

DETERMINATION

Case references: ADA/002269, 2276, 2278, 2290, 2292, 2296, 2308

Objectors:

- **Northamptonshire County Council**

The Governing Bodies of:

- **Collingtree Church of England Primary School**
- **Elizabeth Woodville School**
- **Hackleton Church of England Primary School**
- **Hardingstone Primary School**

- **The Diocese of Peterborough**

- **An individual parent**

Admission Authority: The Governing Body of Caroline Chisholm School

Date of decision: 4 September 2012

Determination

In accordance with section 88H (4) of the School Standards and Framework Act 1998, I uphold the objections to the admission arrangements determined by the Governing Body of Caroline Chisholm School.

I have also considered the arrangements in accordance with section 88I of the Act. I determine that they do not conform with the requirements relating to admissions arrangements in the way set out in this determination.

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 referral

1. Under section 88H (2) of the Schools Standards and Framework Act 1998, (the Act) seven objections have been referred to the Adjudicator. The

objectors are Northamptonshire County Council (the County Council), the governing bodies of four schools, the Diocese of Peterborough (the Diocese) and an individual parent. The objections relate to the admission arrangements (the arrangements) for the secondary section of the Caroline Chisholm School (CCS), an Academy School, for September 2013. The objections all relate to this school's introduction of an oversubscription criterion which takes account of the primary schools attended by applicant children.

Jurisdiction

2. The terms of the Academy agreement between the proprietor and the Secretary of State for Education require that the admissions policy and arrangements for the Academy School are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the proprietor, which is the admission authority for the School, on that basis.
3. The objectors submitted their objections to these arrangements on various dates before 30 June 2012. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and that they are within my jurisdiction.

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 objectors' letters and supporting documents;
 - b. the School's responses to the objections and supporting documents;
 - c. the County Council's composite prospectus for parents seeking admission to schools in the area in September 2012;
 - d. maps of the area identifying relevant schools;
 - e. details of the arrangements made for consultation on the admission arrangements;
 - e. the summary of the outcomes of the consultation and the governors' responses to these; and
 - f. a copy of the determined arrangements.

Background

5. Following consultation, the governors of the CCS adopted a set of admission arrangements for 2013 which give greater weight than hitherto to the primary school attended by applicant children.

6. The order of priority for consideration of admission is:
 1. *Looked after children*
 2. *Children who live in the admissions area (Wootton, Wootton Fields, Grange Park, Quinton, and Courteenhall) and attend a cluster school and have an older sibling at CCS*
 3. *Children who live in the admissions area (Wootton, Wootton Fields, Grange Park, Quinton, Courteenhall) and attend a cluster school*
 4. *Children who live in the admissions area and have an older sibling at CCS*
 5. *Children who live in the admissions area*
 6. *Children who attend a cluster school and have an older sibling at CCS*
 7. *Children who attend a cluster school*
 8. *Children who have an older sibling at CCS*
 9. *Other children.*
7. The cluster schools are identified as Woodland View Primary School, Preston Hedges Primary School, Wootton Primary School
8. For each of these criteria (or sets of criteria) there is a tie breaker based on distance of the child's home from the school, with those living nearest having preference.
9. The principal difference between these criteria and those operating for 2012 admissions is that the new criteria give greater weight to attendance at one of the three cluster schools. The 2012 criteria give higher priority to residence in the catchment area than to attendance at a cluster school.

The Objections

Northamptonshire County Council

10. In its closely argued submission the County Council submits that, whilst schools operating in clusters have a number of significant benefits, the use of such clusters for the purpose of determining priority in the allocation of school places can be unfair. It argues that this is the case here and makes the following points in support of this view.
 - a. By giving priority to children attending a group of primary schools, CCS is overlooking the needs of other families resident in the area who could not secure a place in any of those primary schools or who chose not to for whatever reason. In adopting its new order of priorities CCS would be failing to meet "the needs of the surrounding communities."

