

DETERMINATION

Case references: ADA/002209, ADA/002214-2231

Objector: A Group of Eligible Parents

Admission Authorities: a) Stockport Metropolitan Borough Council
b) Governors of St Winifred's School
(ADA/002215)

Date of decision: 13 October 2011

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined for St Winifred's RC School.

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objections to the admission arrangements for primary schools determined by Stockport MBC. The arrangements will be modified by the addition of a new category as follows:

"D. Children who will have a sibling who joined the reception class in September 2008, 2009 or 2010 and will still be at the school at the time of admission."*

Existing categories "D" to "G" to be relabelled "E" to "H" respectively

The referral

1. Objections have been referred to the Adjudicator by a group of 25 eligible parents (some being both parents from the same household) alluding to the admission arrangements for seven Primary Schools in Stockport for September 2012. Six of these are community primary schools and the seventh is a Roman Catholic Voluntary Aided School. Four of the schools are located close together in the North East; the others are in different parts of the Borough. All the objections (even those that actually name the VA school) allege that Stockport Local Authority failed properly to consult before it determined the arrangements, and go on to challenge changes to the sibling rules within the admissions arrangements which came into effect for the current year.

Jurisdiction

2. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the Governors of St Winifred's RC Primary for that school (St Winifred's) and by the

Stockport Metropolitan Borough Council (the LA) which is the admissions authority for the other primary schools. The parents submitted the objections to these determined arrangements on 29th July 2011.

3. Two previous sets of objections, relating to the same change to Stockport's sibling criteria, were lodged in June and July of 2010 by a single family and a group of eligible parents respectively (see determinations ADA/001774 and ADA/002084 - 2117). Some of the present objectors were involved in one or other of those previous cases.
4. In 2010, for reasons more fully outlined in those determinations, I decided, on balance, to accept the referrals; but following consideration of the facts I did not uphold the objections on either the "sibling rule" or the "consultation" grounds. Although the substantive issues were considered last year and the detail of the arrangements are unchanged, these objections have been lodged against the subsequent determination for admissions in September and therefore must be considered again on their merits.
5. The first part of these objections reference a number of mandatory requirements in the Code; but the second part does not cover a category of objection that parents can legitimately make, as Regulation 27(c) of the School Admission (Admission Arrangements) Regulations only permits parental objections to be made which relate to a mandatory aspect of the Code. It is clear that I cannot entertain an objection on the sibling question alone because paragraph 2.25 says that siblings "**should**" rather than "**must**" be enabled to attend the same school.
6. However, as well as again challenging the LA's approach to consultation the objectors have suggested the 2010 determinations were erroneous citing the decisions of independent appeal panels in support of their arguments. I have therefore decided that I should also consider whether the latest objectors have adduced any new evidence in relation to the sibling priority point, or formulated arguments, that would cause me to reconsider my previous decisions.
7. I am satisfied this objection has been properly referred to me in accordance with section 88H of the Act and that it falls within my jurisdiction.

Procedure

8. In considering this matter I have had regard to all relevant legislation, guidance and the School Admissions Code.
9. The documents I have considered in reaching my decision include:
 - the parents' objections lodged via the OSA website on 29th July 2011;
 - the LA's responses to the objection of 26th August and 14th

September;

- relevant papers in relation to, and my own determination of, previous cases (reference ADA/001774 and ADA/002084 - 2117)
- the LA's booklet for parents seeking admission to schools in the area in September 2011 and its determined policy for 2012.

10. I have also taken account of information received during a meeting I convened on Monday 12th September 2011 at the LA's offices, involving some of the Parents and representatives of the LA. Representatives of St Winifred's and the Diocese were also invited but were unable to attend. However, since none of the objectors who had referred to St Winifred's had elected to attend the meeting either, I judged it would be appropriate to proceed without them.
11. In addition to investigating the matters raised by the objectors 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 Objections

