



## Determination

<b>Case reference:</b>	<b>ADA3854</b>
<b>Objectors:</b>	<b>Two parents</b>
<b>Admission authority:</b>	<b>London Borough of Merton for Dundonald Primary School</b>
<b>Date of decision:</b>	<b>15 July 2021</b>

## Determination

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2022 determined by the London Borough of Merton for Dundonald Primary School.**

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

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

## The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by two parents (the objectors), about the admission arrangements (the arrangements) for Dundonald Primary School (the school), a community school for boys and girls aged three to eleven, for September 2022. The objection is to a priority for siblings living outside the catchment area that only applies if the older sibling was offered a place prior to 1 September 2016.

2. The local authority (the LA) for the area in which the school is located is the London Borough of Merton, which is the admission authority for the school. The LA, the school and the objectors are parties to the case.

## Jurisdiction

3. The terms of the academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust, which is the admission authority for the school, on that basis. The objectors submitted their objection to these determined arrangements on 14 May 2021. The objectors have asked to have their identities kept from the other parties and have met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of their names and address to me. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and the part of it that I am considering is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

## Procedure

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

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

- a. a copy of the decision report of 26 February 2021 confirming that the LA had determined the arrangements;
- b. a copy of the determined arrangements;
- c. the objectors' form of objection dated 14 May 2021 and subsequent correspondence;
- d. the school's response to the objection; and
- e. the LA's response to the objection and further material provided in response to my enquiries.

## The Objection

6. The objectors argue that the arrangements are unfair to parents making applications for admission in September 2022, whose older sibling was an in-year admission in the academic year 2016 to 2017. They say it was not made clear at the point of admission that siblings of children allocated places after 1 September 2016 would be accorded a lower priority for a place at the school than children living in the school's admission priority area (APA), which was introduced by the admission arrangements for 2017 to 2018. Paragraph 14 of the Code states that "admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair."

7. The objectors also expressed the view that the local authority did not publish the determined admission arrangements for 2017 to 2018 in accordance with the requirements of Code and that an aspect of the determined admission arrangements for 2017 to 2018 was, in fact, brought into effect in September 2016. These matters are not within my jurisdiction as they do not relate to the admission arrangements for September 2022, but to an earlier set of arrangements. My jurisdiction under section 88H(4) of the Act extends only to the arrangements for admission in September 2022.

## Background

8. The school is located in a heavily populated part of Wimbledon in the London Borough of Merton. Its arrangements for admission in the academic year beginning in September 2016 were the generic ones that applied to almost all community primary schools in the LA area. Those generic oversubscription criteria can be summarised as follows:

1. Looked after children and previously looked after children.
2. Children with exceptional medical or social needs.
3. Children who have a sibling attending the school.
4. Other children prioritised by distance from the school.

9. Changes were made to the oversubscription criteria for Dundonald Primary School for admission in the academic year beginning in September 2017 (the 2017 to 2018 arrangements). An APA was introduced and the oversubscription criteria were altered. The altered oversubscription criteria can be summarised as follows:

1. Looked after children and previously looked after children.
2. Children with exceptional medical or social needs.
3. Children who have a sibling attending the school and who live within the APA.
4. Children who live within the APA.
5. Children who have a sibling attending the school and who live outside the APA.
6. Other children.

Priority within criteria 4 to 6 is determined on the basis of distance from the school. The arrangements also state that where the older sibling was offered a place at the school before 1 September 2016, a younger sibling will be considered under criterion 3 (by implication, whether they live in the APA or not). This provision represents what is often termed “transitional protection”.

10. The altered arrangements were first determined on 15 March 2016. The arrangements for admission to the school in September 2022 are almost identical, apart from the addition of a priority for children of staff, as the third oversubscription criterion. The school has a Published Admission Number (PAN) of 60. The LA has confirmed that, for admission in September 2020 and September 2021, the school was oversubscribed and no places were allocated to children living outside the APA, apart from those siblings who benefitted from the transitional protection, that is, those who had an older sibling who had been offered a place at the school before 1 September 2016.

## Consideration of Case

11. The objectors explain that their child was admitted to the reception year (YR) at the school in January 2017, following an in-year application. They say that it was not made clear to them either when making the application or accepting the offer of a place that, when making future applications for siblings of this child, if they did not live in the APA, those siblings would have a lower priority for a place than children living in the APA:

“When forms were submitted, we relied on the 2016/2017 admissions criteria for the choice of school, while it was not made clear to us at any point that existing arrangements were no longer applicable to our son, who was allocated after September 2016.”

