



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** ADA3608

**Objector:** The North East Law Centre

**Admission authority:** The Governing Board of Gosforth East Middle School, Newcastle

**Date of decision:** 30 August 2019

### 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 2020 determined by the governing board for Gosforth East Middle School, Newcastle.

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

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of 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 the North East Law Centre, the objector, about the admission arrangements (the arrangements) for Gosforth East Middle School (the school), a foundation school for children aged 9 to 13 for September 2020. The objection is that the arrangements disadvantage service families.
2. The local authority for the area in which the school is located is Newcastle City Council (the local authority). The local authority is a party to this objection. Other parties to the objection are the governing board of the school and the objector.

## Jurisdiction

3. These arrangements were determined under section 88C of the Act by the school's governing board which is the admission authority for the school. The objector submitted the objection to these determined arrangements on 14 May 2019. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

## Procedure

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

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

- a) the objector's form of objection dated 14 May 2019 and subsequent correspondence;
- b) a copy of the arrangements;
- c) copies of the minutes of the meeting of the governing board at which the arrangements were determined;
- d) the school's response to the objection;
- e) the local authority's response to the objection; and
- f) maps of the area identifying relevant schools;

## The Objection

6. The objector is a community law centre which provides legal advice and related services to disadvantaged people. The objection stated *"if a family moves into the area and makes a normal admissions round application (or an in-year application), it is very difficult for that family to secure a place at Gosforth East Middle School (or, as it happens, at either of the other two middle schools) because the child has not attended any of the nine first schools in Gosforth (and will also have no older sibling at the school)."*

7. The objector said that it advised service families moving to Gosforth as a result of a service posting and it was concerned that the *"fortress Gosforth' approach will continue to adversely disadvantage Service families in breach of the letter and spirit of the Military Covenant, as further articulated at paragraph 2.18(b) of the Code, as well as the general requirements that (i) oversubscription criteria must be fair under paragraph 14; (ii) oversubscription criteria must be reasonable and not unfairly disadvantage social groups at paragraph 1.8; and (iii) naming feeder schools must be reasonable at paragraph 1.15"*.

## Other Matters

8. When I considered the arrangements as a whole I noted that the arrangements said “*All applications for school places must be made on Newcastle City Council’s school application form and returned to Newcastle City Council.*” As set out in paragraphs 2.1 to 2.3 of the Code this is not the case. For the normal admission round applications must be made on the application form provided by the local authority in which the applicant lives and returned to that authority.

9. The section in the arrangements concerning the tie breaker did not appear to me to be clear, paragraph 1.8 of the Code requires that arrangements contain “*an effective, clear and fair tie breaker*”.

10. When I raised these matters with the school, after consulting with the local authority, it proposed revisions to the wording of the arrangements which when formally adopted by the governing board would address these two concerns. I will not refer to these matters again in this determination.

## Background

11. The school is part of a three-tier school system which serves the Gosforth area north of Newcastle city centre. In this system children attend one of the nine first schools until the age of nine before transferring to one of three middle schools which they attend until the age of 13 when they transfer to the high school. A two-tier school system with transfer from primary to secondary school at the age of 11 operates across the rest of the city. All three middle schools give priority in their admission arrangements to children attending the first schools and the high school gives priority to children attending the middle schools.

12. The school has a published admission number of 128 and the oversubscription criteria can be summarised as follows.

1. Looked after and previously looked after children.
2. Children attending one of three named first schools.
3. Children attending one of the other six named first schools.
4. Children with siblings at the school.
5. Children with exceptional medical reasons for attending the school.
6. Other children with those living closest to the school having priority.

13. If the school is oversubscribed from within the nine feeder schools, priority is given to siblings and then to those living closest to the school. For the other criteria children living closest to the school have priority with random allocation being used as a final tie breaker if necessary.

## Consideration of Case

14. The objector set out the background to the 'military covenant' also known as the 'armed forces covenant' and noted that this has been adopted by the local authority which is committed to ensure that *"members of the Armed Forces community are not to be at a disadvantage when they try to access public services such as education"*.

