



Office of
the Schools
Adjudicator

Determination

Case reference:	ADA3724
Objector:	An individual
Admission authority:	Inspiring Learners Multi-Academy Trust for Tyntesfield Primary School, Trafford
Date of decision:	16 November 2020

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 2021 determined by Inspiring Learners Multi-Academy Trust for Tyntesfield Primary School, Trafford.

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 a person, (the objector), about the admission arrangements (the arrangements) for Tyntesfield Primary School (the school), a primary academy for pupils aged 3 to 11, for September 2021.**
- 2. The objection is to the priority in the oversubscription criteria given to applicants living within the school's catchment area who do not have a sibling at the school, being a higher priority than is given to siblings of existing pupils living outside the school's catchment area, and to the catchment area itself.**

3. The local authority (LA) for the area in which the school is located is Trafford Council. The LA is a party to this objection. Other parties to the objection are the objector and the school.

Jurisdiction

4. The terms of the Academy agreement between the Inspiring Learners Multi-Academy Trust (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 objector submitted her objection to these determined arrangements on 15 May 2020. 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

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

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

- a. a copy of the minutes of the governing board at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 15 May 2020 and supporting documents;
- d. the LA's response to the objection and supporting documents;
- e. the school's response to the objection and supporting documents.

Background

7. The school is a primary academy for boys and girls aged 3 to 11 years old situated in Sale, Cheshire. The school converted to academy status on 1 February 2018. According to the LA's website the school has a published admission number (PAN) of 60 for September 2021, although this is not set out in any published admission arrangements for the school. The school has not been inspected by Ofsted since conversion to academy status.

Consideration of Case

8. In considering the admission arrangements I have taken these to be those that are published by Trafford Council (Trafford) under the heading "TRAFFORD 2021 PROPOSED ADMISSION ARRANGEMENTS COMMUNITY AND VOLUNTARY CONTROLLED

PRIMARY, INFANT AND JUNIOR SCHOOLS Infant/Primary School Admissions”. These are the admission arrangements provided by the school.

9. The oversubscription criteria set out by the LA for admissions to community and voluntary controlled schools, which have been adopted by the school, are, in abbreviated form:

1. “Looked after children and children who were previously looked after.
2. Children who have been in state care outside of England and ceased to be in state care as a result of being adopted. A child is regarded as having been in state care in a place outside of England if they were accommodated by a public authority, a religious organisation or any other provider of care whose sole purpose is to benefit society.
3. Children who live in the catchment area of the requested school, who will have a sibling attending the requested primary, infant or partner junior school **at the time of the applicant's proposed admission**
4. Children who live in the catchment area of the requested school.
5. Children, who live outside the catchment area of the requested school, with a sibling attending the requested primary, infant or partner junior school **at the time of the applicant's proposed admission**
6. Children who live nearest to the requested school, calculated in a direct straight line from the child's permanent place of residence to the school.”

The Objection

10. The first part of the objection addresses whether it is reasonable and/or fair that the oversubscription criteria for Tyntesfield Primary School (the school) gives priority to children living within the school’s catchment area without a sibling attending the school at the time of admission, over children living outside the catchment area with a sibling attending the school at the time of admission.

11. The basic principles for admissions are set out in the Code. “Admission authorities are responsible for admissions and must act in accordance with this Code, the School Admission Appeals Code, other laws relating to admissions, and relevant human rights and equalities legislation” (paragraph 1.1) and “This Code does not give a definitive list of acceptable oversubscription criteria. It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances” (paragraph 1.10).

12. The Code does not explicitly prevent an admission authority giving priority to children living inside the catchment area without a sibling attending the school at the time of admission, over children living outside the school’s catchment area with a sibling attending

the school at the time of admission. However, the Code does set out requirements for admission arrangements “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” (paragraph 14) and oversubscription criteria “Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation” (paragraph 1.8).