- b. Bearing in mind wider demographic trends and patterns of parental choice in the primary sector, the number of children projected to be in attendance at the linked (or cluster) primary schools is such that CCS is unlikely to be in a position to admit all applicants from those schools, thus undermining the putative benefits of giving priority to pupils attending cluster schools; "...the current linked area is simply too large for the school to be able to accommodate all the pupils living within it."
- c. The introduction of the new priorities in the oversubscription criteria will compound the problem of securing fair access to secondary schools which the County Council is seeking to do through a strategic review of cluster groupings which requires the co-operation of all secondary admission authorities in the area. This review would secure a better match between pupil places and demand, and address some of the anomalies identified during CCS's own consultation on its revised arrangements, particularly the anomaly of families having low priority for admission to CCS despite its being their nearest secondary school.
- d. There is evidence indicating that a number of parents move their children into available places in the CCS cluster primary schools in order to secure higher priority for places at CCS. The change which is now objected to will encourage this further, thereby disrupting the continuity of the children's primary education.
- e. The consultation carried out by CCS in advance of its decision to adopt the oversubscription criteria now objected to was flawed. The views of families whose children do not attend any of the cluster's primary schools were not actively sought; only 1.5 per cent of responses came from this group. The County Council also argues that the wording of at least one of the four consultation questions (relating to the underlying principles of continuity of learning, family and community cohesion) was "methodologically problematic".

Hackleton Church of England Primary School

11. The governors of Hackleton Church of England Primary School (Hackleton) object to the arrangements on the following grounds.
- a. A significant number of children living in the CCS catchment area have been unable to secure places at the CCS linked cluster primary schools.
 - b. The popularity of CCS combined with the proposed oversubscription criteria will have a distorting effect on parents' choice of primary school. This in turn will lead to a number of families with children at schools

which are not linked seeking transfers to linked cluster schools in the course of their primary education. There is evidence of this effect in the current school year. This will have a detrimental effect on these children's learning and social development.

- c. The proposed arrangements discriminate against those who choose on grounds of their religion a faith school which is not linked to CCS. This applies to about 50 per cent of families seeking a place at Hackleton.
- d. The proposed arrangements will also have a discriminatory effect on those families who have sought a place in a non-linked school because of a preference for a small primary school.

Hardingstone Primary School

12. The governors of Hardingstone Primary School object to the arrangements on the following grounds.

- a. The oversubscription criteria adopted by CCS will unfairly constrain parents' choice of primary school. Factors such as school size, faith or distance from home or work which they want to take into account when their children are four or five may no longer be relevant when they are 11.
- b. A significant number of children living in the CCS catchment area have been unable to secure places at the CCS linked primary schools. These families are being disadvantaged twice.
- c. Primary education is being undesirably disrupted for a number of children whose families have seized opportunities to transfer them to CCS linked primary schools at the beginning of Year 6 in order to secure a better chance of being offered a place at CCS.

The Elizabeth Woodville School

13. The governors of The Elizabeth Woodville School object to the arrangements on the following grounds.

- a. It is not reasonable that a school should adopt arrangements which have the effect of denying admission to children living relatively close to that school.
- b. The introduction of the new criteria will frustrate the efforts being made by the County Council to balance the intakes to secondary schools in

the area to the potential detriment of The Elizabeth Woodville School with particular regard to its curriculum and staffing plans.

Collingtree Voluntary Aided Church of England Primary School

14. The governors of Collingtree Voluntary Aided Church of England Primary School (Collingtree) object to the arrangements on the following grounds.

- a. The proposed oversubscription criterion giving high priority to children who attend the named linked primary schools will lead to direct discrimination against parents who had previously chosen a faith school for their children's primary education. The adoption of the new criterion will lead to a situation where CCS will be taking no children from a faith primary school. Parents choosing Collingtree would be taking a significant risk that their children would not obtain secondary places at CCS.
- b. Whereas under CCS's existing admissions arrangements parents living in the catchment area can be reasonably confident of securing a secondary place at the School, the new arrangements will reduce that reasonable certainty making the whole process of secondary transfer more uncertain and unpredictable for families.
- c. The arrangements will have the effect of limiting parental choice of primary school. As all the schools linked to CCS in its cluster are two form entry primary schools, families preferring a smaller primary setting will be discouraged from pursuing their real preference for primary education by longer term consideration regarding secondary education.
- d. The adoption of an oversubscription criterion favouring children attending a limited number of linked primary schools is likely to lead to more children transferring to those linked primary schools towards the end of their primary education, as parents take tactical decisions to improve their chances of securing a place at CCS for their children. This will have a disruptive and negative effect on the children's primary education.

