DETERMINATION

Case reference: **ADA/002142**

Objector: **Eligible parents**

Admission Authority: **Enfield Borough Council**

Date of decision: **24 June 2011**

Determination

In accordance with section 88I of the School Standards and Framework Act 1998, I have considered the admission arrangements determined by Enfield Borough Council.

In addition to considering the referral, I have also considered the admission arrangements as a whole in accordance with section 88J of the School Standards and Framework Act 1998, and whether any changes should be made to them. Although I find that the admission arrangements do not conform to the requirements of the School Admissions Code I am not making any changes given the time in the admission round.

I determine that for admissions in September 2011 the admission arrangements should be as determined by Enfield Borough Council, but that for September 2012 the Council should make changes by varying the admission arrangements in order that they would conform to the requirements of the School Admissions Code.

The referral

1. An objection has been referred to the Adjudicator by eligible parents about the coordination arrangements adopted by the Council for all schools for September 2011.

2. The objection concerns the operation of waiting lists in the period between the offer day and the first day of the 2011/12 school year. The objectors believe that the Council's practice of operating "reallocation" lists composed essentially of applicants with unsuccessful higher preferences after offer day, which are given precedence over "waiting" lists composed essentially of all other applicants, breaches the requirements of the Code.

Jurisdiction

3. The Council formulated arrangements for the coordination of admissions to schools in its area for September 2011 under section 88M of the School Standards and Framework Act 1998 (the Act). The parents submitted their objections to these determined arrangements at the end of April 2011 and therefore not within the time limit prescribed for an objection in accordance with section 88H of the Act. Accordingly, I do not consider that the objection has been properly referred as there is no reason why it could not have been referred within the time limit. However, it appears to me that the matters brought to my attention may mean that the arrangements do not comply with the mandatory requirements. I am therefore considering these arrangements in accordance with my powers under section 88I of the Act. I have considered whether to use my powers under section 88J of the Act to make changes to the arrangements but have decided not to do so.

Procedure

4. In considering this matter I have had regard to all relevant legislation, guidance and the School Admissions Code. The documents I have considered in reaching my decision include:

- the parental letter (undated), forwarded to me on 28 April 2011;
- the LA's response to the objection;
- the Council's booklet for parents seeking admission to schools in the area in September 2011 and that for 2012;
- a copy of the pan –London co-ordinated admission system (template scheme for co-ordination of admissions to reception in 2012/13);
- a letter from the Council dated 27 May 2011 in response to my own of 24 May seeking clarification of a number of matters.

5. In addition to investigating the matters raised by the objector(s) I have also reviewed the admissions arrangements as a whole and considered whether I should use my power under section 88J(2)(b) of the Act. I am not using my powers under the Act to make further changes to the arrangements.

The Objection

6. The objectors have raised with the Adjudicator Enfield's practice of maintaining throughout the period between offer day and 1st September two lists for each school .One is called a "reallocations list" and is for children whose parents had named the school as a higher priority in their original application than the school they were allocated . This is given priority over a "waiting list" which is for all other applications. The objectors believe that this practice contravenes The School Admissions Code (paragraph 3.19) which states that waiting lists must not give priority to children based on the date their application was received.

7. The objectors also refer to provisions of the Code which

(i) prohibit the use of conditions such as the taking into account of the other preferences expressed to affect the priority given to an application (paragraph 2.16a)), and

(ii) prohibit priority being given to children according to the order of schools named as preferences (paragraph 2.16b).

The priority given to applicants who had named the school originally may also, they say, place the Council in breach of these requirements.

Background and Consideration of Factors

8. The objectors sought a reception place for their child for September 2011, listing 6 preferred schools as allowed in the Council's scheme for coordinating admissions. All six applications were unsuccessful, and when they approached the Council expressing a wish to name alternative preferred schools, they were told that this was possible, but that these new applications would be prioritised below all those which had been expressed for the school in initial applications.

9. The Council's initial response to the objection explained that as a London local authority, its admission arrangements reflect the requirements of the coordinated approach operated there. As a result, I wrote to the Council on 24 May asking for clarification since the objection focussed on the operation of separate "reallocation" and "waiting" lists in Enfield, which were not a feature of the pan-London scheme. The pan-London scheme does use the information provided to Councils in the form of on-time expressed preferences to carry out a "reconciliation round" after the offer day. However, this is normally complete by the start of May. I therefore asked if the Council could provide me with the rationale for the approach which they had adopted, and in particular what its view was of the potential consequences of accepting preference changes made after the offer day onto the same waiting lists that are used for reallocation purposes.

