



## DETERMINATION

**Case reference:** ADA2733

**Objector:** Surrey County Council

**Admission Authority:** The governing body of St James Church of England Primary School, Elstead, Surrey

**Date of decision:** 2 September 2014

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of St James Church of England Primary School for 2015.**

**Further, in accordance with section 88I I have considered the arrangements as a whole for admissions in September 2015 and I determine that these do not conform with the requirements relating to admission arrangements.**

**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 as quickly as possible.**

### **The objection**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by Surrey County Council, the local authority (the LA), the objector, about the admission arrangements (the arrangements) for St James Church of England Primary School (the school), a voluntary aided school for pupils aged 4 to 11 years, for September 2015. The objection is to the sibling criterion which the objector contends is unfair because it gives priority to applicants who have siblings of children on roll at the school, but only if they do not also have other siblings who attend other primary schools.

### **Jurisdiction**

2. These arrangements were determined under section 88C of the Act by the governing body, which is the admission authority for the school. The objection to these determined arrangements was submitted on 20 June 2013. 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.

3. Having reviewed the arrangements for 2015 and concluded that there were matters that did not comply with the School Admissions Code (the Code) I am using my powers 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 Code.

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

- the objection from the LA dated 30 June 2014 and further comments dated 11 July 2014;
- correspondence between the LA and the school from 23 May 2014 to 5 June 2014;
- the school's responses to the objection dated 30 June and 21 July 2014;
- a response from the Diocese of Guildford (the diocese), dated 10 July 2014;
- minutes of a meeting of the governing body held on 13 November 2013 at which it was agreed to go to consultation about the proposed change to the arrangements for 2015;
- the minutes of the full governing body meeting held on 26 March 2014 at which the arrangements for 2015 were determined;
- the determined arrangements for admission to the school in September 2015; and
- the composite LA prospectus for parents, 'Starting Primary School - Information for parents/carers 2014/2015'.

### **The objection**

6. The objection is to oversubscription criterion 3 which gives priority to applicants who have siblings of children on roll at the school, providing they do not also have other siblings who attend other primary schools. An exception to the rule is made in circumstances where those siblings were subject to a statement of special educational needs, or were in exceptional circumstances or were resident at a different address.

7. The LA refers to paragraph 14 of the Code which requires admission authorities to ensure that the practices and criteria used to decide the allocation of school places are fair, clear and objective. It is the view of the LA that to take account of the school preferences or allocation outcomes for other siblings is unfair and should not impact on an application for a younger child because:

- parents may make different decisions or preferences for each of their children (based on faith, size of school, special or educational needs);
- some children may not be offered a place at a preferred school and thus have to take up a place at an alternative school;
- after a house move, parents might decide to keep an older primary aged child in a current school until their next point of transition;
- some families may have a change of school forced upon them, such as when a child is excluded; and
- some children might win a scholarship to an independent school whilst their younger siblings may not.

8. In its objection to the school's arrangements the LA also cites paragraph 1.8 of the Code and says that the arrangements are unreasonable as they do not allow for the different scenarios that parents and children might face (as set out above). They also have the potential to cause disadvantage to children:

- from families who are more mobile and who might be more likely to have difficulty getting their children into the same school, such as traveller families;
- from ethnic minority backgrounds whose families arrive in the United Kingdom after the normal admissions round and who have difficulty getting several primary aged children into the same school;
- whose families have been forced to move house but who cannot then gain places at the same school for their children e.g. single mothers fleeing domestic violence, families living in council accommodation who have an enforced house move, families who are evicted from their homes, low income families who rent and whose housing may be less stable; or
- who come from mixed faith families where other children choose a school of a different faith (this could include children adopted or fostered in to a family).

9. In the view of the LA the inclusion of the condition, that is, that applicants under the sibling criterion must not also have other siblings attending alternative primary schools, contravenes the requirements of several paragraphs of the Code as follows:

- The school is introducing a condition that sibling priority will not be afforded to a younger child if a parent has applied for another school for an older child, whether or not the outcome of that application is known. This contravenes paragraph 1.9a) of the Code.
- The admission authority should not take account of decisions made in respect of previous school applications whether in respect of the applicant

or their siblings, unless it is a named feeder school. On this basis it is the arrangements do not comply with paragraph 1.9b) of the Code.

- The admission authority should not give a higher priority to children whose parents, in their prior application for a sibling, have ranked St James as a higher preference to other schools. This principle also applies to families who might apply for a different school to St James at Year 3. Any such application or preference ranking should not be taken in to account when assessing sibling priority for younger children. Paragraph 1.9c) of the Code.