The Diocese of Peterborough

15. The Diocese objects to the arrangements on the following grounds.

- a. The proposed arrangements do not take account of the outcomes of the extensive consultation led by the County Council and the School Admissions Forum.
- b. The proposed arrangements will have the effect of limiting parental choice of primary school. There are two church schools in the

catchment area of CCS which are not linked schools for the purpose of the criterion objected to. Some of the children at these schools are there because of their parents expressed preference for a church primary school. Others chose them because of their size. Some children are at those schools because their parents were unable to secure places for them in one of the linked schools. The proposed criterion will have the effect of constraining parents' choice in the future, with parents feeling obliged to seek a place in one of the three linked schools in order to secure a place at CCS. "The Board regards this as *de facto* discrimination against parents wishing for a Church School primary education for their children."

- c. The changes are likely to lead to a loss of pupils for the non-linked schools, with the consequent loss of resources and adverse impact on the quality of the experience on offer there.
- d. The proposed arrangements undermine the principles of continuity of education and family cohesion which CCS professes to have adopted in developing its arrangements. The arrangements are likely to lead to a situation where families take opportunities to move their children into one of the linked primary schools towards the end of their primary education, causing significant discontinuity. Equally with higher priority being attached to attendance at a linked school than to having a sibling at CCS, it is likely that fewer younger siblings will be able to join older brothers and sisters at CCS.

An Individual Parent

16. An individual parent (SM) has objected to the arrangements on the following grounds.

- a. SM lives in the catchment area of CCS. He was unsuccessful in securing a place for his child at any of the primary schools linked in the cluster to the School. If the revised criteria are not changed his family will be disadvantaged again as a consequence of his lack of success in securing a place in the primary school of his choice.
- b. SM's son is already disadvantaged socially by having to attend a different school from other children living nearby. This will be exacerbated if, as a result of the new oversubscription criteria, he has to attend an alternative school, probably eight miles from his home.

Other Matters

17. In reviewing these arrangements for the purpose of this determination I noticed two small but significant deficiencies.

- a. The arrangements as published on the CCS website do not include the Published Admission Number for the relevant year group contrary to paragraph 1.2 of the Code.
- b. Although the school gives highest priority to looked after children, its first criterion does not refer to previously looked after children, contrary to paragraph 1.7 of the Code

The School's Response

18. In response to these objections the CCS submits that the County Council's objection includes a number of significant inaccuracies. It has misunderstood the criteria set out in the arrangements for 2013 and miscalculated the number of children in Year 6 of the relevant schools for 2013. It has misunderstood the nature of the consultation conducted by the School and, as a consequence, misinterpreted the results. It has incorrectly measured the distances between schools. The views and intentions of head teachers and governing bodies in the cluster have been misrepresented.

19. In support of these general statements the school makes the following detailed points.

- a. The County Council's objection is not based on a proper consideration of the school's admission arrangements assessed against the standards set out in the Code, but is an attempt to re-introduce a proposal designed to increase pupil numbers at another secondary school.
- b. CCS is not seeking to isolate itself from the County Council or from other schools. It continues to work productively with a number of local primary schools which are not included in the school's admission arrangements.
- c. CCS was built to provide for a distinct community. It is right that its admission arrangements should seek to give priority to children transferring from primary schools in that community. The school does not accept the County Council's assertion that there is a consensus that the area served by CCS is too large in terms of pupil numbers, and that it is right to seek to reduce it. It contends that its catchment area constitutes a community for which it seeks to provide the educational hub. It is resisting a proposal "to chop bits off it."
- d. The County Council is wrong in its view that CCS is seeking to ensure that all children attending the named link schools will transfer to the School. Those children who attend linked primary schools but do not live in the catchment area are less likely to do so.

- e. The County Council's argument in support of an objection to the arrangements for 2013 is based on pupil number projections for subsequent years. Its submission that the total pupil output of the linked primary schools is equal to the total capacity of the School could be true in subsequent years, but it is not in 2013. It asserts that "it is not correct that 'there are only enough places available in the Caroline Chisholm secondary department to receive children from the designated feeder schools'. We anticipate 195 children joining Year 7 from cluster schools and our own Year 6 in 2013, leaving 45 places for looked after children, children with statements naming our school and other children living in the admissions area. All the children who live in the area whose parents wanted places have got places for Year 7 in 2012. We have checked and, if we applied our 2013 criteria this year, all the children living in the area would still get in regardless of which primary school they attend. We expect the same to occur in 2013, though of course there can be no guarantees."
 - f. The County Council's calculation of home to school distances is inaccurate.
 - g. The County Council has misrepresented the school's consultation process, and quoted highly selectively and misleadingly from the consultation responses.
20. In response to the additional points made by other objectors CCS makes the following points.
- a. Because objectors have accepted the County Council's assessment of the availability of places at CCS in 2013, they have overstated the disadvantage likely to be experienced by families whose children do not attend any of the linked partner primary schools. If the pattern of parental preferences for 2013 is the same as 2012, it is likely that a similar number of places will be allocated to children from schools other than linked schools.
 - b. Whilst children attending local faith schools (which are not linked in the cluster) will have lower priority than those attending the linked schools, it is likely that a number of them will be allocated places at CCS in 2013 (as set out in (a.) above), and these children will have higher priority for admission to faith secondary schools which favour those attending faith primary schools. It is not fair that these children should have higher priority for both types of school.

