



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3680

Objector: A member of the public

Admission authority: Lancashire County Council for Moss Side Primary School, Leyland

Date of decision: 07 January 2021

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 Lancashire County Council for Moss Side Primary School, Leyland.

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 member of the public, the objector, about the admission arrangements (the arrangements) for Moss Side Primary School, Leyland (the school), a community school for children aged 4 to 11. The objection is to the reasonableness and fairness of the means used to give priority to children when the school is oversubscribed. The objector says that by giving priority to children living closest to the school, the arrangements breach the requirement in paragraph 1.8 of the Code that oversubscription criteria are reasonable. Since the objector had also stated that he thought that this made the arrangements unfair, I informed the parties that it was my view that the objection also engaged paragraph 14 of the Code, which requires admission arrangements to be fair.
2. The local authority (the LA) for the area in which the school is located is Lancashire County Council. The LA is a party to this objection as is the school's governing board.

Jurisdiction

3. These arrangements were determined under section 88C of the Act by Lancashire County Council, the LA, which is the admission authority for the school. The objector submitted his objection to these determined arrangements on 4 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.

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 4 May 2020 and a further form of objection submitted by him dated 6 June 2020, and subsequent correspondence;
- b) the LA's response to the objection and supporting documents, and subsequent correspondence;
- c) the LA's composite prospectus for parents seeking admission to schools in the area in September 2021 and the area supplement for this part of the county also published by the LA;
- d) a map of the area identifying relevant schools;
- e) copies of the minutes of the meeting of the Cabinet of Lancashire County Council at which the arrangements were determined; and
- f) a copy of the determined arrangements.

The Objection

6. The objector is concerned about the use within the arrangements of the distance from the school to a child's home as a means for giving priority when oversubscription occurs within one of the stated priority groups. I shall set out below the details of the determined oversubscription criteria, but suffice it to say here, in describing the objection itself, that the objector says:

"When the admission procedure..... is applied it means that children living close to the school and having priority will only have a short distance to travel to school, those living furthest away from the school and do not get priority (sic) may have a considerably longer distance to travel to their school. I believe, that to be reasonable, the distance a child has to travel to school should be equalised as much as is practical."

7. He continues:

“I believe that for.. (the arrangements)... to be reasonable ...(they)...should read:

‘...If there is oversubscription within any of the admission criteriathen the children living furthest away from the nearest alternative school to their preferred schoolwill have priority.’ ”

He says that since the arrangements fail to satisfy this view of what they would need to say in order to be reasonable, they fail to comply with the requirement of paragraph 1.8 of the Code that oversubscription criteria must be reasonable. He says:

“It is unreasonable and unfair to me that because a child does not live close to a school, he is then sent to an alternative school twice as far away.....I believe the only way to address this fairly is not to base priority on distance to a preferred school but on the distance to the nearest alternative school to the preferred school.”

Background

8. The objector’s grandson failed to secure a place at the school in September 2020. The objector states that Moss Side Primary School is 0.62 miles from the boy’s home, and that it is geographically midway between his home and the school to which he has been admitted, which is 1.24 miles away. This information corresponds with the data supplied to me by the LA for one of the unsuccessful first preference applicants for a place at the school in September 2020. I shall refer to this data again below.

9. It is of course not a matter for my consideration whether or not a particular child has been admitted to the school. My concern is only whether the admission arrangements do or do not comply with the relevant requirements in the light of the objection concerning them which is before me. And of course these arrangements are those which have been determined for admissions in September 2021, and not those that applied to the objector’s grandson’s application for a place at the school in September 2020. It is, however, as a result of his grandson’s case that the objector has made his objection to the arrangements and it will be helpful to the reader for me to briefly explain here what the arrangements say and what the objector’s understanding of them has been.

