>King’s School Canterbury²⁶</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• The Governors, the Headmaster and the Lower Master of The King’s School of the Cathedral Church of Canterbury in the City of Canterbury, a body corporate</td>
<td>[…][C]</td>
<td>17,111,805</td>
</tr>
<tr>
<td>Lancing College²⁷</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Lancing College Limited, a private company limited by shares</td>
<td>[…][C]</td>
<td>8,211,369</td>
</tr>
<tr>
<td>• The Woodard Corporation, a company limited by guarantee</td>
<td>[…][C]</td>
<td>56,432,393</td>
</tr>
</tbody>
</table>

²⁵ The turnover figures for Harrow School exclude income from a related school which may form part of the undertaking’s turnover (see document TC22e). The turnover figures provided by Harrow School are for the 2003/2004 business year as figures were not available for the 2004/2005 business year at the time of the OFT’s information request.

²⁶ See document TC23e.

²⁷ See documents TC24k and TC24l.
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Total:28</td>
<td>[...][C]</td>
<td>64,643,762</td>
</tr>
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<td>Malvern College</td>
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<tr>
<td>• Malvern College, a body corporate</td>
<td>[...][C]</td>
<td>12,535,231</td>
</tr>
<tr>
<td>Marlborough College29</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marlborough College, a body corporate</td>
<td>[...][C]</td>
<td>20,074,282</td>
</tr>
<tr>
<td>Millfield School30</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Millfield, a company limited by guarantee</td>
<td>[...][C]</td>
<td>32,320,000</td>
</tr>
<tr>
<td>Mill Hill School31</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• The Mill Hill School Foundation, a company limited by guarantee</td>
<td>[...][C]</td>
<td>8,396,000</td>
</tr>
</tbody>
</table>

28 See note 1 above.
29 See document TC26d.
30 The relevant turnover figure for Millfield School excludes non-fee income which may form part of the undertaking’s turnover for the purposes of the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (SI 2000/309), as amended by the Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004 (SI 2004/1259); see document TC27c.
31 See document TC28b. The OFT notes that the turnover figures provided by Mill Hill School are for the 2003/2004 business year as figures were not available for the 2004/2005 business year at the time of the OFT’s information request.
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Oakham School32</td>
<td>[...]</td>
<td>14,732,000</td>
</tr>
<tr>
<td>• The trustees of Oakham School, an unincorporated charitable trust</td>
<td>[...]</td>
<td>14,732,000</td>
</tr>
<tr>
<td>Oundle School33</td>
<td>[...]</td>
<td>21,284,000</td>
</tr>
<tr>
<td>• The Governing Body of Oundle School, a body corporate</td>
<td>[...]</td>
<td>21,284,000</td>
</tr>
<tr>
<td>Radley College34</td>
<td>[...]</td>
<td>14,417,018</td>
</tr>
<tr>
<td>The Council of St Peter's College, Radley a body corporate</td>
<td>[...]</td>
<td>14,417,018</td>
</tr>
<tr>
<td>Repton School35</td>
<td>[...]</td>
<td>8,651,570</td>
</tr>
<tr>
<td>• Repton School, a company limited by guarantee</td>
<td>[...]</td>
<td>8,651,570</td>
</tr>
<tr>
<td>• Sir John Port’s Charity, a company limited by guarantee</td>
<td>[...]</td>
<td>0</td>
</tr>
</tbody>
</table>

32 See document TC29b. The OFT notes that the turnover figures provided by Oakham School are for the 2003/2004 business year as figures were not available for the 2004/2005 business year at the time of the OFT’s information request.

33 See documents TC30d and TC30e. The OFT notes that the turnover figures provided by Oundle School are for the 2003/2004 business year as figures were not available for the 2004/2005 business year at the time of the OFT’s information request.

34 See document TC31c.

35 See document TC32c. The OFT notes that the turnover figures provided by Repton School are for the 2003/2004 business year as figures were not available for the 2004/2005 business year at the time that the OFT requested relevant and total turnover figures.
<table>
<thead>
<tr>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>Total: ³⁶</td>
<td>[...][C]</td>
<td>8,651,570</td>
</tr>
<tr>
<td>Royal Hospital School ³⁷</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• The Secretary of State for Defence acting in execution of the Greenwich Hospital Acts 1865 to 1996 and the Defence (Transfer of Functions) Act 1964</td>
<td>–</td>
<td>–</td>
</tr>
<tr>
<td>Rugby School ³⁸</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• The Governing Body of Rugby School, a body corporate</td>
<td>[...][C]</td>
<td>14,369,783</td>
</tr>
<tr>
<td>St Edward’s School, Oxford ³⁹</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• St Edward’s School, a company limited by guarantee</td>
<td>[...][C]</td>
<td>12,619,869</td>
</tr>
<tr>
<td>St Leonards–Mayfield School ⁴⁰</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

³⁶ See note 1 above.
³⁷ Given that under section 73 of the Act a penalty may not be imposed in respect of Royal Hospital School (see paragraph 174 of this Decision), this table does not include turnover figures in respect of Royal Hospital School.
³⁸ See document TC33c.
³⁹ See document TC38a. The relevant turnover figure for St Edward’s School, Oxford excludes non-fee income which may form part of the undertaking’s turnover for the purposes of the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (SI 2000/309), as amended by the Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004 (SI 2004/1259).
<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• St Leonards–Mayfield School, a company limited by guarantee</td>
<td>[...][C]</td>
<td>5,987,929</td>
</tr>
<tr>
<td>Sedbergh School(^1)</td>
<td>• Sedbergh School, a company limited by guarantee</td>
<td>[...][C]</td>
</tr>
<tr>
<td>Sevenoaks School(^2)</td>
<td>• Sevenoaks School, a company limited by guarantee</td>
<td>[...][C]</td>
</tr>
<tr>
<td></td>
<td>• The trustees of Sevenoaks School Foundation, an unincorporated charitable trust</td>
<td></td>
</tr>
<tr>
<td>Sherborne School(^3)</td>
<td>• Sherborne School, a company limited by guarantee</td>
<td>[...][C]</td>
</tr>
</tbody>
</table>

\(^{40}\) See document TC39f.