- c. CCS accepts that its oversubscription criteria could lead to greater movement between primary schools as families seek to secure the benefits for admission purposes of attending a linked cluster primary school. The school does not seek to encourage this and recognises the educational disadvantages of such moves. It asserts, however, that this is a matter for individual families balancing the benefits of continuity of primary education against those of securing a place at their preferred secondary school.
- d. Seven other secondary schools in Northamptonshire list feeder primary school as a higher category than home address. So there is good evidence in the county that such systems are workable.

Consideration of Factors

Planning Context

- 21. A significant part of the County Council's objection relates to its quite proper concerns with school place planning, and securing the best possible match between school places and pupil demand for the coming years. CCS is not attracted to proposals which the County Council has made in this connection and, indeed, regards the County Council's objection as a means of pursuing these. I have no jurisdiction in these matters. This is not the place to resolve the disagreements between the County Council and CCS on these longer term planning issues. Whilst this situation is an important feature of the context for this determination, the focus of these considerations must be limited to the school's admission arrangements for 2013 and the extent to which they comply with the Code and associated legislation.
- 22. I note in particular CCS view that had it applied its 2013 criteria for 2012 admissions, all applicant children living in the CCS catchment area would have been offered a place regardless of which primary school they attend, and that it expects the same to occur in 2013, "though of course there can be no guarantees." The figures submitted by the County Council tend to confirm that the pressure on places at CCS will be greater from 2014 onwards, rather than in 2013.
- 23. Even if it is possible that the criteria which are the focus of the objections will have little effect for admissions in 2013, it is important that they are fair that they comply with all relevant provisions of the Code.

Key Provisions of the Code

- 24. Paragraph 1.9 of the Code includes a list of oversubscription criteria which are explicitly proscribed. No element of the oversubscription criteria adopted by the School for 2013 is included in that list. Furthermore, the principal criteria – catchment area, attendance at a linked primary school

and siblings – are included in the list of commonly used criteria set out and considered in the Code at paragraph 1.10.

25. Nonetheless, there are three key aspects of these arrangements and objections which require careful consideration against the standards set out in the Code and associated legislation.
- a. On the central issue of the appropriateness of the use of the linked or (in the terminology of the Code) “feeder schools” the Code specifies that the selection of the feeder school for this purpose “must be transparent and made on reasonable grounds”. There is no challenge regarding the transparency of the selection, but I have to consider whether the selection of the schools in this case is reasonable. In this connection I will need to consider the consultation arrangements which the County Council contends were flawed to the extent of undermining the reasonableness of the decisions reached by the governing body.
 - b. Finally, I need to assess whether the criteria, *taken together*, are “fair, clear and objective” as specified in paragraph 14 of the introduction to the Code.
 - c. It is argued by some of the objectors that the use of the linked school criterion is discriminatory. I need to assess whether this is the case in the light of the School’s duty to comply with the Equality Act 2010, as summarised in the appendix to the Code, “Relevant Legislation”.

I will consider each of these in turn.

Identification of linked schools

26. CCS has a clear rationale for the identification of the linked (or cluster) primary schools. The governors adopted a set of principles to inform the development of their admission arrangements and of the oversubscription criteria in particular. These principles were presented in the consultation document and reproduced here in full:

Continuity of learning from primary to secondary phase – children’s learning is enhanced and they make better progress if the curriculum is coordinated between phases and the primary and secondary schools concerned work together to plan the transition from Year 6 to Year 7

Community cohesion – schools can have a powerful positive influence in fostering a sense of community and bringing together diverse groups within the community

Family cohesion – it is helpful for families and supports good relationships between siblings if children from the same family can attend the same school.

Each of these principles - taken on its own - is commendable and capable of being expressed in the form of an acceptable oversubscription criterion. This is clearly a reasonable approach.

