

DETERMINATION

Case reference: ADA2618

Objectors: A member of the public

Admission Authority: Hertfordshire County Council

Date of decision: 4 August 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 Hertfordshire County Council for schools for admissions in September 2015.

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 make the revision to its admission arrangements as quickly as possible.

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 about the sibling definition within the determined admission arrangements (the arrangements) for September 2015 for schools for which Hertfordshire County Council (the council) is the admission authority. The objection to the sibling definition is that it does not include any reference to foster family relationships.

Jurisdiction

2. These arrangements were agreed at Cabinet on 25 March 2014 and were determined by the County Council on 26 March 2014 under section 88C of the Act.

3. The objection to the 2015 determined arrangements was submitted by an anonymous objector on 10 April 2014. The anonymous objection was allowable under Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admissions Arrangements) (England) Regulations 2012 because the objector had provided his/her name and address to the Adjudicator. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that it is within my jurisdiction to consider this objection.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

The documents I have considered in reaching my decision include:

- a. the form of objection of 10 April 2014, and further comments from the objector on 12 May 2014;
- b. responses with attachments from the council dated 6, 8 and 13 May 2014;
- c. the sibling definition in the 2015 determined arrangements available on the council's website; and
- d. the related determinations ADA 2585 and 2586.

5. I arranged a meeting on 4 June 2014 (the meeting) with representatives of the council, Watford Grammar School for Boys and Watford Grammar School for Girls, as all three admission authorities had been the subject of similar complaints about the sibling definition. I have considered the representations made to me at the meeting and the documentation and correspondence submitted.

The Objection

6. The objection relates to paragraph 1.11 of the Code with respect to the definition of sibling used by the council which fails to include foster family relationships. In the council's arrangements for community and voluntary controlled schools for which the council is the admission authority, a sibling is defined as *"the sister, brother, half brother or sister, adopted brother or sister, or a child of the parent/carer or partner, and in every case living in the same house from Monday to Friday. A sibling must be on the roll of the named school at the time the younger child starts."* The same sibling definition is also used by a number of other schools using the council's oversubscription criteria for admissions in September 2015.

7. The objector asserts that this sibling definition appears to have excluded a younger child from applying as the sibling of a looked after child already on roll at a school, even though both are living together in the same family home. The objector complains that the sibling definition does not comply with paragraph 14 of the Code because it is *"vague, confusing and unclear for families looking after children on behalf of the state. As a consequence, these families are precluded the right to apply for a sibling right when submitting the council's admission application."* Paragraph 14 states that *"in drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."*

Background

8. In an email dated 6 May 2014, the council confirmed it had undertaken a full consultation on its proposed arrangements for 2015/16 in the period 2 January 2014 to 28 February 2014, and provided appropriate evidence to assure me that the council had complied fully with the requirements of the Code related to consultation.

9. The same member of the public had also submitted on 1 April 2014 a similar objection to the sibling definition used by Watford Grammar School for Boys, the subject of the earlier determination ADA 2585, and the related determination with

respect to Watford Grammar School for Girls ADA2586.

Consideration of Factors

10. I note that paragraph 1.11 of the Code states that *“admission authorities **must** state clearly in their arrangements what they mean by ‘sibling’ (e.g. whether this includes step siblings, foster siblings, adopted siblings and other children living permanently at the same address or siblings who are former pupils of the school).”* In this case I have taken *foster sibling* to mean a child being looked after by parents who have at least one younger child by birth and that all are living in the same family home.

11. The council defines sibling as *“the sister, brother, half brother or sister, adopted brother or sister, or a child of the parent/carer or partner, and in every case living in the same house from Monday to Friday.”* However, in the hypothetical case where the younger birth child of the family is applying for a place at the same Hertfordshire school as a looked after child already on roll at the school, it is not clear whether or not the younger child would be prioritised for a place as a sibling even though s/he lives throughout the week (not just Monday to Friday) in the same family home as the foster child.

12. It is the case that the council’s definition does not specify whether or not foster relationships are included as siblings, and the objector asserts the definition is therefore *“vague, confusing and unclear for families looking after children on behalf of the state.”* As foster sibling is included as an example in paragraph 1.11 of the Code, this suggests that it is up to the admission authority to decide whether or not foster siblings should be included in the sibling definition. It could therefore be the case that the lack of any reference to foster relationships in the sibling definition may lead parents with a foster child already at a Hertfordshire school to be unsure as to whether or not their younger child by birth would be eligible to be considered under a priority for siblings. Accordingly, the lack of certainty about whether or not foster relationships fall within the council’s sibling definition does not comply with the Code at paragraph 14 which states that *“parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”*

13. However, from the objector’s further statement that *“as a consequence, these families are precluded the right to apply for a sibling right when submitting the council’s admission application”* it appears that the objector has assumed that as foster relationships have not been *explicitly* included in the sibling definition, they have been *implicitly* excluded. It is arguable whether the council has stated the sibling definition with sufficient clarity with respect to foster siblings to satisfy the requirement of the Code at paragraph 1.11.