12. The parents' objections (which are all identically framed) make a number of different points. They begin with references to mandatory paragraphs 1.26, 1.28 [consultation requirements] and 2.22 [requirement for a clear explanation of the basis and effect of any sibling criteria used] of the Schools Admissions Code. The objections make further reference to paragraphs 2.21 and 2.25 [both relating to the use of sibling criteria but without any mandatory elements].
13. The basis of the objection relates to a change in the sibling criterion that took place between the September 2010 and 2011 intake years. Between 2008 and 2010 the standard oversubscription criteria for VC and community primary schools in Stockport included "Children who have a sibling at the school at the time the younger child starts" as the second priority after looked after children. This was changed for the September 2011 intake (via arrangements determined in April 2010) to differentiate between siblings resident within the catchment area (which became the third priority after LAC and those with "highly exceptional medical / social needs") and siblings resident elsewhere which were given a lower priority (fifth after "children resident within the catchment area").
14. It was this change which prompted the 2010 objections to the OSA. These were fully set out in the determinations mentioned above, but in summary were that:
- a. The consultation was technically flawed because statutory timescales had not been met and also because the nature and extent of the consultation was inadequate in other ways with the outcome that *"this failure to consult or publicise changes by the required date leads us to be extremely concerned that those adversely affected may not be aware of the implications for them"*

until the time comes for them to apply for places by which time it will be too late to object."

- b. They argued that the basis upon which arrangements which had been in place for only two years were reversed before there had been enough time to assess whether the current system was working satisfactorily. They called into question the validity of claims made in the consultation document about the relative numbers of children who would be disadvantaged by the alternative approaches under consideration, and the way that information was presented in the Council's decision making process – which was consequently flawed. And,
- c. As to the substance of the change itself the previous objectors characterised the nub of the matter as a conflict between two desirable aims of admissions policy. *"Changing the admission criteria, such as giving higher priority to children living in the catchment area (criterion D) than to siblings living outside the catchment area (criterion E), would benefit families living closest to school at the expense of other families, but central to this case is the relative weight to be attached to perfectly acceptable criteria: to residents in a priority area on the one hand, and the attendance of a sibling on the other. The former attaches highest priority to keeping communities together; the latter to keeping families together."* They also argued that the Code should be understood to require all siblings to be treated as an equally high priority regardless of where they live.

15. These objections were not upheld (again for the reasons fully set out in those determinations) and the arrangements remained as determined by the LA. In April 2011 the LA, once again, determined similar arrangements for admissions in September 2012:

- A. Children in Care
- B. Children considered to have highly exceptional medical / social needs
- C. Children resident within the catchment area of the school with a sibling at the school
- D. Children resident within the catchment area
- E. Children resident outside the catchment area of the school with a sibling at the school
- F. Other children
- G. Applications received after the closing date (ordered in accordance with the oversubscription criteria outlined above)

16. It is these arrangements that are now the subject of new objections. In essence the reasons for the objections remain the same but some slightly different arguments have been deployed.

17. The objectors say that *"Parents, made their applications on the [2010] criteria for a child with a younger sibling, on the understanding that the Admission's Authority had clearly explained how the priority for younger siblings would be given. Subsequently, the authority changed the rules so that siblings residing out of catchment are given much lower priority*

than any child residing in catchment. This prejudicial change unfairly disadvantages families who applied for a place for their child that has a younger sibling, under 2010/2011 admissions criteria. Families selected schools out of catchment under 2010/2011 criteria for their elder child, in good faith, understanding that rules for sibling admission were clearly published, taking proper consideration of the importance of siblings attending the same school. Many parents would have been happy with their catchment school and, if aware of the potential changes, would have made their catchment school first choice. These families are now in a position where younger siblings are now unlikely to gain entry to the same school as their elder sibling in cases of over-subscription, due to admissions criteria changes. ”

