

## **DETERMINATION**

**Case reference: ADA/002141**

**Objector: Eligible parents**

**Admission Authority: Essex County Council on behalf of the Governing Body of Colchester Royal Grammar School**

**Date of decision: 15 June 2011**

### **Determination**

**In accordance with section 88I of the School Standards and Framework Act 1998, I have considered the admission arrangements determined by Essex County Council and the Governing Body of Colchester Royal Grammar School.**

**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 Essex County Council and the Governing Body of Colchester Royal Grammar School, but that for September 2012 each should make changes by varying the arrangements in order that they should 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 admission arrangements for Colchester Royal Grammar School (the School), a selective Foundation school for boys for September 2011.**
- 2. The objection concerns the arrangements made by Essex County Council (the Council) to coordinate admissions to secondary schools in the County. The objectors are of the view that its practice of placing new applications made after the offer day on a lower priority waiting list than some unsuccessful applications made before the offer day contravenes mandatory aspects of the Code.**

## **Jurisdiction**

3. The Council formulated a qualifying scheme for the coordination of admissions to secondary 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 the determined admission arrangements on 24 March 2011 and therefore not within the time limit prescribed for an objection in accordance with section 88H of the Act. 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, and also those of the School itself under the same provisions. 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 of objection of 24 March 2011;
- the school's and the Council's responses to the objection;
- the Council's booklet for parents seeking admission to schools in the area and its scheme for coordinating admission in September 2011 and the scheme for coordinating admissions in September 2012;
- a series of letters from the objector and the Council which follow on from the Council's initial response to the objection ending with a letter from the objector dated 30 May 2011.

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 objection concerns the manner in which the scheme for coordinating admissions operated by the Council treats some applications made after the closing date, by placing them on a waiting list which is given lower priority than that maintained for some other late applications. The objectors believe that this practice contravenes the requirement of the Code (paragraph 3.19) that waiting lists must not give priority to children based on the date their application was received.

## **Background and Consideration of Factors**

7. There are four grammar schools in Essex. Entry is based on the results obtained by candidates in a common selection test. Admission to these schools is, in common with all secondary schools in the County, coordinated

by Essex County Council.

8. In their referral letter of 24 March 2011, the objectors informed the Adjudicator that when they submitted their Common Application Form, they stated a first preference for one of the four Essex grammar schools, but this application was unsuccessful. A place was offered at the other school for which a preference had been expressed, which is a non-selective school.

9. The objectors then submitted a further preference form naming, in addition to these two schools, Colchester Royal Grammar School and a selective school in a neighbouring local authority area, both as higher priorities than the school at which a place had been offered.

10. The application for a place at Colchester Royal Grammar School was also unsuccessful. The objectors were informed by the Council that their application had not been considered alongside all others also seeking a place there, but had been put on a second waiting list which was accorded lower priority. Within each list, applications were ranked according to the school's oversubscription criteria, which prioritise applications based on the score obtained in the selection test by candidates who have named it as a preferred school and for whom it is the highest preference school on their application for which they have qualified. I shall return to this final point below.

11. The Council wrote to the objectors on 30 March 2011, clarifying how their application for a place at the School has been processed. In this letter, the Council stated that, in accordance with its published scheme, applications received after the national offer day (1 March 2011) were held in a lower priority waiting list (than unsuccessful applications received as part of the normal admission round).

12. The objectors wrote again to the Adjudicator on 1 April 2011 to refine their objection, **firstly** citing The School Admissions (Co-ordination of Admission Arrangements)(England) Regulations 2008 (the Regulations) as support for their belief that their second application was a late application in terms of the distinctions drawn there between (i) applications made in the normal admission round, (ii) late applications and (iii) in-year applications. Their view was that it would have been appropriate for the Council to have treated all applications falling within the late application category in the same way, but that it had not done so. A **second** part of their objection, they explained, was that the Council had used the date on which an application was made (before or after the national offer day) to define two waiting lists having differing priorities, in contravention of the Code (see paragraph 6 above). **Thirdly**, Essex's arrangements meant, they believed, that a parent who had not applied for a place at all in the normal admission round (through dereliction) would be in an advantageous position compared to those who had but who had been unsuccessful, since the former would be placed on the higher priority waiting list because they had not previously had a request determined. This offended the principle of fairness which underpins the Code. As a **fourth** element, the objectors referred to paragraph 2.16a) of the Code which prevents admission authorities from taking into account other preferences expressed on the same application form when determining the outcome of an application. In their view, because the Council did take into

account the fact that the preference expressed for the School was not one included in the original preference form, it was in practice offending against this requirement. I shall deal with each of these elements to the objection in turn.