15. After setting out the oversubscription criteria for the school the objector said *"if a family moves into the area and makes a normal admissions round application (or an in-year application), it is very difficult for that family to secure a place at Gosforth East Middle School (or, as it happens, at either of the other two middle schools) because the child has not attended any of the nine first schools in Gosforth (and will also have no older sibling at the school)." The objector described the admissions policy as "fortress Gosforth" and said that it "adversely affects all families moving into the area, but what is particularly relevant for the purposes of the Code is that Service families in particular will be adversely affected."*

16. The objector said that service children can experience a high degree of disruption to their education. This was because service families are posted as required by the service and have no control over when or where they are posted and postings do not coincide with school admission rounds. The objector also said that service families move frequently and may not have the support of friends or family in the area. They said that combined with the turbulence caused by having parents away from home for long periods placement at a school with siblings can be vital for a service child.

17. The objector said *"We acknowledge that the School is very popular and oversubscribed. We appreciate that any admission arrangements are likely to result in disappointment to a significant number of parents. However, in our view compliance with letter and spirit of the School Admissions Code 2014 and the Military Covenant is the best method of ensuring that all parents, and in particular Service families, can make an informed decision and have a fair opportunity of securing a place for their child at their preferred school."*

18. In response to the objection the school said *"Gosforth East Middle School is often oversubscribed and we do admit children throughout the year who are neither from feeder schools or have siblings already attending the school. In this academic year we admitted 12 pupils and of the 12 pupils only one was allocated due to a sibling link. All other places were allocated due to distance from home to school measured in a straight line distance. Gosforth East Middle School consider applications from Crown Servant families half a term in advance of arriving in the City and will look to admit over PAN if ranked top of the waiting list. This provides children from Crown Servant families with an advantage over children who are not from Crown Service families."*

19. The local authority provided more detail about the number of children allocated places at first and middle schools in Gosforth outside of the normal admission round in the past academic year. This data confirmed the figure of 12 such admissions supplied by the school. The local authority said that *"Newcastle schools are aware of their responsibilities in*

responding to applications for school places for children of Crown servants returning from overseas to live in the city". It listed three ways in which additional support was given.

*"• Where a vacancy exists at a school a place will be allocated to the family in advance of their move even if they do not have a confirmed address*

*• In-year applications will be processed up to six weeks ahead of a Crown servant family arriving in the City (provided the application is accompanied by an official letter declaring a relocation date)*

*• Where a school is oversubscribed the application is ranked in accordance with the school's oversubscription criteria and, as clarified in the Government's Admission of children of crown servants: explanatory note, if ranked top of the waiting list, the preferred schools will look to admit the child of a Crown servant over their published admission number (PAN). For a child in Key Stage 1 they would be admitted over PAN as an excepted pupil in accordance with the School Admissions Code 2014 section 2.15(f)."*

20. I asked the objector if they could provide some examples to illustrate the issues created for service families by the arrangements. The objector provided three examples, one from 2019 and two from 2016. One of the examples from 2016 concerned two children of first school age, this example would not be affected by the admission arrangements for this middle school. The other example from 2016 included one middle school aged child. This referred to applications to "Gosforth School Trust schools". There are 10 schools in the Gosforth School's Trust, although the schools are in the same trust, the admission authority for each school is its own governing board, it is not clear which of the two middle schools in the trust the application was for, although I will assume that it was for this school. As a result of not being offered a place the middle school aged child was privately educated with 90 per cent of the fees coming from the Defence Continuity of Education Scheme. It is not stated whether or not a place would have been available for the middle school aged child at an alternative school in Newcastle.

21. The most recent example concerned a family with three children posted to Newcastle who contacted the objector in January 2019. Places were available for two of the children at a local school, but not for the eldest child. This child was offered a place at an alternative school and was eventually offered a place at another middle school through the independent appeal process. The objector said "*The School Admissions Code 2014 provides for schools to prioritise children of Service families in their over subscription criteria, if this had been the case this would have put him at the top of the schools waiting list. The school explained that only if he was at the top of the waiting list could he be admitted as an excepted child.*" I find this to be a strange comment because the term 'excepted child' is that used for children admitted to infant classes above the limit of 30 in certain prescribed situations and middle schools do not have infant classes.