13. I find that in relation to the priority given to those inside and outside the school’s catchment area the oversubscription criteria in question are clear, objective and, subject to the consideration of whether they are fair and/or reasonable below, comply with all relevant legislation.

14. The school has a catchment area. After looked after and previously looked after children, and children adopted from state care abroad, the highest priority in the criteria which apply when the school is oversubscribed is afforded to children living within the catchment area who have a sibling at the school at the time of the proposed admission. This criterion is not at issue here. It covers those children who live in the area intended to be served by the school and who have siblings at the school.

15. The issue here is the choice of the next criterion. This could, as here, give a higher priority to children living within catchment who do not have a sibling at that school, which is the criterion adopted at this level by most if not all the other primary schools in the Trafford area, including the school. This, in effect, prioritises those children living in the catchment which the school is intended to serve over siblings. It disadvantages younger children of families with a child already at the school who live outside the catchment area. Hence, where the school is oversubscribed, a child living outside the catchment area with an older sibling at the school may be displaced by a child living within the catchment area who does not have an older sibling at the school.

16. Alternatively, the criterion at this level could give priority to children who have siblings at a school over those living within catchment who do not have a sibling at that school. This, in effect, prioritises siblings over children living in the area the school is intended to serve. This disadvantages children living within the catchment area who do not have an older sibling at the school, usually first born or only children. Hence, where a school is oversubscribed, a child living within the catchment area without an older sibling at the school may be displaced by a child living outside the catchment area with a sibling at the school.

17. Across the country many schools adopt one or other of these alternatives. I do not find that there is any reason to prefer one over the other in principle. In most cases it would be reasonable and fair to adopt either.

18. The school have adopted the admission arrangements determined by the LA for its maintained voluntary controlled and community schools. In effect, since these have not changed since the school became an academy, the school has kept the admission arrangements, including the catchment area and the priority order of oversubscription

criteria, which applied prior to it becoming an academy. I find that, provided the admission arrangements are fair and reasonable in themselves, this is a sound approach.

19. I accept that the school adopted the relevant oversubscription criteria for a sound reason, that is, to maintain continuity of the admission arrangements. I also accept that putting the oversubscription criteria in this order could lead to a detriment for some children living outside the catchment area and having an older sibling at the school. Nevertheless, it is in the nature of all oversubscription criteria that they advantage some applicants and disadvantage others. In my view the order in which these criteria are set out in a particular school's admission criteria is generally a matter for that school's admission authority to decide. In most circumstances it would be fair and reasonable to adopt either order.

20. I note that the objector refers to other admission authorities which do not have catchment areas but instead prioritise children (in part) according to the distance they live from the school. This is a legitimate criterion. However, the use of catchment areas is also legitimate and is expressly allowed for in the Code (paragraph 1.14).

21. I note that the objector states in her objection that the oversubscription criteria are not the same as those set out as Sample Admission Arrangements in the Code. The sample arrangements in the Code are merely an example. There is no requirement that these are followed. As stated above an admission authority may adopt any arrangements, provided they comply with the Code and the law relating to admissions. The objector also states that other admission authorities, including neighbouring local authorities, have admission arrangements which reverse the priority given to in catchment children and those living outside catchment without siblings at a school. In most cases either order would be lawful and it will usually be open to any given admission authority to choose either order.

22. I find that the relevant criteria are both fair and reasonable and I do not uphold the objection on this point.

Catchment Area

23. The second part of the objection raises the issue of whether the school's catchment area is compliant with the provisions of paragraph 1.14 of the Code, which reads as follows:

"1.14 Catchment areas **must** be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school".

24. The objector gives examples of addresses which are within the catchment area of the school but actually nearer to other local primary school and states that her own home address is outside the school's catchment and approximately 425 metres from the nearest primary school. Her home address is within the catchment area for Woodheys Primary School (Woodheys). Her home address is 590 metres from Tyntesfield Primary School but outside the school's catchment. A child living at the objector's address would have a high priority for Woodheys even without having a sibling attending the school. That child would

fall within the third oversubscription criterion, after looked after and previously looked after children and children living within catchment with an older sibling at Woodheys.