10. In the form of objection, which was submitted on 4 May 2020, the objector set out as the admission arrangements for the school for September 2021 those which he believed applied to the school, and based his objection on them. However, on seeing the arrangements which were sent to me by the LA as a result of it having been notified of his objection, he accepted that these were not the same as the arrangements which he had cited in his objection, and he submitted a further form of objection dated 6 June 2020. This is after the deadline for such objections to be made. This second form made the same objection as that made originally, but referred to the admission arrangements for the school for September 2021, as the objector viewed it, more accurately. Since the second objection effectively did no more than revise the terms of the original objection, which had been

submitted prior to the deadline of 15 May, but without altering its substance, I have been happy to consider this later material as part of the original, on-time objection to the arrangements. It is now my understanding that while the arrangements were revised by the LA for September 2021, this was not in the way the objector believed this to have happened. I shall explain below how the arrangements for the school had been changed by LA between those used for September 2020 and those which it has determined for use in September 2021, and the relevance of these changes to the objection and to my consideration of it.

11. When the objector submitted his objection initially, he did so by making reference to the admission arrangements determined by the LA for the great majority of primary schools for which it is the admission authority – those for which it has not defined a catchment area. However, different oversubscription criteria apply to these schools on the one hand, and on the other to the relatively small number of schools for which it has designated a catchment area - something which is known locally as a Geographical Priority Area (GPA). When the objector saw the determined admission arrangements for September 2021, he became aware that, since Moss Side primary school has a catchment area, these different oversubscription criteria were those which were relevant, and he forwarded a revised objection but stated that “my objection is still basically the same”. He repeated his concern that to give priority to those living closest to the school was unreasonable and in contravention of the requirement concerning reasonableness in paragraph 1.8 of the Code.

12. The presence of a catchment area for the school is, I believe, material to my consideration of the objection, as I shall explain below. What has changed between 2020 and 2021 is the oversubscription criteria which are employed for schools with a designated GPA. Until 2020, priority for these schools was given as follows:

- Looked after and previously looked after children
- Children for whom there are medical, social or welfare reasons which require them to be admitted to the school
- Children with an older sibling at the school
- Children living within the GPA
- Children living outside the GPA.

The priority order in the arrangements for September 2021 is set out below, with revised priority for those with siblings, depending on where they live.

13. I need also to note in passing that the objector has stated that he does not think that the arrangements use distance as a tie-breaker for giving priority when there is oversubscription under all oversubscription criteria, but that it is applied only in relation to the final oversubscription criterion, both for schools generally and for schools with a catchment area. However, this is plainly not the case, since the arrangements say in a

footnote, which is also specifically referred to by the objector, that “The distance criterion will be used as the tie breaker if there is oversubscription within any of the oversubscription criteria...”. However, I do not consider that this misreading of the arrangements takes anything away from the objection, which is to the principle of the use of proximity to a school for determining priority for admission.

14. The arrangements determined by the LA for primary schools for September 2021, in summary, set out the following :

A. For primary schools generally, if oversubscribed, priority is given in the following order:

- Looked after and previously looked after children
- Children for whom there are medical, social or welfare reasons which require them to be admitted to the school
- Children with older siblings at the school
- Other children.

B. For primary schools for which a catchment area (a GPA) has been defined, priority is given in the following order:

- Looked after and previously looked after children
- Children for whom there are medical, social or welfare reasons which require them to be admitted to the school
- Children living within the GPA who have an older sibling at the school
- Other children living within the GPA
- Children living outside the GPA who have an older sibling at the school
- Other children living outside the GPA.

The use of distance from a school as a tie-breaker is set out in an explanatory note (note (iv)).

I shall now proceed to my consideration of the objection.

Consideration of Case

Whether the arrangements are reasonable.

15. The objector, in his second form of objection, had the following to say:

“Lancashire CC admissions procedure states in Notes (iv) ‘The distance criterion which will be used as the tie breaker if there is oversubscription within any of the admission criteria is a straight line (radial) measure.....’

.....I believe ... this...to be unreasonable and illogical and does not comply (sic) with the School Admissions Code.”