18. They go on to say that the LA did not make sufficient efforts to explain to parents the 2010/2011 admissions arrangements were subject to review and change. In support of this contention they cite the stated reasons for a number of school admission appeals panels upholding admissions appeals in a number of individual cases. They say that this failing on the part of the LA was explicitly stated as the key reason for multiple subsequent, successful appeals with respect to children affected by the change of policy.
19. The next point they make is to challenge the outcome of the previous adjudication decisions. Firstly they take issue with the finding that *“whilst the consultation and publication process was technically less than perfect, it was not so flawed as to defeat its purpose.”* Part of the reason for that finding was that *“It is reasonable to suppose that those with an interest in these matters, and certainly schools, would be aware of the possibility of further change. It is also self evident that the objectors were aware of the consultation, they did respond and their responses were noted and taken into account.”* The objectors say that this was factually incorrect as many of the affected parents did not have other school-age children and would have been unaware of the consultation or that, prior to 2007, the position had been different with a higher priority for all in-catchment applicants. They also say that the subsequent decisions of admission appeal panels support this view.
20. Secondly they refer to the Adjudicator’s consideration of whether it would be appropriate to amend the LAs arrangements to include transitional protection for out-catchment siblings of pupils who had joined schools during the three years when the undifferentiated sibling criterion was in place. Although it was characterised as a ‘close call’ the Adjudicator decided, on balance, that transitional provisions of this nature would not be appropriate. The objectors argue that this was the wrong call, again citing the number of successful appeals. The objectors quote the appeal verdicts as saying: *“The changes to the Admissions Criteria and the negative impact this had on your situation and your contention that had you known of these changes your earlier preferences for your other child may have been different.”* *“The panel found that the Admissions Authority and School had acted unreasonably in not making greater efforts to inform parents of the change in the Admissions Criteria that altered the priority given to*

siblings from outside the catchment area. By not doing so, the Panel felt that you were not able to make a fully informed decision prior to stating your preferences.”

21. They go on to argue that the number of successful appeals should dictate that the authority ought to implement appropriate transitional arrangements for admissions in 2012. The argument being that if everyone who challenged their refusal of a place this year was successful the same will also be true in further years. This will amount to a de facto transitional arrangement for those who appeal but will not benefit those who chose not to exercise that right of appeal. *“If the rules regarding siblings are not enforceable or commonly upheld by appeals panels then they are fundamentally unsound, therefore unclear. Lack of clarity leaves siblings and parents (in or out of catchment), and the schools themselves, unclear to which children are ultimately likely to gain admission. In the interests of the siblings disadvantaged by this circumstance, increased clarity for all parties, reduced appeals, reduced stress for entire school community and to ensure that public perception of the authority is not further damaged the council should now adopt a transitory admissions policy for 2012/2013.”*

22. The objectors go on to suggest that this reality has been tacitly acknowledged by the LA by quoting from the minutes of the Stockport Admissions Forum for 23 March 2011, which considered consultation responses on the 2012 arrangements: *“Some respondents felt that the recent changes to the oversubscription criteria – made last year - should be reversed”. . . “Since this change to sibling status, there have been a number of questions about the validity of the policy” . . . “Careful monitoring of the sibling change is important to ensure that the public perception of the admission authority is not damaged during the transition period and to help formulate a coherent defence of the position for use in forums, such as independent appeals panels, where the decision is likely to be scrutinised in the public eye.”* The objectors observe that it is *“Disappointing . . . that ‘careful monitoring’ is considered important such that the interests of the authority are protected rather than the interests of the children [and families] affected by poor handling of the policy change. . . ”*

Comments by the Schools

23. Neither St Winifred’s nor the Diocese has written with a formal response to the objection which mentioned them; and, as noted above, neither did they attend the meeting I held. They have, however, let it be known informally that they consider that their school was named in the erroneous belief that the LA was the admissions authority and that nothing in the substance of the objection actually refers to St Winifred’s admissions arrangements or their process of consultation and determination. The oversubscription criteria were not materially changed during the period in question and have always differentiated between siblings on the basis of faith status and parish of residence. They therefore take the view they have no case to answer.

24. None of the other named schools chose to respond or take up the invitation to attend the meeting.

The LA's Response

25. In response to the objections, LA officers submitted the background documents requested by OSA. They also submitted information about the objectors as to whether they had objected previously, whether they received their preference or got their child into the school requested and/or had the expectation that a sibling would gain entry to the school under the previous policy. This showed that a large majority were not adversely affected by the change in policy and most of those who had been, had succeeded in securing places for children starting school in the current round on appeal.