\(^{41}\) See document TC34c. The turnover figures provided by Sedbergh School are for the 2003/2004 business year as figures were not available for the 2004/2005 business year at the time of the OFT’s information request.

\(^{42}\) See document TC35b. The Parties related to Sevenoaks School did not provide the OFT with separate figures for each Party.

\(^{43}\) See document TC36b. The relevant turnover figure for Sherborne School excludes certain non–fee income which may form part of the undertaking’s turnover for the purposes of the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (SI 2000/309), as amended by the Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004 (SI 2004/1259).
<table>
<thead>
<tr>
<th>School and associated Parties</th>
<th>Parties’ stated relevant turnover for their 2004/2005 business year / £</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Governing Body of Shrewsbury School, a body corporate</td>
<td>[...]£C</td>
</tr>
<tr>
<td><strong>Stowe School</strong></td>
<td></td>
</tr>
<tr>
<td>Stowe School Limited, a company limited by guarantee</td>
<td>[...]£C</td>
</tr>
<tr>
<td><strong>Strathallan School</strong></td>
<td></td>
</tr>
<tr>
<td>Strathallan School, a company limited by guarantee</td>
<td>[...]£C</td>
</tr>
<tr>
<td><strong>Tonbridge School</strong></td>
<td></td>
</tr>
<tr>
<td>Tonbridge School, a company limited by guarantee</td>
<td>[...]£C</td>
</tr>
<tr>
<td>The Master and Wardens of the Guild or Fraternity of the Body of Christ of the Skinners of London, a body</td>
<td>[...]£C</td>
</tr>
</tbody>
</table>

44 See document TC37b. The relevant turnover figure for Shrewsbury School excludes certain non–fee income which may form part of the undertaking’s turnover for the purposes of the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (SI 2000/309), as amended by the Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004 (SI 2004/1259).
45 See document TC40l. The OFT notes that the turnover figures provided by Stowe School are for the 2003/2004 business year as figures were not available for the 2004/2005 business year at the time that the OFT requested relevant and total turnover figures.
46 See document TC41a. The relevant turnover figure for Strathallan excludes certain non–fee income which may form part of the undertaking’s relevant turnover for the purposes of the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (SI 2000/309), as amended by the Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004 (SI 2004/1259).
47 See documents TC42c and TC42f.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total:48</td>
<td>[...][C]</td>
<td>14,834,841</td>
</tr>
<tr>
<td>Truro School⁴⁹</td>
<td>The trustees of the Methodist Independent Education Trust, formerly known as the Methodist Secondary Education Trust, an unincorporated charitable trust</td>
<td>[...][C]</td>
</tr>
<tr>
<td>Uppingham School⁵⁰</td>
<td>The trustees of Uppingham School, an unincorporated charitable trust</td>
<td>[...][C]</td>
</tr>
<tr>
<td>Wellington College⁵¹</td>
<td>The Wellington College, a body corporate</td>
<td>[...][C]</td>
</tr>
<tr>
<td>Wells Cathedral School⁵²</td>
<td>Wells Cathedral School, Limited, a company limited by guarantee</td>
<td>[...][C]</td>
</tr>
</tbody>
</table>

⁴⁸ See note 1 above.
⁴⁹ See document TC44b.
⁵⁰ See documents TC45a and TC45b.
⁵¹ See document TC46f.
⁵² See document TC47o.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Westminster School</td>
<td>[…][C]</td>
<td>15,637,984</td>
</tr>
<tr>
<td>Saint Mary College of Winchester, near Winchester, otherwise called Winchester College</td>
<td>[…][C]</td>
<td>[…][C]</td>
</tr>
<tr>
<td>Woldingham School</td>
<td>[…][C]</td>
<td>9,203,302</td>
</tr>
<tr>
<td>Worth School</td>
<td>[…][C]</td>
<td>7,827,171</td>
</tr>
<tr>
<td>Worth School</td>
<td>[…][C]</td>
<td>7,827,171</td>
</tr>
</tbody>
</table>

53 See document TC48a.
54 See document TC49a.
55 See document TC50d. The Parties related to Woldingham School did not provide the OFT with separate figures for each Party.
56 See document TC51f. The Parties related to Worth School did not provide the OFT with separate figures for each Party.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Wycombe Abbey⁵⁷</td>
<td>[…][C]</td>
<td>12,217,141</td>
</tr>
</tbody>
</table>

⁵⁷ See document TC52a. The OFT notes that Wycombe Abbey’s stated relevant turnover figure is lower than its stated total turnover figure. The OFT understands that this relates to the fact that the total turnover figure was taken from Wycombe Abbey’s statutory accounts whereas the relevant turnover figures were calculated separately. Given the agreed resolution subsequently reached in this case, this is not material to this Decision.