22. The objector continued to say "*The use of a high number of feeder schools in over subscription criteria inevitably results in any children whose families move into the area*

*being placed far down the waiting list for their local school. With the current pressure on school places in the area, the current use of nine feeder schools in the over subscription criteria for a popular school results in families new to the area being disadvantaged and, in particular, children of service families who have very little notice of new postings and no choice of the area they move into.”*

23. The first part of the Code referred to by the objector is paragraph 2.18b. This says *“For families of service personnel with a confirmed posting to their area, or crown servants returning from overseas to live in that area, admission authorities **must**: a) ... ; b) ensure that arrangements in their area support the Government’s commitment to removing disadvantage for service children. Arrangements **must** be appropriate for the area and be described in the local authority’s composite prospectus.”*

24. The objector then referred to the requirement that the arrangements are fair as set out in paragraph 14 of the Code which says *“In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.”* The objector also referred to paragraph 1.8 of the Code which says *“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group”*. The last part of the Code which the objector asked me to consider is paragraph 1.15 which says *“Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.”*

25. I am also taking into account paragraph 1.9f of the Code which prohibits admission authorities from giving priority for places on the basis of parents’ occupational status other than in accordance with paragraphs 1.39 to 1.39B. Paragraph 1.39A says *“Admission authorities may give priority in their oversubscription criteria to children eligible for the early years pupil premium, the pupil premium and also children eligible for the service premium.”*

26. This objection essentially asks two questions. The first is, does the use of feeder schools in the oversubscription criteria for this school conform with the Code in general, and the second is, does this unfairly disadvantage service families?

27. The Code permits the school to use feeder schools within its admission arrangements providing the requirements of paragraph 1.15 are met. The feeder schools are named and transparent. This leaves the question of reasonableness and fairness to families who move into the area.

28. A child attending one of the nine first schools is required to move to a new school at the end of Year 4. In my view there is no question that children who must transfer to a new school from these first schools should have priority over children who can continue their education in an all-through primary school for two more years. It is also entirely reasonable that priority is given to children who, although they may not have attended one of the first

schools, will have a sibling at the school ahead of other children with no family connection to the school.

29. If a family with a middle school aged child moves into the area, they could apply for a place at the school. The only grounds on which the governing board could refuse admission is, as phrased in section 86 of the Act, "*prejudice to the provision of efficient education or the efficient use of resources*", in other words the school is full. The governing board may have to defend their position to an independent appeal panel. If after exhausting the appeal process the child is not offered a place then alternative schools will need to be considered. For a child aged 9 to 11, there are 16 two-tier primary schools within a two mile radius of the school's postcode and for children aged 11 to 13, there are three 11 to 18 secondary schools within the same circle. Inspection of a map of the area indicates to me that these schools would all be within the three mile walking distance which is the point at which children over 8 years old would be entitled to free home to school transport. In the event that the child is refused admission to every suitable school (that is one which offers education appropriate to the child's age, ability and gender), within a reasonable distance of their home the local authority has the power to direct a maintained school to admit the child or request that the Secretary of State directs an academy to admit the child as set out in sections 96 and 97 of the Act. In my view it is unlikely that a middle school aged child moving into the area would not be able to obtain a school place within a reasonable distance of their home, all-be-it not necessarily at the nearest school, or at a school preferred by their parents.

30. Admission authorities are only required to keep a waiting list from the date when places are allocated in the normal admission round until 31 December in the year of admission. The waiting list must be ranked in order of the oversubscription criteria. This is set out in paragraph 2.14 of the Code "*Each admission authority **must** maintain a clear, fair and objective waiting list until at least **31 December** of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria. Priority **must not** be given to children based on the date their application was received or their name was added to the list. Looked after children, previously looked after children, and those allocated a place at the school in accordance with a Fair Access Protocol, **must** take precedence over those on a waiting list.*"

31. The school chooses to keep a waiting list every term and the arrangements say these waiting lists are ranked using the oversubscription criteria. From the information about admissions during the last academic year one sibling was offered a place and 11 other children were admitted on the basis of distance from the waiting list. If this is a typical pattern, and it has not been suggested that it is not, it is not necessary for a child to have attended a feeder school or have a sibling at the school in order to be offered a place outside of the normal admission round. Presumably, all children who attended a first school were offered places in the initial round of allocations.