26. They reiterated the points made in connection with the previous adjudication that the change in policy to give a high priority to all siblings had been made in response to changed circumstances. Like any change it had been something of an unknown quantity and was kept under review. Its consolidation as a permanent change was contingent on a process of monitoring to determine its effect during the period of uncertainty arising from the introduction of an "equal preference" (as opposed to first preference first) approach following changes in the Admissions Code. In the event the decision to change the policy again arose from concern at the growing percentage of non-catchment siblings that were being awarded places under the previous policy and the consequent displacement of catchment children, who were not gaining access to their local school. The reversion to the former approach to the sibling policy seemed to be having the desired effect, and it was timely because primary schools places are under increasing pressure due to the rise in the birth rate.

27. In discussion at the meeting, officers of the LA made further responses to the new aspects of this objection. They said that amongst the thirty or so appeals in respect of unsuccessful out-catchment siblings only four used the arguments about the change to the arrangements deployed by the objectors. The same four all related to a single school and were the only ones where the appeals were successful. So, whilst acknowledging that there was an issue at that school, they did not accept that this was illustrative of a general flaw in the arrangements or that it had discredited the policy for all community schools.

28. They also accepted that there was no explicit warning in the documentation for the round leading up to 2008 and 2009 admissions that there was a possibility the policy change to give high priority to all siblings might be changed back at a later date. However following the evidence of displacement of in-catchment applicants warnings were included in documentation for the following year.

29. Following the meeting mentioned above LA officers provided helpful data illustrating the fact that increasing numbers of Stockport primary

schools are becoming over-subscribed with the two most popular (including the one where successful appeals were recorded in 2011) already having more in-catchment applicants than places. Although the LA is currently working to create additional capacity in the coming years continued pressure on places is anticipated. In 2011 a number of schools were unable to accept many out of catchment siblings or other applicants and a number of appeals related to those refused places in their catchment school.

30. The response expressed concern that, had there been a transitional arrangement for non-catchment siblings of the 2011 cohort, it would have had greatest impact on those schools where there is already pressure on places. Admitting them would almost certainly disadvantage other parents within catchment without a sibling from gaining a place. LA officers took the view that the expectation of in-catchment first time applicants “. . . is no less and in fact greater than the small number of parents who complained from a particular school and area and who in fact got the places they desired through the appeal route.”

Consideration of Factors

St Winifred's School

31. It appears that St Winifred's School was named in the erroneous belief that the LA was the admissions authority because nothing in the substance of the objection actually refers to St Winifred's admissions arrangements or their process of consultation and determination. The oversubscription criteria were not materially changed during the period in question and have always differentiated between siblings on the basis of faith status and parish of residence. The governors and the Diocese therefore take the view they have no case to answer. I agree.

LA Consultation & the Previous Adjudications

32. Unlike the position in the 2010 objections, there were no alleged technical flaws in the LA consultation process. But the emphasis, as summarised at paragraph 18 above, was that there had been insufficient warning that the policy might be changed again during the three rounds when all siblings had equal priority. It is for this reason (fully articulated in paragraphs 44 to 48 of the previous case: reference ADA/002084-2177) that I gave serious consideration to introducing a transitional criterion to protect those families that had chosen an out-catchment school for a first child whilst high priority was given to all siblings. However the LA deployed strong arguments that the short duration of 'all sibling priority' being in force, and the continuing public review since its inception, meant that a legitimate expectation of out-catchment sibling priority had not been allowed to become established. They also argued that dissatisfaction over the displacement of in-catchment applicants by out-catchment siblings was growing. Although I was narrowly persuaded by these arguments (see ADA/002084-2177 paragraph 49) I have revisited them and given further consideration to

the issue in the light of the additional evidence available from the most recent admissions round.

33. As noted above, the LA has conceded that no formal warnings were given about a possible change. This was because, although the effect of the policy was unknown and was therefore kept under review, it was not explicitly experimental. Whilst there was a debate within the education community after 2009 it is difficult to argue that ordinary parents, particularly those seeking a primary school place for a first child, ought to have known about it. Indeed, it was alleged that some parents, at least in the earlier rounds, had been encouraged to seek a place at a popular out-catchment school as the new sibling criterion meant they would have 'nothing to lose'.
34. Several points in the objections refer back to the 2010 determination. Strictly speaking these cannot be entertained as the right of objection is to the arrangements determined by the Admissions authority for 2012 not to a previous adjudication (albeit one that encouraged the LA to maintain its policy). The only route for challenging an Adjudicator's determination is by way of Judicial Review in the High Court and such a challenge would now be out of time. I did nevertheless review the previous determination in the light of what was said. The specific complaints were generally based on a misreading, or a misunderstanding, of the legal position or what was being said and do not need further elaboration here.