10. The Council replied to me on 27 May. It confirmed that its practice is to continue to run its admissions process up to 1 September each year by offering places to children who are on the "reallocation" lists. It therefore gives priority to existing applicants and to new applicants (who may be allowed access to the reallocation lists "in exceptional circumstances") over existing applicants who have added new schools to their preferences.

11. This practice is set out in the Council's determined admission arrangements for both 2011/12 and 2012/13, which also state that "waiting" lists are composed of applicants who received an offer of a higher preference school but who wished to be reconsidered for a lower preference school. Parents who had completed an on-time application but did not name the school (as in the case of the objectors) "may apply for their child to be added to the waiting list". I assume this means that they would be added to this list,

and if so, there seems to be no reason for not stating this as a fact. The Council's admission arrangements also clearly state that "The reallocation list will take precedence over the waiting list and will operate until 1 September".

12. The Council told me that it has taken the view that since its scheme allows parents to name up to six schools on the common application form (compared to the minimum of three required by The School Admissions (Co-ordination of Admission Arrangements) (England) Regulations 2008) (the Regulations), "the expectation is that parents who have had the opportunity to make an on time application would already have identified the schools they would like their children to be considered for". The Council says it is aware that London authorities take different approaches to post-allocation waiting lists - some operating in the same way as Enfield, others constructing waiting lists without reference to previous applications - but that this is not a "mandatory" element of the pan-London scheme.

13. The Council has made the further point that it has faced considerable pressure as a result of the large number of new applicants (mainly families new to the area) accommodated onto reallocation lists in recent years, because of the effect which this has of moving those already on the lists further down them. This has resulted in expressions of concern by parents. More than 250 such new applications have been received since March in the current year, and I was told that the Council is exploring the possibility of opening new classes in September to meet the additional demand.

14. In its letter to me, the Council has made a reference to its practice of allowing changes of preference where there are exceptional circumstances "mirroring the process described in the Code in relation to late applications". I take this to be a reference to paragraph 3.19, which requires those moving into an area outside the normal admission round to be added to waiting lists in a position determined by the relevant oversubscription criteria. I take it also to mean that the Council's view is that a changed preference is not a late application unless the Council chooses to treat as one, "in exceptional circumstances".

15. The Regulations define late applications as those which are submitted before the start of the school year but which have not been determined by the admission authority on or before the offer day. The Code requires schemes to state how they will handle late applications (paragraph 3.25) but does not specify in terms that they shall all be treated in the same way. It may then be permissible for schemes to define two or more classes of late application, and to treat them differently. In practice, this is what Enfield does since it treats those which are "new" and those which result from a changed preference in different ways. The question which I have to address is whether in doing so the Council's practice means that it is not compliant with other mandatory elements of the Code.

16. Paragraph 3.19 of the Code, as we have seen, is that relied upon by the objectors, since it states that waiting lists must not give priority to applicants based on the date that the application was received and they contend that this is what the Council is doing.

17. The Council for its part takes the view described above in paragraph 12 – essentially that by allowing six preferences to be expressed, any likely preference on the part of parents will have been captured at this point, and so continuing to prioritise these over changed preferences is appropriate.

18. The Regulations require parents to be allowed to express a minimum of three preferences on their common application form. But this entitlement does not preclude in my view the general right which a parent has to express a preference for any school at any time and to have that preference considered within the terms set out in the Code. The Code in fact makes a specific reference to the fact that schemes of coordination do not affect the statutory duty under section 86 of the Act to comply with such expressed preferences (paragraph 1.37). That being the case, the right to express preferences on common application forms must be seen as an additional right, not as a replacement for the general right to express a preference, which remains unaltered.

19. Nevertheless, it is obvious that any coordination arrangements have to use the information that is provided by parents at a particular point in time, which is why the Code (paragraph 1.39) states that after the closing date local authorities should not allow preferences to be changed unless there are genuine reasons. The Council has confirmed my understanding that the pan-London scheme requires a period after the offer date when this original information continues to be used for “reconciliation”, but that this is complete by the beginning of May.

20. After that date has passed, it is difficult to see any administrative reason why all remaining unsatisfied preferences, including newly expressed ones, should not then be accepted and treated equally - and indeed the Council has not offered one. Instead, it considers its current practice to be justified on the grounds of a sense of equity concerning the status of the preferences expressed on the common application form (paragraph 12 above) and because of the unpopularity of the effect of new preferences on existing ones (paragraph 13 above). I will now consider what weight should be attached to each of these lines of reasoning.