25. Historically some local authorities divided their area into a jigsaw of primary school catchment areas. Boundaries of catchment areas may follow geographical boundaries, such as main roads, railways or rivers. Residential streets do not follow straight lines or even curves. Catchment areas are also often designed to ensure that all those who live in the catchment area can be accommodated at the catchment area school and that no child has a very long distance to go to school. For all of these reasons, it is almost inevitable that not every address will be in the catchment area of its nearest school. I do not find that a catchment area is unreasonable because there are addresses within the catchment area for a school which are nearer to another school nor because there are addresses outside a school's catchment area that are nearer to that school than that addresses' catchment school.

26. The Objector refers in her objection to paragraph 1.14 of the Code and the judgement in *R v Greenwich* referred to in footnote 23. That case was concerned with a local authority's duty in relation to applicants living outside the area of the local authority. It does not apply to catchment areas in general and, I find, does not apply to the catchment area in this case.

27. The catchment area adopted by the school is the same as that which applied before the school converted to academy status. It will be familiar to parents in the local area and will fit with the other catchment areas of other local schools, although some other schools, since becoming academies, have changed their admission arrangements.

28. I do not find that the catchment area adopted by the school is unfair or unreasonable and consequently the objection is not upheld on this point. See below for my finding relating to the definition of the catchment area.

Other Matters

29. **Whether the school has published its admission arrangements** for 2021 in accordance with paragraph 1.47 of the School Admissions Code (the Code), the relevant part of which reads as follows:

*“1.47 Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website displaying them for the whole offer year (the school year in which offers for places are made)”*; and

30. **Whether the school's admission arrangements are clear** as required by paragraphs 1.4 and 1.8 of the Code, the relevant parts of which read as follows:

“1.4. 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. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated”.

*“1.8 Oversubscription criteria **must be reasonable, clear, objective, procedurally fair**”*

31. The school’s website only states “we adhere to Trafford’s Admission Policy”. This does not provide sufficient information. There is no single admission policy for the LA. The document provided by the school is headed “TRAFFORD 2021 PROPOSED ADMISSION ARRANGEMENTS COMMUNITY AND VOLUNTARY CONTROLLED PRIMARY, INFANT AND JUNIOR SCHOOLS Infant/Primary School Admissions” does not apply to the school.

32. The school is not a community or voluntary controlled school, it is an academy. Consequently, the name of the school is not included in the list of schools at the bottom of that document. It may not be clear that these are the arrangements referred to on the school’s website. Furthermore, these are “*proposed*” arrangements and it is not clear that these are the arrangements finally determined by LA. I am, however, informed by the LA that they have determined and published these arrangements for the community and voluntary controlled schools in their area, but not, of course for the school.

33. The deadline for determining admission arrangements for 2021 was 28 February 2020. It is not clear, when the Inspiring Learners Trust Board (the Trust) resolved on 20 November 2019 that there “*would be no change to the admission arrangements*”, whether that is a reference to admission arrangements for 2020 determined by Trafford which will remain for 2021, or a reference to Trafford’s admission arrangements for 2021, which might or might not have been varied from 2020.

34. I do not mean to suggest that there is any bar on an academy determining admission arrangements which mirror those determined by its local authority (provided those arrangements are compliant with the Code). However, it must be clear what arrangements have been determined by the academy and those determined arrangements must be published on the school’s website.

35. The admission authority for the school has not determined clear admission arrangements. The LA has not determined any admission arrangements for the school as it is not the admission authority for the school. It is for the school’s admission authority to determine its own arrangements and to ensure that these are clear and compliant with the Code and the law on admissions. I find that as determined by the admission authority the admission arrangements for the school are not clear. Those admission arrangements must include all matters required under the Code including (but not limited to) the school’s published admission number (PAN) and a clear description of the catchment area.