16. The objector has expanded on his view as follows:

“I think it is unreasonable and illogical not to grant a child a place at his local school....and then expect the child to walk past his local school to get to the allocated school”.

He has suggested that “the only way to address this fairly is not to base priority on distance to a preferred school but on the distance to the nearest alternative school to the preferred school”, and has provided his own wording, which I quoted above, as to how this could be set out in admission arrangements.

17. Even if this alternative approach were to be seen to be more reasonable than that provided for in the arrangements, this would not mean that the arrangements are themselves automatically unreasonable. My only concern here is to come to a view about whether the arrangements themselves are reasonable, or not. This does not include a consideration of whether some alternative might be considered to be more reasonable than them.

18. The first thing for me to address is the question of reasonableness itself. There are two aspects to be considered when coming to a view about whether something is, or is not, reasonable. First, there is the reason behind it. Something might be unreasonable if the reason for it being done were irrational. One important way of looking at this in matters concerning the decision of a public authority is the notion of “Wednesbury unreasonableness”, which was provided in a judgement involving a public body in 1948. This says that a decision would be unreasonable if it were “so unreasonable that no reasonable authority could ever have come to it”.

19. The second matter which needs to be considered is whether something has an unreasonable effect. It is possible for something to be reasonable in terms of the reasoning behind it, but unreasonable because of its effect. If the effect which something had were that it was unfair, for example, then this would be unreasonable. I will come to this below.

20. I look first at the reasoning which leads to the giving of priority to those living closest to the school. The objector has stated that he considers this to be “unreasonable and illogical”. He explains this view in the following way :

“I think that it is unreasonable and illogical not to grant a child a place at his local school and then expect the child to walk past his local school to get to the allocated school.”

21. This is close to looking at the reasonableness of the criterion in terms of its effect, which I shall come to, but I understand it also to be a complaint that this is unreasonable and irrational in the first place, because the thinking behind it is irrational. I am aware, as perhaps the objector is not, that it is widespread practice nationally for oversubscription in school admissions to be resolved using the distance between a child’s home and the school in question in exactly the way that the LA does for Moss Side Primary School. I have therefore given this matter considerable thought and have approached it from first principles, in order to consider this objection afresh.

22. I have started by looking at the Code which says, at paragraph 1.9 that :

“It is for admission authorities to formulate their admission arrangements”

before listing specific prohibitions, which do not include the use of distance. In a separate section (1.13) it provides the most commonly applied oversubscription criteria, which include “distance”, where it says that:

“Admission authorities must clearly set out how distance from home to the school will be measured, making clear how the ‘home’ address will be determined and the point in the school from which all distances are measured.”

There is also a set of “illustrative” admission arrangements in the Code’s Appendix which include as an oversubscription criterion:

“Other children by distance from the school, with priority for admission given to children who live nearest to the school as measured by using Ordnance Survey data to plot an address in this system.”

23. What I take from this is that the Code, while it does not provide “acceptable” oversubscription criteria, and does not say, in terms, that using distance in the way that the objector says is unreasonable is permitted, it comes very close to doing so.

24. I have also given thought to the process of school admissions which is described by the Code, since this is the context in which the decision to use home to school distances in the way objected to has been made. Whether or not a decision is irrational is dependent on the circumstances to which it will apply. What may be rational in one context may be less so in another. Paragraph 15 of the Code sets out the policy context for the process of school admissions. It makes clear that this is predicated on the expression of parental preference and the meeting of this preference to the greatest extent possible. The Code allows for at least three preferences to be expressed by a parent and the local authority must act to offer

parents a place for their child at the highest preference school if possible, or at another school only if it is not possible to satisfy any of the expressed preferences (paragraph 2.11).