32. I conclude that a family moving into the area would be able to find a school place for a child of middle school age at a school within a reasonable distance of their new home and there remains the possibility that a place may be offered from the waiting list to a child who did not attend a feeder school or have a sibling on roll. The independent appeal process is in place to balance the specific circumstances of the child against any prejudice which may arise to the other children at the school if they were to be admitted. In my view no unfairness arises if a place at the school cannot be offered at the school to a family moving into the area.

33. Families are required to relocate for many reasons outside of their control and it may not be just service families with a child aged between 9 and 11 who unexpectedly find themselves living in Gosforth without support from family and friends. Often, the circumstances of these families will be difficult involving factors such as unemployment, bereavement or family breakdown and the adverse impact on the child's education could be greater than that on a child moving as a result of their parent's posting in the armed forces. If the school is full, these families will be in the same position as the service family posted to the area and will have the same opportunities for a place at an alternative school or to follow the appeal route. I do not think that the child of a service family is necessarily more disadvantaged than a child from any other family moving to the area.

34. Paragraph 2.18 of the Code refers to "*families of service personnel with a confirmed posting*" and "*crown servants returning from overseas*". The statements made by the local authority and the school refer to measures to support "*crown servants*", "*crown servants returning from overseas*" and "*crown service families*". Neither referred to "*families of service personnel*". There is a significant difference. Paragraph 1.39A of the Code allows admission authorities to give priority in their oversubscription criteria to children eligible for the service premium. A child is eligible for the service premium if:

- one of their parents is serving in the regular armed forces
- they have been registered as a 'service child' on the January school census at any point since 2014,
- one of their parents died whilst serving in the armed forces and the pupil receives a pension under the Armed Forces Compensation Scheme or the War Pensions Scheme
- they have a parent who is on full commitment as part of the full time reserve service.

35. Paragraph 1.9f of the Code prohibits giving priority for admission to children of crown servants as doing so would take into account parents' occupational status. Paragraph 2.18 of the Code concerns how applications from crown servants returning from overseas, or service personnel with a posting in the area, must be processed and removing disadvantage for service children.



36. In making the Code, the Government could have decided that it was necessary to make it mandatory for admission authorities to give priority to children eligible for the service premium in order to meet the requirement of paragraph 2.18 to remove disadvantage for service children. It did not do so, leaving it for admission authorities to decide if it was appropriate to give priority to children eligible for the pupil premium in the circumstances of the school.

The evidence provided by the objector is in my view limited and does not show that there is a high level of demand for places at the school from service families who have been posted to the area. Nor does that evidence show these families suffered any greater disadvantage than other families who may move to the area or that any disadvantage was significant. The only way in which the admission authority could give greater priority in its admission arrangements to children of service families is through the permission in paragraph 1.39A of the Code, it has chosen not to do so. Given the low level of demand identified by the objector, the proximity of other suitable schools and the availability of an independent appeal which can take into account a child's circumstances, I do not think it unreasonable for the admission authority to have made this choice. I do not uphold the objection.

## Summary of Findings

37. I find that the use of named feeder schools in the arrangements is transparent and reasonable. The school operates waiting lists beyond the requirements of the Code and children who have not attended one of the feeder schools are admitted through this process.

38. Any family moving into an area where schools are full, whether feeder schools form part of the oversubscription criteria or not, may find that it is not possible for a child to join the nearest school to their home, or the school preferred by their parents. In this case there are a range of alternative schools within a two mile radius of the school's postcode and a mechanism to allow parents to appeal against any decision to refuse a child a place at the school. This mechanism can consider the child's circumstances including that of relocation through an armed service posting and balance those with any prejudice which could be caused to the education of other children already at the school if the child was admitted.

39. While the admission authority could give priority in its oversubscription criteria to children eligible for the service premium, it chooses not to do so. The reported level of demand for places from service families and the availability of alternative schools within a reasonable distance of the school do not suggest that this is unreasonable.

40. For these reasons I do not uphold the objection.

## Determination

41. 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 2020 determined by the governing board for Gosforth East Middle School, Newcastle.

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

43. 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: 30 August 2019

Signed:

Schools Adjudicator: Phil Whiffing