### **Other Matters**

10. Having reviewed the arrangements as a whole for admissions in September 2015, I considered other issues which may contravene the Code. These include the requirement for information that forms part of the arrangements, such as the map of parish boundaries, to be included with the arrangements on the school's website.

### **Background**

11. The school is a voluntary aided primary school in the Diocese of Guildford, for pupils aged 4 to 11 years. It is a one-form-entry village school in Elstead, Surrey with capacity to accommodate up to 210 pupils. It has a published admission number of 30 and there are 189 pupils on roll, with a forecast roll for September 2014 of 198. The school says that although the village has a growing population and there are plans for new houses in the village, it has restricted space which would prevent further expansion if this were required.

12. During the past five years the governing body has continually reviewed its position on the inclusion of a priority for siblings and acknowledges that it is very difficult to devise criteria that meet the needs of all families, that is, those with a first born child and those with several children who wish to have their children educated at the same school. In the last admission round the governing body noticed that in one or two instances where places had been allocated for admission to the Reception year (YR), based on the sibling criterion, a small number of parents who had claimed sibling priority, had also applied in the same admissions round for places at alternative schools for the older child. As a result the older siblings were not on roll when their younger siblings started to attend YR at the school. In the same round one or two children living in the village had been 'displaced' to alternative schools. The school feels that the 'sibling rule' alone does not adequately capture its underlying aim and is unfairly prioritising children who will no longer have a sibling in school at the point of admission, over children who have no sibling at all or are new to the village.

13. For admissions in September 2015 the school has tried to introduce arrangements that will be seen to be fair to the majority of applicants. Before doing this it undertook a widespread consultation to get views on the proposed changes. There were just two written responses one in support and one an objection from the LA, although the school reports several verbal responses as positive. Following the consultation the governing body determined the arrangements for 2015 which included a newly formatted sibling criterion 3 which states, *“Children who have at least one sibling in attendance at St James Primary school at the time of admission AND who will not have another sibling of primary school age at any other school at the time of admission, other than where they have been admitted to that other school under their statement of Special Educational Needs or Exceptional Circumstance arrangements; or are resident at a different address.”*

### **Consideration of factors**

14. The school says it believes that the Code clarifies that admission authorities should take account of their particular local context and it cites paragraph 1.10 which says, *“...It is for admission authorities to decide which criteria would be most suitable to the school according to local circumstances.”* It also refers to paragraph 1.11 of the Code which says, *“Admission authorities **must** state clearly in their arrangements what they mean by ‘sibling’ (e.g. whether this includes step siblings, foster siblings, adopted siblings or other children living permanently at the same address or siblings who are former pupils of the school.”* The school has interpreted this to mean that an admission authority may take into account previous school applications in respect of the siblings of any applicant. In my view this is not a correct interpretation as the text is referring to the requirement for clarity about the relationship between the applicant and those considered to be siblings of the applicant. It makes no reference to the outcomes of applications of other siblings.

15. The governing body received feedback on its arrangements from the LA and the diocese and I shall review this advice and guidance so that I can begin to explore the reasoning behind the school’s decision to introduce this particular format of sibling criterion. The diocese provided some helpful context to explain why the school has been keeping the sibling criterion under almost constant review for several years. For some time and with increasing frequency the school has suffered a withdrawal of children at the end of year 2 as children have been transferred to other schools. Sometimes the school is advised of these transfers and at other times it does not find out until after offers have been made to applicants for year R. During this last academic year there are just 21 children in the year 3 class at the end of the year, which had started with 25 children. The school has been advised that a further three children will be leaving next year and this is not only disruptive for the school, for parents and pupils, but also has also has serious financial implications for this small village school.

16. An additional concern is that there is no PAN for admission to year 3 and so parents looking on the LA's website will not find the school listed an option in the 'drop down box', even though in reality, there may be several places available. With reference to this point made by the diocese I referred to the LA's prospectus, "Primary School Admissions 2014/15". Under the heading "Leaving infant school" it advises parents that, ".....*If you are interested in applying for a junior place at a primary school that does not have an intake at Year 3, you should submit an in year application for that school indicating your preferred start date. If the school is full you can arrange for your child's name to go on the waiting list.*" It seems to me then that there is a mechanism for children to be admitted into year 3 if places are available and it is therefore a matter for the school to consider whether to be proactive in advertising that places are available.

