

## **DETERMINATION**

**Case reference:** ADA 2545

**Referrer:** A parent

**Admission Authority:** Kent County Council

**Date of decision:** 3 October 2013

### **Determination**

**In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Herne Church of England Voluntary Controlled Infant School as determined by Kent County Council.**

**I determine that the arrangements do conform with the requirements relating to admission arrangements.**

### **The referral**

1. The admission arrangements (the arrangements) of Herne Church of England Voluntary Controlled Infant School (the school), for September 2013 have been brought to the attention of the Schools Adjudicator by a late objection made to them on 12 July 2013. It concerns the clarity, fairness and reasonableness of that part of the arrangements under which priority is given to children who have a sibling attending the school.
2. Having looked at the arrangements for 2013 I considered that there may be matters that do not comply with the School Admissions Code (the Code) and therefore I also looked at the arrangements for admissions in September 2014.

### **Jurisdiction**

3. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by Kent County Council, the local authority (the LA) which is the admission authority for the school. These arrangements were referred to the adjudicator on 12 July 2013.
4. As the matter referred concerns the 2013 arrangements any objection should have been made on or before 30 June 2012. However, under section 88I(5) of the Act the adjudicator may consider arrangements that come to his attention. I am satisfied the referral has been properly made to me and it is within my jurisdiction. I am also using my powers under section 88I to consider the arrangements as a whole and the arrangements for 2014.

## Procedure

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

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

- a. the referrer's emails of 3 June 2013 and 12 July 2013 and the form of objection dated 20 July 2013;
- b. the LA's response to the referral and supporting documents provided by it;
- c. the LA's composite prospectus for parents seeking admission to schools in the area in September 2013;
- d. confirmation of when consultation on the arrangements last took place;
- e. copies of the minutes of the meetings at which the LA determined the arrangements for September 2013 and those for September 2014; and
- f. copies of the determined arrangements.

## The Referral

7. The referrer has said that she believes that paragraphs 1.6, 1.7, 1.8, 1.11 and 1.14 of the Code are contravened by the arrangements.

8. She goes on to say that the criterion within the arrangements under which priority is afforded to children who have a sibling already attending the school is not clear, fair or reasonable.

9. Paragraph 1.8 of the Code states that "oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation.....". I believe that the referrer's citing of other paragraphs within the Code is intended to ensure that her view about the use of the sibling connection within the arrangements is comprehensively referenced, and that they do not introduce further elements into the referral.

## Background

10. The referrer first contacted the Office of the Schools Adjudicator on 3 June 2013, setting out the circumstances which had led to the refusal by the LA to admit her second son to the school attended by his elder sibling. In that e-mail she quoted from a letter from the LA which explained this refusal by setting out what appeared to be part of the school's admission arrangements and by going on to say why the objector's child was not eligible for the priority afforded by this oversubscription criterion, and hence not given a place at the school. She was informed by return that adjudicators have no jurisdiction

concerning the admission of individual children to schools. She subsequently submitted an e-mail on 12 July and a form of objection on 20 July 2013 to the school's admission arrangements.

### **Consideration of Factors**

11. My jurisdiction concerns not the individual case of the referrer's application for a school place, but the admission arrangements of the school, and whether they conform to the requirements set out in the Code and in legislation. The arrangements determined by the LA for the school for September 2014 are in essence the same as those for September 2013 concerning the wording of the priority given to children with a sibling connection, as set out below, and therefore I have given my consideration to the arrangements for both years.

12. The LA determined admission arrangements for community and voluntary controlled primary schools for September 2013 on 19 March 2012. Those for September 2014 were determined by it on 15 April 2013 and both are to be found on the LA's website. Both list oversubscription criteria which give first priority to looked after and previously looked after children, followed by children attending any named feeder school. Third priority is given to children with a "current family association".

13. The arrangements for September 2013 are worded as follows:

*"Current Family Association – a brother or sister in the same school at the time of entry where the family continue to live at the same address as when the sibling was admitted - or - if they have moved - live within 2 miles of the school, or have moved to a property that is nearer to the school than the previous property as defined by the 'Nearness criterion' (below). Linked infant and junior schools are considered to be the same school for this criterion. In this context brother or sister means children who live as brother and sister in the same house, including natural brothers or sisters, adopted siblings, stepbrothers or sisters, foster brothers or sisters.*

*If siblings from multiple births (twins, triplets, etc) apply for a school and the school would reach its Published Admission Number (PAN) after admitting one or more, but before admitting all of those siblings, the LA will offer a place to each of the siblings, even if doing so takes the school above its PAN. If the admissions are to Year R, and so result in a breach of class size legislation, the additional pupil(s) will be treated as "excepted" for a period of one year, as with excepted pupils as defined in the School Admissions Code."*

14. Those for 2014 set out the priority as follows:

*"Current Family Association – a brother or sister in the same school at the time of entry where the family continue to live at the same address as when the sibling was admitted - or - if they have moved - live within 2 miles of the school, or have moved to a property that is nearer to the school than the previous property as defined by the 'Nearness criterion' (below).*

*Linked infant and junior schools are considered to be the same school for this criterion. If sibling priority is lost (as above), it will not be reinstated when a child transfers from an infant school to the linked junior school.*