27. The problem arises from a tension between the principles. Unless it is possible to identify all the primary schools from which children transfer to a secondary school as “feeder” primary schools, a principle relating to continuity of learning which supports the identification of “feeder” primary schools is bound to be at odds with a principle relating to community cohesion and a criterion relating to where families live. CCS argues that it was built to provide for a distinct community. It seeks to serve as the “educational hub” for that community. It seems to me reasonable that children living in the locality but attending schools which have not been identified as linked schools are entitled to be regarded as members of the community in which they live. The school’s approach, identifying just three local schools, attaches greater weight to the principle of continuity of learning than it does to community cohesion, creating a community within a community, from which a number of local families are likely to be excluded. I don’t believe that this is reasonable.
28. CCS attaches high importance to collaboration with local primary schools, and has made this an important feature of its work since becoming an Academy. This has contributed to the decision to adopt the principle of continuity for the purpose of designing its admission arrangements. It argues that, as a high proportion of its intake comes from the linked primary schools, continuity can best be achieved if the admission arrangements reinforce the professional and curriculum links forged between schools. This argument has some merit, but I am not persuaded that it is reasonable if to use admission arrangements to reinforce collaboration between institutions to the point of excluding some local children. Certainly the overriding consideration of the Code is not continuity but fairness for admission to schools.

Fairness

29. The requirement to consult on admission arrangements is, in part, intended to ensure that arrangements are fair. The County Council argues that the consultations carried out by CCS were faulty and therefore likely to undermine the fairness of the governors’ decisions. Before adopting its arrangements for 2013 CCS conducted an extensive programme of consultation informed by a well written issues paper. It may well be that the process could have been improved, particularly as regards the range of parents invited to comment, but it is clear that the consultation met (and probably exceeded) the minimum standard set out in the Code. It certainly allowed parents, other schools, religious authorities and the local community to raise any concerns about the proposed arrangements. It is also clear that the governors of CCS gave consideration to the responses to the consultation and made a number of amendments to the proposals in the light of some of the comments received. I consider that the consultation arrangements were generally good and that it was reasonable for the governors to rely on the findings of the process.

30. The governors have considered the question of fairness and the representations made by a number of respondents on this point from a very particular perspective. In considering objections submitted at consultation stage they concluded that it was reasonable and fair, when considering applications made by families when their children are 11, to take into account choices made by parents when their children were four. The summary of the governors' response to the consultation includes the following: "allowing ...parents to go outside the admissions area for their primary education and come back in again for their secondary education...would be at the expense of the parents who chose to remain within the admissions area and support their local schools..." The School here is making a value judgement about choices parents were entitled to make when their children were four years old and seeking to apply that judgement when determining priorities for admission at the age of 11. I do not consider that this is fair.
31. I am reinforced in this view by the situation of those who would have liked their children to attend one of the linked primary schools, but were unsuccessful in applications for places there. The case made by objector SM is particularly material to this aspect of the case. To the extent that the use of attendance at linked schools as an oversubscription criterion has the effect of compounding the disadvantage of those who were unsuccessful in applications to those schools, it must be considered unfair.

Discrimination

32. The law forbids discrimination on the grounds of religion, but I do not consider that the arrangements are discriminatory in the legal sense. The oversubscription criteria take account of choices made when admission to primary school was being considered, but they do not take account of the reasons for those choices. Some of the families with children attending one of the Church of England voluntary schools will have applied for places there for religious reasons, but, as the governors of those schools themselves acknowledge, others will have chosen them for their size, location or other characteristics. CCS does not seek information about the religious affiliation of applicant families, and there are no grounds to conclude that the School is seeking to determine priority for admission on the grounds of faith or religious affiliation.

Conclusion

33. In the light of the foregoing considerations I have concluded that the arrangements do not meet four requirements of the Code.
34. I consider that the identification of three schools as linked schools for the purpose of admissions when a significant minority of children living in the school's catchment area are known to attend other schools is unreasonable and unfair. I therefore uphold the objections.

35. Furthermore, the school needs to amend its arrangements to include reference to its Published Admission Number, and to make it clear that the reference to looked after children includes children who have previously been looked after.

Determination

36. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I uphold the objections to the admission arrangements determined by the Governing Body of Caroline Chisholm School.

37. I have also considered the arrangements in accordance with section 88I of the Act. I determine that they do not conform with the requirements relating to admission arrangements in the way set out in this determination.

38. 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.

Dated: 4 September 2012

Signed:

Schools Adjudicator: Mr Andrew Baxter