17. The diocese is sympathetic to the situation that the school finds itself in and supports the fact that governors have tried to address the issue through amending their 2015/16 admission arrangements. The school's over-arching objective is for siblings of primary school age to be educated together and the governing body has tried to promote this by as fair and objective a means as possible. Thus to incorporate admission priority at the time of application as the LA is said to have suggested, would not serve to further this aim.

18. The LA responded to the diocesan comment saying it had not suggested that the arrangements should afford sibling priority at the time of application. An email dated 23 May 2014 documents the LA's response and says that the LA had noted that the school had changed the arrangements from assessing sibling priority at the time of application, to the time of admission. The school says the primary reason for making this change was to put children who no longer have a sibling on roll at the school, on an equal footing with children who have no siblings on roll at the point of admission. The LA confirms it had advised the school that this could be achieved by assessing sibling priority at the time of admission alone, without the need to introduce the further condition that the child should not have another sibling attending another school.

19. The diocese considers that the arrangements are compliant with paragraph 14 of the Code, in that the allocation of places are 'fair, clear and objective' and says it could be argued that the proposed change actually makes them *more* fair. Referring to the LA's interpretation of paragraphs 1.9b and 1.9c the diocese feels that neither paragraph relates to the situation in the schools but acknowledges that there may be situations that justify a sibling attending another school, other than the 'excepted examples' quoted in the school's arrangements, but makes the point that it is extremely difficult to second guess every situation that could arise. The school has also strongly challenged the LA's interpretation of these aspects of the Code stating that it believes paragraph 1.9b applies to the applicant only and that extending it, as suggested by the LA, to include the school that the sibling attends is inaccurate

and that the intention of paragraph 1.9c is that it applies to the applicant only, and that extending it to include sibling preferences is inaccurate. Having considered the LA's views and those of the school and the diocese I am not persuaded that paragraphs 1.9b and 1.9c of the Code are relevant to the third oversubscription criterion. I also consider that paragraph 1.9a does not apply since technically the school is not placing conditions on the consideration of an application, that are not within the arrangements as it is the criterion that sets the condition. In my view the issue is rather, whether or not any conditions that relate to other children, other than the fact that a child is or is not a sibling of a child on roll, should be taken into account within the school's arrangements

20. I will now move on to consider the school's response to the objection. It believes that the changes introduced to the arrangements for 2015, after proper consultation, are based on sound objectives. The majority of parents in the village elect to send their children to the school. Where parents choose to send all their primary aged children to the school, the school wishes to support them because this then maintains the school and village community and supports the school's social and environmental principles.

21. The governing body says is it is trying to bridge the gap between two imperfect solutions. The aim is not to remove choice or to force parents to remain at the school but rather to make the process fairer for all and to prevent families from receiving the benefit of an application under the sibling criterion when parents intend to remove the older sibling before the younger child starts school. *"In addition families with primary school age children attending more than one school secure sibling benefits at each of these schools –whilst first borns or those new to the village have no such benefit. Our changes are seeking to afford equal priority to both cases."* I am puzzled by the logic of this reasoning since it seems to be based on false assumptions about the conditions that will apply to every admissions round, that is:

- in any admission round there will be a significant number of large families living in the village that have several primary age children and that they will be enrolled in a number of schools;
- all alternative primary schools will have a sibling priority within their arrangements;
- children are on the roll of other primary schools, because parents must have expressed a first preference for those schools. This seems to be contrary to the point made earlier by the school, that sometimes children are displaced to schools and it might well penalise families for circumstances beyond their control, but which would not meet the school's definition of exceptional circumstances;
- it suggests that despite statements to the contrary, the admission authority does wish to place constraints on parental preferences; and

- it has the effect of denying that a younger brother or sister of a child on roll at the school at the time of admission is a sibling.

22. The governing body has clearly put much time and effort into trying to develop arrangements that are fair. It says it has considered using the term 'family priority' but had instead decided to use the standard terminology of sibling priority. The school says that with the benefit of hindsight the use of the term 'family priority' would have provided greater clarity. It says that the arrangements will improve the likelihood that families moving in to the village will gain a place because they will have equal priority with those families that will not now be eligible to gain sibling priority. However, in practice parents can only express preferences and these can only be considered at the time of the application for admission. There is no guarantee that in any admission round, parents will be successful in achieving admission to their first preference school. It is certainly not possible for an admission authority to guarantee future places for the younger siblings of older pupils who are on roll.