13. In its further response dated 3 May 2011, the Council states that it considers the third and fourth parts of the objection to be unfounded. I agree. The Council's arrangements make it clear that a new application would only be accorded the higher priority if it could be shown that the application could not reasonably have been made on time, and this would not be the case in the example given by the objectors as the basis for the third part of their objection. As to the fourth part, the Code's outlawing of "conditionality" (in paragraph 2.16a) involving other schools that might be named on the same form is aimed, in my understanding, at ensuring that preferences are considered having regard only to the school itself and in isolation from the preferences being expressed for other schools. I do not see that the fact that the Council has taken into account that the School was itself not originally preferred offends against this principle. And of course, the prohibition on "conditionality" in paragraph 2.16a) only applies to "preferences for schools made on the same application form", not to different preferences made on different application forms. Rather more pertinent it seems to me is the issue of the timing of the application in relation to the coordination process, to which I now turn.

14. In response to the fuller objection referred to above, the Council wrote again to the Adjudicator on 3 May 2011. This letter, and subsequent correspondence provided by both parties, deals principally with the first two elements of the objection. It is made clear in these exchanges that the practice of the Council, clearly set out in its scheme of coordination (for both 2011/12 and 2012/13, which have identical wording) is to deal with changed preferences expressed before the national offer day by treating them effectively as preferences expressed by the original closing date, if there are considered to be exceptional reasons for the lateness. They are treated as late applications (considered after all on-time applications have been processed) if there are no such circumstances. Changed preferences expressed after the offer day are treated as part of the late applications if there are considered to be exceptional circumstances, but if not, they are placed in a second waiting list which is considered only when none of the higher priority waiting list remains.

15. Both parties have referred to the Regulations which define the three classes of application (see paragraph 12 above) in support of their case. I shall attempt to clarify for both how the issues raised by this objection sit, in my view, in relation to these definitions. Firstly, the Council's practice is to choose to determine on offer day accepted changed applications received after the closing date but before offer day. It treats them not as late applications but as part of the normal admission round. If a preference is expressed after the offer day it cannot be anything but a late application, since it cannot be determined on the offer day. The Council's practice however is to distinguish between such late applications by treating those which follow on from an original expression of preferences differently from those received at this point for the first time (for instance from parents who have moved in to the

area). The former group are dealt with in the way we have seen and which forms the basis of this objection, and the latter are added to the higher priority waiting list.

16. I agree with the Council when it says that although the Regulations define what is and what is not a late application, they do not require all late applications to be treated in the same way, only that the coordination scheme should set out how they will be dealt with. The Essex scheme does this and it has been drawn up in the required manner. This in itself does not provide compliance with the requirements of the Code, however, as the Council would have me accept. The question I have to address is whether what the scheme does is in accordance with the Code as a whole.

17. The Council maintains that its practice in respect of changes of preference made after offer day which are not accepted does not offend the Code, and is justified because to do otherwise would allow parents what would effectively be *“5<sup>th</sup>, 6<sup>th</sup> and so on preferences in a scheme which only allows 4”*. In its view it would be wrong to allow parents to *“jump’ ahead on the waiting list of someone who did apply for that school originally and is still seeking a place”*.

18. It therefore contends that the requirement of the Code not to treat applications differently based on the date when they are expressed (paragraph 3.19) is not breached because the Council is not doing so – it is treating them differently *“because they submitted the preference on a second application having elected not to apply for the school in the first place when they had the chance to do so as part of their 4 preferences”*.

19. However, under the Essex scheme, if a parent made a change to their preference before the offer day for reasons which were not accepted as exceptional, that changed preference would be considered at the point when all on time applications had been dealt with. But if the same change were made after the offer date, also for reasons which were not seen as exceptional, it would be placed on a lower priority waiting list and not considered until there were no outstanding preferences remaining on the higher priority waiting list. In other words, it is clear to me that the date on which the change is made is material to how it is dealt with within the waiting list. This constitutes a clear breach of the requirements of paragraph 3.19 of the Code, in my view.

20. I have given some thought as to why the Council has considered its existing practice to be justified. It has been very clear that it takes the position that it would be unfair to others on the waiting list to consider what it regards as “second” applications on an equal footing. In doing so, it has stated its understanding that the Code and Regulations “allow” parents to express a minimum of 3 ranked preferences on the common application form. Indeed, this is the case (Code, paragraph 3.15a)), and the Essex coordination scheme allows 4 such preferences to be expressed. But the coordination arrangements must be read in the context of the Code as a whole, which makes an explicit reference (paragraph 1.37) to the fact that they do not affect the statutory duty under section 86 of the Act to comply with parental preferences. The right to express a number of preferences as part of the

coordinated scheme does not preclude the general right to express a preference for any school at any time and to have that preference considered within the terms set out in the Code. In other words, the entitlement given to parents to express preferences under coordination schemes is an additional entitlement to their general right to do so. It is not a substitute that stands in place of that entitlement.

