



DETERMINATION

Case reference:	ADA2597
Referrer:	A parent
Admission Authority:	Hampshire County Council
Date of decision:	21 October 2014

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements determined by Hampshire County Council for Bosmere Junior School for admissions in September 2014 and 2015. I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K (2) of the Act 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 referral

1. The admission arrangements (the arrangements) for admission in September 2014 to Bosmere Junior School (the school) a community school for pupils aged 7 – 11 have been brought to the attention of the Office of the Schools Adjudicator (OSA) by a parent (the referrer).
2. A determination relating to this referral which had been issued on 3 June 2014 was quashed by Consent Order on 26 August 2014. As a result, the matter remains undetermined and I was asked on 2 September 2014 to consider it afresh. The referral concerns the relative priority given in the school's oversubscription criteria to children who live outside the school's catchment area and have a sibling at the school or its linked infant school compared to the priority given to children who live outside the catchment area and do not have a sibling at the school or linked school. The referrer questions whether this aspect of the arrangements is fair or clear. When I reviewed the arrangements I considered that there might be matters which did not comply with the requirements relating to admissions and I therefore decided to review the arrangements for 2015 also.

Jurisdiction

3. These arrangements were determined under section 88C of the School

Standards and Framework Act 1998 (the Act) by Hampshire County Council, the local authority (LA), which is the admission authority for the school. The referrer brought the arrangements for 2014 to the attention of the OSA in an email dated 21 April 2014. Section 88I of the Act provides for the adjudicator to consider arrangements brought to her attention. I am satisfied that it is within my jurisdiction to consider these arrangements and I have used my power under section 88I to consider the arrangements as a whole for both 2014 and 2015.

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 referrer's email dated 21 April 2014;
 - b. the school's comments on the matter referred;
 - c. the LA's response to the referral and supporting documents and subsequent letters;
 - d. the LA's composite prospectus for parents seeking admission to schools in the area in September 2014 and September 2015;
 - e. maps of the area identifying relevant schools;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. copies of the minutes of the meeting of the LA at which the arrangements were determined; and
 - h. a copy of the determined arrangements.
6. I have also taken account of information received during and subsequent to a meeting I held with the LA on Friday 12 September at the LA's offices in Winchester, Hampshire.

The Referral

7. The oversubscription criteria set out in the arrangements give different degrees of priority for children who live inside and outside the school's catchment area. The referrer is concerned with children who live outside the catchment area. The arrangements give a higher priority to out of catchment children who have a sibling or siblings at the school or its linked infant school than to other out of catchment children who attend the linked infant school even if these children live closer to the school than do children with siblings at the school or linked school. The referrer contends that the arrangements are not clear and are unfair. Paragraph 14 of the Code states that "*admission authorities must ensure that the practices and the criteria used to decide the*

allocation of school places are fair, clear and objective.”

Other Matters

8. When I reviewed the arrangements I considered that the arrangements might not be fair as required by paragraph 14 of the Code. I was concerned about some aspects of the priority for a particular school given in the arrangements to siblings of children who had not been able to attend their catchment area school and had been allocated to that school. The arrangements provide that in some circumstances siblings of children displaced to a non-catchment area school will be treated as if they live in the catchment area of the school. I also considered that the arrangements might not contain a final tiebreaker as required by paragraph 1.8 of the Code capable of distinguishing between two applications that cannot otherwise be separated.

Background

9. The LA's policy for admissions to schools for which it is the admission authority includes the following guiding principles that:
 - a. each school should serve its local community;
 - b. as many children as possible should attend their parents' preferred school;
 - c. siblings as far as possible can attend school together;
 - d. children should be able to benefit from continuity between schools serving the same community.
10. In common with many other LA areas, Hampshire has experienced increasing demand for primary places in recent years. By 2012 concern was being expressed among primary schools that children were unable to gain places at their catchment area school and that younger siblings were then being sent to different (non-catchment) schools with the result that families had siblings in two or more different primary schools or sets of linked infant and junior schools. In response, the LA consulted on changes to its admission arrangements to introduce what has become known as the "displaced sibling rule" which came into force for admissions in September 2014 and which continues for admissions in September 2015. The displaced sibling rule provides that in certain circumstances where a child had been refused a place at their catchment area school and allocated to another school, that child's sibling or siblings would be treated as if they lived in the catchment area of the school to which the first child had been allocated. They would be, in other words, be treated as an in-catchment sibling in relation to the school the first child attended. The oversubscription criteria for junior community and voluntary schools in the LA including Bosmere accordingly include the following:

Criterion 3

*“3 Children living **in** the catchment area of the school ...*

- (i) Children who at the time of application have a sibling ...on the roll of the school or linked infant school who will still be on roll at the time of admission. [See 4(i) for additional children who may be considered under this criterion.]*
- (ii) A criterion relating to C of E controlled schools only*
- (iii) Other children living in the catchment area of the school*