23. The key stated objective is for siblings of primary school age to be educated together. *"It is our view that our Admission Arrangements aim to achieve this whilst providing a fairer way of delivering the sibling priority. Parents who are not educating their primary school age children at the same primary schools simply receive equal priority with local first born children. We believe that this is the 'most fair' way to allocate places as it levels the playing field as far as we are able to for first born children, whilst ensuring those families who value a family education have a good chance of being allocated a place at St James Primary."*

24. I can understand that it has been frustrating for the school to discover in past years that a place has been offered to a child on the basis that the child has a sibling on roll, only to find out that parents have also made a successful application for a place in year 3 at another school and will therefore be removing the older sibling from the roll of the school. However, had the arrangements for those years clearly stated that for a place to be offered the older child had to be on roll at the time of admission, rather than at the time of application it is possible that this issue may not have arisen. It was appropriate and correct for the LA to make this point to the school.

25. In the particular context of the school there is a pattern of a small number of parents claiming priority for younger siblings while also taking active steps to remove the older child and to enrol them in an alternative school. The Code makes provision in such cases for the offer of a place to be withdrawn and says in paragraph 2.12, *"An admission authority **must not** withdraw an offer unless it has been offered in error, a parent has not responded within a reasonable time, or it is established that the offer was obtained through a fraudulent or intentionally misleading application....."* I think it would be fair to say that if a parent made an



application claiming sibling priority but also elected to make a concurrent application for that older child at an alternative school, then such an application could be deemed as misleading. It should be noted however, that paragraph 2.12 goes on to say that where an application is withdrawn on these grounds the application **must** be considered afresh. Clearly then, if there is a place available in the school when the application is reconsidered the child would be admitted.

26. At present the arrangements deny the legitimate rights of some parents to claim priority under the sibling criterion. This group of parents have for whatever reason, been allocated places at an alternative school and at this school, so they do have an older sibling on roll. It is not reasonable in my view for the arrangements to deny a legitimate right for them to claim priority under the sibling criterion. It would appear that this group of parents are being put at an unreasonable disadvantage because in the past one or two families in the village have applied under the sibling criterion but had no intention of keeping an older sibling on roll.

27. There are two quite separate issues here and I am convinced that the school has made a genuine attempt to resolve them. However, in trying to deal with the issue of parents who claim sibling priority while actively seeking to remove the older sibling from the school, another group of parents are being penalised. This is neither reasonable nor fair and for these reasons I uphold this objection to the condition placed on the sibling criterion concerning having a sibling at another school. The admission authority may wish to consider a criterion that will apply only where the sibling that is 'relied upon' to gain priority for admission is on roll in one of the years 1 to 6 at the time the younger sibling starts school.

### **Other Matters**

28. Having reviewed the arrangements as a whole for admissions in September 2015, I considered other issues which may contravene the Code. Criteria 5, 6, 7 and 8 all refer to parishes and require parents to be aware of the boundaries of different parishes. The guidance notes refer applicants to the school or to the Rector of St James' Church and explain that a map can be obtained from these two sources, but as this information forms part of the arrangements, a map of parish boundaries must be included with the arrangements on the school's website.

### **Conclusion**

29. The objection is to the fact that the sibling criterion in the arrangements for admission to the school in September 2015 unfairly differentiates between children who have a sibling on roll at the time of admission such that an application will not be considered for sibling priority because the child on roll also has a sibling enrolled in another primary school. In my view it is not the role of an admission authority to seek to override the preferences that parents may wish express for each of their children or to penalise families who for an entirely valid reason have siblings at the

school and another different school. Applications must be considered individually in each relevant admissions round and it is not reasonable to take into account earlier outcomes for other children in a family that have resulted in admission to other schools.

30. The admission authority has elected to take the position that a younger child will not qualify for admission even when an older sibling will be on roll at the time of admission if other brothers and sisters happen to attend other primary schools. This seems to me to deny a legitimate legally existing relationship which in my view is neither reasonable nor fair to the applicant. For these reasons and those detailed earlier I have concluded that the objection, to the arrangements for admission to the school in September 2015, do not comply with the requirements of the Code for fairness and I therefore uphold the objection.

31. I have also considered the arrangements as a whole for admission to the school in September 2015 and have concluded that the published arrangements omit key information that some parents will require in order to be able to make an application. The Code requires the admission authority to revise its arrangements as quickly as possible.

### **Determination**

32. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of St James Church of England Primary School for 2015.

33. Further, in accordance with section 88I I have considered the arrangements for admissions in September 2015 and I determine that these do not conform with the requirements relating to admission arrangements.

34. 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 as quickly as possible.

Date: 2 September 2014

Signed:

Schools Adjudicator: Carol Parsons