14. In the response of 6 May 2014, the council confirmed that it does not currently include in its definition *“the siblings of children living in the same household as children looked after”* [CLA] and also stated that *“it is fairly common for schools and local authorities **not** to include CLA in their sibling definition.”* However, in the meeting on 4 June 2014 I explained that the converse is also true, that it is fairly common for schools and local authorities to include foster relationships in their sibling definition.

15. Paragraph 1.11 of the Code requires that *“admission authorities **must** state clearly in their arrangements what they mean by ‘sibling’ (e.g. whether this includes ... foster siblings... and other children living permanently at the same address).”* I find it puzzling that the council’s sibling definition is so broad in terms of acceptable family relationships, and so precise in terms of the requirements of residence in the same house from Monday to Friday, and yet from the meeting and from correspondence, it is clear that the council did intend to exclude foster relationships from the sibling definition, even though a looked after child would be living in the same home as a birth child of the same family, and not just Monday to Friday but throughout the week. As a result, it seems to me that I should also consider whether it is fair for the council to have excluded foster relationships from the sibling definition, as the Code at paragraph 14 requires that the practices used to decide the allocation of school places must be fair.

16. The council explained in the response of 6 May 2014 that it *“does not object in principle to amending its sibling definition to include children looked after, however we do feel that if the exclusion of CLA from the sibling definition is indeed a breach of the Code, the Code itself should be clear on this issue.”* The council also expressed concerns *“that the inclusion of children looked after in the sibling definition could, perhaps ‘unfairly’ in the eyes of some parents, provide a sibling link to children who would otherwise have little chance of obtaining a place at an oversubscribed school some distance from their home address, particularly if the CLA in question was fostered on a temporary basis.”*

17. In the meeting the council reiterated what it described as a *“slight concern”* that some children are placed with the foster family on a short-term temporary basis, and that in such cases, allocating a place on the basis of being the sibling of the foster child already at a school may be unfair to other families, but the council acknowledged that such cases would be rare. The council reiterated that it did not have an issue in principle with widening the sibling definition to recognise foster relationships, and would be happy to do so.

18. In the hypothetical case mentioned above that two children live as siblings in the same family home, one being a foster child already at a Hertfordshire school and the other a younger child by birth, I consider that the children should have as much right to be eligible as siblings as any two children living in any other family arrangement which qualifies under the sibling definition. The council suggested that allocating a place on the basis of being the sibling of the foster child already at a school may be unfair to other families, as some children are placed with the foster family on a short-term temporary basis. I consider that this argument is weak, as the council acknowledged in the meeting that such cases would be rare. Furthermore, I consider that the possibility of unfairness being perceived by other families is outweighed by the actual disadvantage to the younger birth child in a family with a foster child already at a school as the younger child would not be prioritised as a sibling for a place at the school, unlike the younger child in any other family arrangement allowed by the sibling definition. If the council’s concern is that, on rare occasions, some foster children are placed with a family on a short-term basis, it may be possible for the council to develop a form of words in the sibling definition to exclude that possibility.

19. I consider that the council must include foster relationships in the sibling definition, as to do otherwise would be unreasonable as it would disadvantage unfairly in terms of priority for places at a school, a birth child living in the same family home as an older foster brother or sister already on roll at the same school, and therefore in breach of the mandatory requirement in paragraph 14 that *“the practices and the criteria used to decide the allocation of school places are fair”* and also a breach of paragraph 1.8 that *“oversubscription criteria **must** be reasonable.”* I acknowledge that in the meeting on 4 June 2014 the council agreed to amend the definition of sibling to include foster relationships.

Conclusion

20. As the council does not refer to foster relationships at all in its sibling definition, it may be that parents with a foster child already at a Hertfordshire school would not be able to look at the arrangements and ascertain whether or not their younger child by birth would be eligible as a sibling to be prioritised for a place at the same school. I consider this lack of certainty to be a breach of the Code at paragraph 14 which states that *“parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”*

21. I consider that the younger birth child of a family with a looked after child already on roll at a Hertfordshire school has at least as much right to be prioritised as a sibling for a place at the school as the younger child of any other family arrangement allowed by the county’s broad range of family relationships permitted by the sibling definition. As the council’s concern relates to the rare occasions when some foster children may be placed with a family on a short-term basis, it may be possible for the council to develop a form of words in the sibling definition to exclude that possibility. I consider that it would be unreasonable and therefore a breach of the Code at paragraph 1.8 for the school not to decide that foster relationships qualify as siblings, as to decide otherwise would be unequal treatment, therefore unfair and in breach of paragraph 14.

22. I conclude that the council must include foster relationships in the sibling definition, as to do otherwise would be unreasonable as it would disadvantage unfairly in terms of priority for places at a school, a birth child living in the same family home as an older foster brother or sister already on roll at the same school, and therefore in breach of the mandatory requirement in paragraph 14 that *“the practices and the criteria used to decide the allocation of school places are fair”* and also a breach of paragraph 1.8 that *“oversubscription criteria **must** be reasonable.”*

23. I acknowledge that in the meeting on 4 June 2014 the council agreed to amend the definition so that foster relationships are recognised as siblings.

Determination

24. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by Hertfordshire County Council for schools for admissions in September 2015.

25. 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 make the revision to its admission arrangements as quickly as possible.

Dated: 4 August 2014

Signed:

Schools Adjudicator: Ms Cecilia Galloway