25. In the school admissions process set out in the Code, it is the preferences of individual parents that regulate the vast majority of admissions, rather than any attempt to produce a particular pattern of admissions overall, such as one with the minimum aggregate of travel distances for pupils across all admissions to all schools, as desired by the objector. The admissions process focuses on the admissions of children to each school individually and uses expressed preferences for places at that school to do so. It does not envisage there being any need for the admission process at one school to be related to that of other schools, for example. This being the case, it is not irrational in my view, when a school is oversubscribed, for priority to be given to children using a criterion which relies only on information about that school and the preferences which have been expressed for places there.

26. The LA uses the relative proximity of the homes of children seeking a place at the school, with those living closer having higher priority than those living further away. Proximity to a school is a clear and objective criterion, as required by the Code, and so it is rational in this respect. It would plainly be irrational to give priority to those living furthest away as this would certainly result in greater travel for children going to the school in question and may have other negative consequences. So prioritising those living nearest to a school seems to me to be rational in nature. That is to say, considered in isolation, the reasoning behind giving priority in this way does not seem to me to be inherently irrational or, therefore, unreasonable. It would certainly not fall within the definition of something that is “Wednesbury unreasonable”, it seems to me.

27. It is worth making the point in passing that, given the requirement that the admission arrangements for individual schools must be published well in advance of the date by which parents express their preferences, matters such as the relative distances to different schools, where these are used in such arrangements, can be expected to be taken into account by parents when preferences are expressed. While this does not guarantee that some children will not ultimately have to travel large distances to go to school, I regard this, coupled with the duty which LAs have to provide home-to school transport if the distance to a child’s school exceeds the maximum “walking distance” for their age, and of course the fact that the admission arrangements of individual schools must be fair and reasonable, as the safeguards in this situation for children. Were there to be a different overall approach to school admissions provided in the Code, then some other approach to the use of distance in these matters, such as that advocated by the objector, might be possible (and equally rational), but as I have said, that is not my concern here.

In order to consider the second aspect of unreasonableness – whether the effect of the what is alleged to be unreasonable has, for example, an unfair effect, I need to look at the question of fairness.

Whether the arrangements are unfair

28. I turn now to my consideration of whether the effect of the criterion makes it unfair and therefore unreasonable. This question concerns the effect of the use of distance in the school's admission arrangements in the way objected to, in the particular context in which it operates for the school. It is therefore not a matter of general principle, but of the result of individual circumstances. The school's context is that the local authority has designated a catchment area for admissions to it, but does not do so for any of the nearby schools. I have examined the LA's area supplement to its composite prospectus for parents for the South Lancashire area, which shows only three community primary schools having catchment areas. The school is located in the South Ribble district where of 14 community primary schools it is the only one with a catchment area.

29. If adjacent schools each have their own designated catchment area, some priority for admission to one of the local schools is conferred on every geographical location. That is not the case here. It seemed to me that there might conceivably be an unfair effect for some children in relation to admissions to the school because it has a catchment area whereas its neighbours do not. Children living just outside its catchment area, for example, especially since this is itself not defined as a radial distance from the school but has an irregular shape, could find themselves in a location where alternative schooling was only available at a great distance from their homes. This could mean that the combined effect of the catchment area and of the use of distance from the school to give priority could have unreasonable effects in practice, and that this might make the use of distance in the way objected to unreasonable in practice. The objector referred to the combined effects of the school's catchment area and the use of proximity to the school to give priority in correspondence following his objection, saying that it shows " grossly unreasonable and procedurally unfair" effects when the outcomes for individual children in his grandson's admission cohort are compared.

30. The school's catchment area was included in its arrangements for 2011 onwards, and essentially provides close to certainty of a place to children of staff living on the prison officer estate within it which serves the local HM Prison Wymott and HM Prison Garth. The reason for doing this is so that their children can attend the same local school, which is important for security considerations. It is for this reason, the LA has told me, that the school has a catchment area whereas its neighbours do not.

31. I have asked the LA for recent admissions data for Moss Side Primary School which shows how the catchment area and the use of distance affected children living both outside and inside the catchment area, and for those unsuccessful in securing a place the distance to their alternative school.