*Where a child is transferring from Year 2 and would not be attending the infant school from the start of the next academic year, but applied for the linked junior school, the sibling link would not be broken for a child applying for the infant school.*

*In this context brother or sister means children who live as brother and sister in the same house, including natural brothers or sisters, adopted siblings, stepbrothers or sisters, foster brothers or sisters.*

*If siblings from multiple births (twins, triplets, etc) apply for a school and the school would reach its Published Admission Number (PAN) after admitting one or more, but before admitting all of those siblings, the LA will offer a place to each of the siblings, even if doing so takes the school above its PAN. If the admissions are to Year R, and so result in a breach of class size legislation, the additional pupil(s) will be treated as "excepted" for a period of one year, as with excepted pupils as defined in the School Admissions Code."*

15. The arrangements differ only by the two sentences of clarification concerning linked infant and junior schools added for 2014 admissions. Both define the priority category in their first sentence, which is the same in each case.

16. I am asked to consider whether this part of the arrangements complies with the requirements of paragraph 1.8 of the Code, listed above.

17. The LA has been helpful in explaining the context which led to this referral. In 2006 it introduced into the admission arrangements for those schools for which it is the admission authority a condition that siblings would only be given priority if the family had not moved since the first child was admitted, or if they had, that they still lived within two miles of the school.

18. The reason for doing so was to prevent the then prevalent use by some families of the priority given to siblings to secure a place at a favoured school but then to move away secure in the knowledge that younger siblings would be able to obtain a place at the same school, potentially at the expense of other children living near the school.

19. It seems to me that the LA introduced the condition concerning the location of the parental home for a good reason, and that the distance of two miles which has been chosen is reasonable since it is the distance laid down in law as that which a child under the age of eight can be expected to walk to school. The criterion is objective and procedurally fair in the sense that it is capable of being applied equally to all applications. I also consider that the wording of the criterion set out above is clear, since it explicitly states those circumstances in which priority is given to siblings, as part of the criterion itself.

20. However, when the LA responded to the referral, it directed me to the LA's composite prospectus for admissions to primary schools in Kent for 2013 and to the description there of the oversubscription criteria which form part of the school's admission arrangements. It has also used this description of the arrangements in correspondence with the referrer and it is this wording which she quoted in her e-mail of 3 June 2013.

21. Although the composite prospectus does refer the reader to a website where "the schools' criteria" can be found, it also tells the reader that "the admission criteria are listed in the next section". The wording provided there under "Current Family Association" is however not the wording of the determined arrangements themselves, but is a paraphrase of them. It describes what is meant by the term "sibling", and then goes on to say:

*"The sibling claim will stand if the family have continued to live at the same house as when the older sibling was admitted to the school, OR*

- If the family have moved, and they have moved to within 2 miles of the school, OR*
- If the family have moved nearer to the school from where they were living previously."*

22. Paragraph 1.51 of the Code states that LA's "**must** publish..... a composite prospectus....which contains the admission arrangements....for each of the state-funded schools in the local authority area....They **must** ensure that this information....is written in a way that makes it clear and accessible to all parents."

23. A principal reason for this requirement is that there is a single, certain source of admission arrangements to which parents can refer, and it is not in my view the intention of the Code that readers should have to access other documents to find them in an accurate form.

24. I have considered very carefully whether the LA has failed to meet the requirement of paragraph 1.51 of the Code. There is no doubt that its intention in paraphrasing the arrangements has been to make them accessible, and it has certainly not changed their meaning in doing so. The arrangements as determined give a statement of those to whom the sibling priority applies, and are clear. The wording in the composite prospectus states that priority is given to siblings and that it continues to be given under the stated conditions. While I think it unfortunate that there is no explicit additional statement in the composite prospectus that the sibling link will be broken if the given conditions are not met, this is very clearly implied.

25. I am unable to agree with the referrer that the determined arrangements themselves fail to be reasonable, fair or clear. I am also of the view that the LA has not failed to meet the requirements of the Code concerning the statement of these arrangements to parents in a clear form. However, I do think that they could do so even more clearly if the wording of the

arrangements themselves were used, or if a statement were added to the present wording so that readers can be in no possible doubt that that the sibling link will cease to apply unless the stated conditions are met.

26. The LA is in the process of publishing its composite prospectus for parents concerning September 2014 admissions. I am of the view that it would be helpful if it took this determination in to account in doing so.

### **Conclusion**

27. I have set out above the reasons why I do not agree with the referrer that the arrangements determined for the school for September 2013, or those determined for September 2014 admissions, fail to meet the requirements of paragraph 1.8 of the Code concerning the way in which priority is given to children with a sibling connection at the school.

28. I have also said why I believe the LA has not failed to meet the requirements set out in the Code concerning the clear statement of those arrangements in a form accessible to parents. Again, I do not uphold that part of the referral concerning the clarity of the arrangements.

### **Determination**

29. In accordance with section 88(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Herne Church of England Voluntary Controlled Infant School as determined by Kent County Council.

30. I determine that the arrangements do conform with the requirements relating to admission arrangements.

Dated: 3 October 2013

Signed:

Schools Adjudicator: Dr Bryan Slater