21. Nevertheless, it is obvious that any coordination arrangements have to use the information that has been provided by parents at a particular point in time, which is why the Code (paragraph 1.39) states that after the closing date preferences should only be changed for genuine reasons. The Essex scheme follows this line. However, once offer day has passed, it is difficult to see any administrative reason why all extant unsatisfied preferences should not then be accepted, including newly expressed ones (save in the case of the pan-London scheme, where a further “reconciliation” period using the information originally provided is needed). The Council is clear that its reasons for not doing this are not administrative in origin, but to do with what it genuinely sees as an issue of equity. However, I believe this to be misplaced in this case.

22. Equity is served it seems to me at the point where all preferences are expressed equally and dealt with on an equal footing – on offer day. Subsequent changes in preference do not interfere with that, and must inevitably have less chance of being satisfied than preferences which were considered then. If post-offer day changes of preference do constitute a second choice, then they are in any case a second order second choice. Given the priority afforded within the Code to the expression and satisfaction of parental preference, revised preferences of this sort should not be further diminished because of the timing with which they were expressed. It is inappropriate in my view, beyond the point where practical requirements dictate the use of a defined information set, to regard one preference as one that has been expressed (an application within the normal admission round), and another one as one that effectively has not (one that has been expressed post offer day), as the Council has tried to persuade me.

23. In this particular case, the admission in question is for a place at a selective school, against whose oversubscription criteria the candidate would have had a high priority and who would, the Council has told me, have been allocated a place if the School had been included in the original application. That application may well have also stood a reasonable chance of being successful if considered as part of the higher priority waiting list, as I believe should have been the case. In reviewing the School’s oversubscription criteria, I have been concerned to see that its admission arrangements for 2011/12 (sent to me by the School on 26 April 2011) appear to state that preference is given to those candidates for whom the School is the highest preference school for which they have qualified.

24. This wording may have been introduced because of the effect of coordination, which will indeed mean that the offer of a place at the School will only be made if it is the highest preference school at which a place can be offered. However, that is different from preference being given in the first place within oversubscription criteria on the basis of the order in which schools are named by the parents in their application. Such a condition would

offend against the requirement of the Code (paragraph 2.16b)) that priority is not given on this basis. It would also have the effect of making the status of a preference expressed subsequent to offer day uncertain in this regard.

## **Conclusion**

25. For the reasons stated in paragraphs 16-19 above, I agree with the objector that the scheme of the Council for coordinating admissions to secondary schools in 2011/12 does not comply with the requirements of the Code, paragraph 3.19. The Council has recently determined its arrangements for 2012/13 which remain unaltered in this respect. I have considered whether to use my powers to make changes to these arrangements, but in view of the length of time which is available to the Council to consult locally before the issuing of Secondary Education in Essex booklet to year 6 pupils at the end of August, I believe it to be more appropriate for it to do so. However, changes must be made which have the effect of ensuring that a single waiting list is operated by the Council in respect of each secondary school during the period between the offer day and the first day of the school year 2012/13 in order for the arrangements to comply with the Code. I so determine.

26. The School's admission arrangements for 2011/12 were unclear in the way I have set out in paragraph 23-24 above. Whether or not the wording referred to concerns the use by the School of an inappropriate condition within its oversubscription criteria, these arrangements nevertheless failed to meet the general requirement as to clarity of admission arrangements. (Code, paragraph 1.71a)). The School recently determined its arrangements for 2012/13 and these remain unaltered in this respect and are therefore in breach of this requirement. Again, given that we are currently at the very early stages of the 2012/13 admission round I have decided not to use my powers to make changes to the School's arrangements, but it must do so itself in order to comply with the requirements of the Code. Criteria that are used to distinguish between otherwise equally qualified applicants must be clearly set out in the order in which they will be applied.

## **Determination**

27. In accordance with section 88I of the School Standards and Framework Act 1998, I have considered the admission arrangements determined by Essex County Council and the Governing Body of Colchester Royal Grammar School.

28. 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.

29. I determine that for admissions in September 2011 the admission arrangements should be as determined by Essex County Council and the Governing Body of Colchester Royal Grammar School, but that for September 2012 each should make changes by varying the arrangements in order that

they should conform to the requirements of the School Admissions Code.

Dated: 15 June 2011

Signed:

Schools Adjudicator: Dr Bryan Slater