The objectors only became aware of the alterations to the oversubscription criteria in the 2017 to 2018 arrangements when they received a letter from the LA in July 2017, a copy of which they provided to me. This letter explains the changes to the oversubscription criteria and the transitional protection offered to siblings of children allocated a place at the school prior to 1 September 2016. It concludes, with reference to siblings living outside the APA who do not benefit from this protection,

“Given the level of oversubscription at the school, it is unlikely a future sibling application will be successful.”

12. The objectors say that the fact that they were only provided with this information six months after their child had enrolled at the school denied them the opportunity to make “an informed choice of school.” It is important to them that their children do not have to attend different primary schools both for practical reasons and because they wished their children “to be together and thrive academically at the same school.” They contend that is unfair that the transitional protection in the arrangements for admission in September 2022 does not apply to siblings allocated a place at the school prior to 1 September 2017.

13. Before proceeding further, I should make clear that it is not within my jurisdiction to investigate further the particular circumstances of the objectors and the chain of events they outline. My jurisdiction extends only to whether the arrangements for admission to the school in September 2022 comply with the Code. I would only comment that the LA has not challenged the objectors’ contention that they were only informed personally in July 2017 of the change to the admission arrangements and its implication for them. That said, I have

not been provided with specific evidence that the LA did not fulfil the requirement, in paragraph 1.47 of the Code, to display a copy of the determined arrangements for 2017 to 2018 on its website for the whole of the offer year, that is from 1 September 2016 to 31 August 2017. The change to the arrangements for 2017 to 2018 was preceded by a period of consultation, as required by the Code. This elicited over 50 responses, including specific references to the proposed transitional protection provision.

14. Very many admission authorities, particularly those for primary schools, seek to give priority both to children who live in the immediate vicinity of the school (or in a specific catchment area if this is different) and also to siblings of current pupils. Strong arguments can be made for the importance of all children from both groups being able to attend a particular primary school. Sometimes, especially for popular schools in densely populated urban areas, it is not possible for this to be the case. Dundonald Primary School has not been able to admit all of the children living in its APA into YR in recent years; it has not been suggested to me that the outcome will be significantly different for admission in September 2022. To give priority to all siblings, whether they live in the APA or not, would, of course, have the effect of reducing the number of children living in the APA who could be allocated places. The LA, as admission authority, decided with effect from September 2017, to give a higher priority only to siblings who live in the APA. This was, I imagine, a pragmatic decision. The Code gives no absolute right either to siblings or to children living in the catchment area to obtain a place at a particular school. The ordering of the oversubscription criteria in the arrangements for the school does not breach any requirements of the Code.

15. Sometimes, when making a change in priorities, admission authorities will include transitional provisions, usually to protect the families of children currently at the school who would otherwise be disadvantaged by the change. Such protection is often time-limited. There is no requirement to provide such protection, but it is possible that, in some specific circumstances, the lack of transitional provisions might be considered to be unfair in its effect on certain groups of children and therefore in breach of the Code. In my view, the transitional protection provided by the arrangements is entirely appropriate and, indeed, generous in the timescale over which it applies.

16. I recognise the possibility, highlighted by the objectors' experience, that some parents making in-year applications to the school in the academic year 2016 to 2017 may well not have been aware of the change in admission arrangements for 2017 to 2018. The LA decided that it should communicate this information before parents enrolled their children at the school in September 2017; it appears, at least in the objectors' case, not to have provided the same information to parents of children admitted in-year. However, unfortunate though this may be, I do not consider that this renders the arrangements for admission in September 2022 unfair and therefore not compliant with the Code. The LA was not under any statutory duty to communicate directly with individual parents about changes to admission arrangements.

17. It is not for me to suggest how the LA, as admission authority for the school, might address individual cases. I note that a child admitted to YR in the academic year 2016 to

2017 will be in the final year of primary school (year 6) when a younger sibling is admitted to YR in September 2022. This means that the two siblings would only spend one year together at primary school before the older one transfers to secondary school. The two siblings would then spend several years at different schools. Furthermore, the arguments for children being able to be at the same school when they are very young reduce as the first child grows older and more independent and may be able, for example, to travel to school on his or her own.

18. I do not find that the arrangements for admission in September 2022 are unfair. I do not uphold the objection.

## Other Matter

19. The arrangements make reference to “residence orders” in respect of the oversubscription criterion giving priority for previously looked after children. Residence orders were replaced by child arrangements orders in 2014. The LA recognised this oversight and undertook to revise the arrangements.

## Determination

20 In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2022 determined by the London Borough of Merton for Dundonald Primary School.

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

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

Dated: 15 July 2021

Signed:

Schools Adjudicator: Peter Goringe