*4 Children living **out** of the catchment area of the school:*

- (i) Children who at the time of application have a sibling ...on the roll of the school or linked infant school who will still be on roll at the time of admission. (Where a sibling was allocated a place at the school or linked infant school in the normal admission round in a previous year because no places were available at the catchment school for their address, the application will be considered under 3(i) above, subject to the address being the same for both applications.)*
- (ii) Children who at the time of application are on the roll of a linked infant school.*
- (iii) Children of staff [in certain circumstances]*
- (iv) [a criterion relating to Church of England schools only.]*
- (v) Other Children.”*

11. The arrangements also provide that where the school reaches and exceeds its PAN within any of the oversubscription criteria, distance – measured by a straight line – will be used to distinguish between applicants, with those living nearer the school having the higher priority.
12. Bosmere has a published admission number (PAN) of 90. It has one linked infant school – Fairfield – which also has a PAN of 90. The LA has told me that the both schools are popular and usually oversubscribed. Figures provided by the LA confirm this and show that the schools are generally able to admit all their catchment area children together with some but not all of those from outside the catchment area who would like a place there.

Consideration of Factors

Fairness and clarity of the arrangements

13. I address first the clarity of the arrangements. It is true that by

introducing the displaced sibling rule, the LA has made its arrangements less simple than they were previously. However, that does not mean that they are necessarily unclear. Paragraph 14 of the Code states that “...parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated”. In this case, the parent who made the referral did understand how places would be allocated; in particular, the parent understood that a child would have more or less priority depending on whether the child had a sibling already at the school. I find that the arrangements are clear as required by paragraphs 14 and 1.8 of the Code.

14. I now turn to the fairness of the arrangements. The LA has a well-articulated set of principles for school admissions and has sought to ensure that admission arrangements support those principles. Where it considered it appropriate the LA has changed admission arrangements to cater for changed circumstances and has done so in accordance with the requirements set out in legislation and the Code. I consider that there is nothing unfair or contrary to any provision of the Code in the principles set out by the LA. It is inherent in oversubscription criteria that they must give a priority to some applicants compared to others and it is inevitable that when a school is oversubscribed, some who would like a place there will be disappointed. In this case, the referrer argues that it is unfair that among children who live outside the catchment area of the school, a child with a sibling at that school (or at a linked school) has priority over a child without a sibling even if the child without a sibling lives closer to the school. Distance and the presence of siblings in a school are both common oversubscription criteria. The order in which they appear relative to each other and whether this is fair in any particular case will depend on the circumstances of the school and of the admission authority. For this school, looked after and previously looked after children have the highest priority as required by the Code. Thereafter, siblings (including, of course, any covered by the displaced sibling rule) have the highest priority among children in catchment and then, after all catchment children, among children who live outside the catchment. I consider that this is fair as required by the Code and it is consistent with the principles set out by the LA.
15. When I reviewed the arrangements, I considered the displaced sibling provision along with other aspects of the arrangements. I concluded that its introduction supported the principles set out by the LA and that giving enhanced priority to siblings of those children who had not been able to gain a place at their catchment area school was fair in order to deal with the situation in the LA in which between 95 and 125 families in each of the past three years had been unable to send their children to the same school. However, there were some aspects of the displaced sibling rule which concerned me and which I thought might not be fair as required by paragraph 14 of the Code.
16. I was concerned first that children without a sibling at the school or linked school who were allocated to an out of catchment area infant

school would have no enhanced priority for admission to the linked junior school. Where a child was allocated to Fairfield from out of catchment because his or her catchment area school was full, the catchment area school would either be another infant school or a primary school. If the school were another infant school it would be likely that its partner junior school or schools would also fill with children who had a higher priority than the displaced child. If the catchment school were a primary school then it is also unlikely that it would have a place available for the child at Year 3 (Y3) when the child would leave Fairfield. In short, it is quite likely such a child would be no more likely to gain entry to his or her catchment area school at Y3 than at YR. If the child was also unable to obtain a place at Bosmere, then the child would have to go to another non-catchment area school. The LA has helpfully been able to provide me with numbers of children displaced from their catchment area infant school despite having made an on time application as shown below.

Year	Number of children displaced to non-catchment infant school
2014	42
2013	27
2012	43
2011	64
2010	29

17. The LA has also tracked the progress of the children who were displaced in 2010 and 2011 and who will accordingly have reached the end of their time at infant school and have found that one child was unable to gain a place at the linked junior school and so was “double displaced”. It is thus clear that while the number of children adversely affected by double displacement to date is very small, it does happen and I consider my concern justified.
18. I was also concerned that the displaced sibling rule might not apply in some circumstances and might not always operate to allow siblings to attend the same school or linked infant and junior schools. I considered that this might not be fair. I raised these concerns with the LA at the meeting and by drawing up two examples which I shared with the LA by letter on 2 October 2014 and which are set out below.

Child A with a sibling child B who is two years younger

19. A is not able to secure a place at her catchment area school and is allocated to YR of Fairfield infant school. B has priority under the displaced sibling rule and is allocated a place on this basis at Fairfield, joining YR at the point that A enters Y2. A applies to join Bosmere for

Y3. However, A does not have priority under 3(i) as a displaced sibling as B was not allocated a place at the school or linked infant school because no place was available at his catchment school.