21. I have set out above the reasons why I do not believe there to be any justification for continuing to give higher status to preferences expressed on the common application form than to those expressed subsequently, other than to meet the needs of the coordination process. Even if it were possible to put aside for the moment the principal argument concerning the primacy of parental preference irrespective of when it is expressed, the Council’s reasoning could only have some validation in practice were all applicants to receive an offer of one of their preferred schools on offer day, and this is clearly not the case, as this objection shows.

22. On the contrary, what the Council’s practice achieves is to give higher priority to parents who want a higher preference school having already been offered one of their original preferences, than to parents who are seeking to have some preference satisfied, having received no such offer in the first place. I do not see any argument that would justify this on the grounds of equity. Equity is however clearly served for all at the point where equally

expressed preferences are dealt with on an equal footing – on offer day. Subsequently expressed preferences do not interfere with that, and in any case have less chance of being satisfied than those dealt with on offer day. Save for the needs of "reconciliation" in terms of timing, late applications should be treated on an equal footing with other unsatisfied preferences after offer day, and I believe that is what the Code requires. I do not accept that the Council has made any case on these grounds for doing otherwise.

23. The Code (paragraph 3.23) sets out very clearly the mandatory requirements that applications made outside the normal admission round, which includes those made after offer day but before the start of the school year, must be considered without delay and that applicants must not be told that they can only be placed on a waiting list. This can only happen if such applications are considered on at least an equal footing - that is, prioritised according to the same oversubscription criteria – as outstanding preferences from the common application form. It follows that the Code expects these outstanding preferences to be ranked lower than newly expressed ones if oversubscription criteria dictate this. Equity at this point concerns the need for children – whether newly arrived in a locality or not – to be given a school place according to fair criteria which can be applied at the time when that need exists, and this is what the Code reflects. The Council's concerns about the unpopularity of the effect of late applications from newly arrived families must take second place to these considerations.

24. Finally, I now turn to the objectors' view that the Council's practice offends further mandatory requirements of the Code – those which deal with conditionality. By giving higher priority to some preferences (those expressed on offer day, but as higher preferences than those which can be satisfied at that point) than others (those expressed on offer day, but which are for a lower preference than the school at which a place has been allocated), the Council's practice also implicitly takes account of other preferences which have been expressed and of the order in which they have been prioritised. I agree with the objectors that this in breach of paragraph 2.16b). However, the prohibition on conditionality in paragraph 2.16a) only applies to "preferences for schools made on the same application form", and I cannot see that where (as in the objectors' case) the Council has taken into account the fact that any newly preferred schools were not those originally named offends against this principle. I do not uphold this part of the objection.

Conclusion

25. For the reasons stated in paragraphs 16-22 above, I agree with the objectors that the scheme of the Council for coordinating admissions for 2011/12 does not comply with the requirements of the Code, paragraph 3.19. I also agree, for the reasons stated in paragraph 24 above that it does not comply with the requirements of paragraph 2.16b. The Council's arrangements for 2012/13 remain unaltered in this respect.

26. I have considered whether to use my powers to make changes to these arrangements, but in view of the timing in relation to admissions for September 2011 have decided not to do so. Also, given the length of time available to the Council to consult locally on necessary amendments before

the admissions process for September 2012 begins in earnest, I believe it is more appropriate for it to engage in such a process and to then itself make amendments to the 2012/13 arrangements. However, changes must be made which have the effect of ensuring that a single waiting list is in operation for each school during the period between the ending of the pan-London reconciliation process in 2012 and the first day of the school year 2012/13 in order for the arrangements to comply with the Code. I so determine.

27. Although the process of making admissions for September 2011 is now well advanced, it is not yet completed. I trust that the Council will bear in mind the judgements set out in this determination when considering whether or not it remains possible for it to provide some amelioration for the objectors and for others in similar circumstances at this point.

Determination

28. In accordance with section 88I of the School Standards and Framework Act 1998, I have considered the admission arrangements determined by Enfield Borough Council.

29. In addition to considering the referral, I have also considered the admission arrangements as a whole in accordance with section 88J of the School Standards and Framework Act 1998, and whether any changes should be made to them. Although I find that the admission arrangements do not conform to the requirements of the School Admissions Code I am not making any changes given the time in the admission round.

30. I determine that for admissions in September 2011 the admission arrangements should be as determined by Enfield Borough Council, but that for September 2012 the Council should make changes by varying the admission arrangements in order that they would conform to the requirements of the School Admissions Code.

Dated: 24 June 2011

Signed:

Schools Adjudicator: Dr Bryan Slater