36. The determined arrangements must be published on the school’s website and must include all matters required by the Code. The reference on the school’s website to arrangements determined by the LA for other schools does not meet the requirement for publication.

37. Whether the admission **arrangements relating to “home address”** where parents are separated are compliant with the provisions of paragraphs 14 and 1.8 of the Code (set out above). That is, whether it is fair and/or reasonable that in all circumstances, where there are shared care arrangements and one address lies outside the catchment area of

the school, the child is treated as resident outside the catchment area. This would mean that a child who, say, lived outside the catchment area with their father every other Saturday night and inside the catchment area with their mother for the rest of the week would be treated as living outside the catchment area for the mother's address. It would also appear to mean that unless both parents live within the same catchment area such children would not be treated as living in any catchment area.

38. The LA have provided me with an explanation of how it actually addresses the issue of home address, and I should emphasise that I am dealing here with the school's admission arrangements not those of the LA. However, the wording of the LA's admission arrangements on "Home Address", which is adopted by the school, is:

"This means the address where the child normally and permanently lives. In the case of parents who are separated:

- where child-care arrangements are shared between two addresses in the catchment area, the child will be considered as living in the catchment area;
- where one of the addresses is outside the catchment area, the child will be regarded as living outside the catchment area.

If there are more applicants than can be accommodated at a school in the relevant category, the average of the distances of the two addresses from the school will be used for the purposes of determining priority for admission."

39. The last part of this provision would mean that if, in the above example, the father lived, say, 100 miles away, the child would be treated as living about 50 miles from the school even though the mother lived in the school's catchment area. This is not fair or reasonable be compliant with the provisions of paragraphs 14 and 1.8 of the Code (set out above).

40. The provision (however it may be applied in practice) is unreasonable. It is unclear when the out of catchment address will be used as opposed to the average between the two addresses. It is unreasonable to deal with two addresses in this way without regard to where the child lives most of the time. I find that this provision does not comply with the requirements of the Code.

41. **Catchment areas.** This point links to the issue raised in the objection and dealt with above but is not specifically raised in the objection. The admission arrangements state under the heading "*catchment areas*" "*All Trafford Community/Voluntary Controlled Infant and Primary Schools have a catchment area. Property information on catchment areas is held in Trafford's Local Land and Property Gazetteer which complies with BS7666*". This does not appear to provide any useful information to a parent wishing to know which catchment area(s) they live within. Further investigation of the website (there is no link in the proposed policy document referred to above) reveals a street list for the catchment area of Tyntesfield School. However, this does not comply with the provisions of paragraph 1.14 of the Code (set out above) or paragraphs 14 and 1.8 of the Code (set out above) as it is

unclear and does not provide for parents considering the school's admission arrangements to understand easily the definition of the school's catchment area.

42. The LA have pointed to the current information on its website setting out catchment areas. However, I emphasise that I am not dealing with the LA's admission arrangements but rather those of the school. It is not sufficient for the school to rely on information about its catchment area on the LA website. It is for the school's admission authority to ensure that its admission arrangements are clear and published on the school's website. The school's admission arrangements do not comply with the requirements of the Code in this respect.

43. There is no section setting out the arrangements for a **waiting list** compliant with paragraph 2.14 of the Code. I am told by the LA that information on waiting lists is contained in the composite prospectus it is required to publish by 12 September 2020. Again, it is for the school's admission authority to ensure that its admission arrangements are clear and published on the school's website, including information about waiting lists as required by paragraph 2.14 of the Code. The school's admission arrangements do not comply with the requirements of the Code in this respect.

Determination

44. 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 2021 determined by Inspiring Learners Multi-Academy Trust for Tynesfield Primary School, Trafford.

45. 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.

46. 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 this determination.

Dated: 16 November 2020

Signed:

Schools Adjudicator: Tom Brooke