20. The result is that A falls to be considered under criterion 4(i) after all children who live in the catchment area. If Bosmere fills with catchment area children, A will not secure a place and the two children will be at different schools. If A is unable to gain a place at her catchment area school, she will in effect be doubly displaced and the LA's objectives of enabling siblings to be educated at linked schools and of ensuring continuity of provision will be frustrated.

Child C with a sibling child D who is five years younger

21. C is not able to secure a place at her catchment area school and is allocated to YR at Fairfield infant school. C has left Fairfield by the time D is to be admitted. D will have priority for Fairfield if C has managed to secure a place at Bosmere. If C has not been able to secure a place at Bosmere, D will have priority under 3(i) for the infant school linked to the junior school C attends provided C was allocated to that school on the grounds that she could not gain admission to her catchment area junior school. However, the arrangements do not make clear that D will have any enhanced priority for Bosmere. This is because the arrangements do not state whether a sibling (C in this case who will have left Bosmere by the time D is to be admitted there) needs still to be attending the school for the enhanced priority to come into play.
22. In response to these concerns, the LA has informed the OSA in letters dated 22 September and 8 October 2014 that it proposes to amend its arrangements for community and voluntary controlled infant and junior schools. The letter of 8 October says that "the authority intends to use 88E to immediately vary its current arrangements (and apply the changes to its 15/16 and 16/17 policies) to give effect to the School Admissions Code". Section 88E of the Act allows admission authorities to vary determined arrangements in order to comply with a determination of the adjudicator or to conform with a mandatory provision of the Code. However, the changes the LA proposes to make have not been made at the time of completing this determination. The changes the LA proposes to make as described in its letters are set out in the following paragraphs.
23. The LA proposes to introduce an enhanced priority for a child, allocated a place at an infant school in the normal admission round in a previous year because no places were available at the catchment school for their address, and they have not moved house, that allows them to be admitted to any linked community or voluntary controlled junior school. The LA says that the intention is that the revised priority will mean the application is considered immediately after catchment sibling applicants but before catchment applicants. This approach will ensure that any child, including an elder sibling or only child, can move from an infant school to a linked junior school.

24. The LA also proposes to vary paragraph 4 (i) of its oversubscription criteria for infant schools to read:

“Children who at the time of application have a sibling ...on the roll of the school or linked junior school who will still be on roll at the time of admission. Where a sibling was allocated a place at the school or linked junior school in the normal admission round in a previous year because no places were available at the catchment school for their address, the application will be considered under 3(i), above, subject to the address being the same for both applications. In future normal admissions rounds a younger sibling will be considered to have been displaced where they were allocated a place at the school or linked junior school under this criteria as a consequence of their elder sibling’s displacement.”

25. The impact of this addition is first that where a child is displaced and has a sibling who is five years younger that sibling will be able to progress through the infant and junior schools even when their older sibling has left, thereby avoiding one family suffering displacement twice. This will also assist families with more than two siblings with a gap of more than four years between the eldest and youngest sibling and enable the siblings to progress through the same infant and junior schools.
26. The LA in proposing to make these changes also notes that by giving higher priority to some children in this way other children will necessarily have a lower priority.

The tiebreaker

27. The tiebreaker in the arrangements when I first saw them did not appear to me to be able to distinguish between two applicants in the unlikely event that they tie for the final place. At the meeting with the LA, it explained that its Geographic Information System was capable of measuring distances very finely and it was confident that it would always be able to ascertain which of two addresses was furthest from a school. Its arrangements also cater for a situation in which two or more final candidates live at the same address and are twins or from a multiple birth. However, the LA acknowledged that its arrangements did not cater for the situation where two final candidates were same cohort siblings living at the same address but not twins or from a multiple birth but, say, one sibling born in September and one in the following August or were step siblings living at the same address. The LA has proposed to vary its arrangements to include a final tiebreak of random selection to be used if the distance tiebreak cannot separate two or more applicants for the final place. This would satisfy the requirement of paragraph 1.8 of the Code for a final tiebreak capable of separating two or more applicants who qualify equally for the final available place in a school.

Conclusion

28. I have concluded that the arrangements when I first saw them were not fair as required by paragraph 14 of the Code in terms of the priority afforded to:
- a. some children who could not gain access to their catchment area infant or primary school and were thus displaced to an infant school elsewhere, when they came to move on from that infant school; and
 - b. some siblings of displaced children, depending on the structure of the family.
29. I have also concluded that the tiebreaker did not conform with the requirements of paragraph 1.8 of the Code.
30. The LA has responded swiftly and positively with proposals to tackle these breaches of the Code. However, at the time of completing this determination, the arrangements as published on the LA's website had not been changed as proposed.

Determination

31. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements determined by Hampshire County Council for Bosmere Junior School for admissions in September 2014 and 2015. I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.
32. By virtue of section 88K (2) of the Act 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.

Dated: 21 October 2014

Signed:

Schools Adjudicator: Shan Scott