32. The data provided to me by the LA can be summarised as follows:

Application of oversubscription criteria to first preferences
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Oversubscription criterion	First preferences 2018 (33)	First preferences 2019 (45)	First preferences 2020 (52)
LAC/PLAC	1	1	3
Medical/Social/Welfare	Nil	nil	nil
Siblings	10	22	15
GPA	15 (all admitted)	11 (all admitted)	25 (19 admitted)
Outside GPA	7 (all admitted)	11 (none admitted)	19 (none admitted)

33. The school has a PAN of 37 and the table above shows that it has moved from a position of not being oversubscribed with first preferences in 2018, to being able to offer places to all those living in the GPA who had expressed a first preference in 2019, to being able to offer places to only some of those expressing a first preference who lived in the GPA in 2020.

34. The LA has supplied me with information about the unsuccessful (on time) first preference applicants in 2019 and 2020. In 2019, the furthest distance travelled by one of these children (all of whom lived outside the GPA) to the school where they were offered a place was 2.5 miles. In 2020, the furthest distance for an unsuccessful first preference applicant living inside the GPA was 1.8 miles, and for a child living outside the catchment area was 3.2 miles.

35. The objector has challenged some of these data in correspondence, and I have looked at what he has said very carefully. I am of the view that the discrepancies which he points out between different data sets which have been provided to me by the LA result essentially from the differences between first preference data and all preference data, and between initial allocations and final allocations, and that they do not in any case impinge materially on the main point of my consideration, which I now come to.

36. It is my view that for admission arrangements to be unfair they would need to cause an actual unfairness to individuals or to groups of children. This goes beyond the everyday meaning of the term "fair", which is essentially related to equity, and which is I believe what the objector has effectively had in mind when making the comments referred to above. An actual unfairness would be caused if children were having to travel unreasonable distances to find alternative schooling as a result of the arrangements.

37. The data above is of course the product of the application of the admission arrangements which were in place up until 2020. Those which are the subject of the objection are those for 2021, which contain a revised priority order for siblings. Children

living inside the catchment area who do not have a sibling will now have a higher priority than those living outside the catchment area who do, the reverse having previously been the case. The effect will be to give more places to those in the school's catchment area. Whether this is likely to result in unsuccessful candidates living further away from the school having excessive distances to travel to an alternative school to a greater extent than under the previous arrangements, it is not possible to say. However, there is no reason for me to believe that this will be the case.

38. For the admission arrangements for the school for 2021 to be unfair in their effect, and therefore both unreasonable and unfair as the objector alleges, it would be necessary for them to cause, or be likely to cause, an unfairness of the sort I refer to above. There would need to be evidence that they might systematically cause an unfairness to individuals or to groups of children. That is to say, I would need to see that there was evidence that children are currently having to travel excessive distances to access alternative schools as a result of being denied a place at the school. As I have said, I think any current effect of this sort would be unlikely to be exacerbated as a result of the changes made to the arrangements which will apply for 2021. I am unable to discern any such evidence in the information presented to me about admissions to the school in recent years, and which I have summarised above. I am therefore led to conclude that the arrangements for 2021 cannot be said to be likely to have any unfair effect.

39. I do not uphold the objection that the arrangements are unfair, and also do not uphold the objection that they are unreasonable..

Summary of Findings

40. I have considered the objection that the arrangements are unreasonable, and have come to the view, first, that the grounds on which the decision to give priority to those living closer to the school has been made are not irrational in nature.

41. I have considered the possibility that the arrangements may have an unfair effect, and that they are therefore unreasonable, and have explained why the evidence which has been presented to me does not lead me to consider that this is the case.

42. As a result. I do not find that the arrangements are unreasonable, in contravention of paragraph 1.8 of the Code, or that they are unfair, in contravention of paragraph 14 of the Code.

Determination

43. 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 Lancashire County Council for Moss Side Primary School, Leyland.

Dated: 07 January 2021

Signed:

Schools Adjudicator: Dr Bryan Slater