The Successful Appeals

35. The objectors have argued that the successful appeals demonstrate that reverting to 'catchment priority' without a transitional arrangement to protect those whose initial choices were conditioned by an expectation that all siblings would have a higher priority was irrational. By extension the Adjudicator's decision not to enforce such an arrangement was also flawed. The LA has countered this by pointing out that in only a small number of appeals was this argument deployed and it was accepted in only four individual cases and by only one of several panels.
36. From a purely technical point of view, whilst an appeal panel is entitled to come to the view it did on each individual case, it is difficult to infer that it believed the LA arrangements to be incompatible with the Admissions Code. If that had been the case the panel would have been required (by paragraph 3.2 (a) of the School Admission Appeals Code) to refer the matter to the Schools Adjudicator, and that did not happen. Nevertheless, as indicated in the previous determination, this was a close judgement call and I have re-examined the arguments in the light of the latest evidence (i.e. how the arrangements played out in the 2010 round) that has emerged since the previous decision.

The Substance of the Objection

37. It is clear for the reasons fully rehearsed in the previous adjudications,

and established by custom and practice elsewhere, that the 'two tier' approach to sibling criteria is not incompatible with the Code. It is also clear that the Code, at paragraph 2.25, gives a strong steer (albeit falling short of an absolute requirement) that “. . .*admission authorities . . . should ensure . . . that siblings can attend the same primary school . . .*” But the aspiration to ensure that all in-catchment children can be accommodated in their local school is also legitimate.

38. Ideally every primary school should be able to meet in-catchment demand and still have sufficient remaining capacity to admit out-catchment siblings as well. The LA has taken the view that where both groups cannot be fully accommodated the balance of advantage should fall to residents within the school's catchment. This is a value judgement that it is entitled to make and, within an established and well understood system, parents must accept that seeking a school place outside their catchment carries a known risk.
39. However when the arrangements say all siblings are accorded equally high priority, and there are no explicit warnings about the possibility of future change, parents selecting a school for a first child have a reasonable expectation that the same rules will apply when places are subsequently sought for younger siblings. It is for this reason that the objectors are pressing for a suitable transitional arrangement to protect the position of those who made decisions on that basis. I believe, in the light of my further consideration of both the original facts and the outcome of the latest admissions round, that my original decision was incorrect. I now consider that the balance of the argument for a transitional arrangement to benefit those whose first child joined reception class whilst the new sibling criterion applied [entry in September 2008, 2009 & 2010] should fall the other way. On balance I consider that failing to provide a suitable transitional arrangement could amount to a contravention of one or more of the mandatory requirements set out in paragraph 1.71 of the Code.
40. The LA previously argued strongly against such an arrangement because of their view that the disadvantage suffered by displaced in-catchment applicants would be greater than that experienced by out-catchment siblings. It was also said that dissatisfaction over the displacement of in-catchment applicants by out-catchment siblings was growing. I note however that the LA is now arguing, on the basis of evidence from the current round of admission appeals, that the numbers currently affected are small. They say that, apart from two particularly oversubscribed schools and after 'waiting list' and appeal outcomes are added into initial allocations, most out-catchment siblings were admitted for September 2011.
41. However the argument that a transitional arrangement is not therefore necessary can be turned on its head. It is an equally valid conclusion that small numbers mean a concession might be made without significant disadvantage to those whom the new policy is designed to benefit. It will however make a very significant difference to the final outcome for a small number of families who otherwise would have had

the great difficulty of supporting young children at different schools. It will also be of benefit to a much larger number who would in fact have secured places anyway; but who will now be saved the anxiety and uncertainty that the relatively low priority for out-catchment siblings creates.

Wider Implications

42. Whatever the actual numbers, the relative position of these two criteria will always be a 'zero-sum game.' For every family in the one category to benefit, another family in the other category will lose out. There can be differing views as to which category should have the higher priority but all can agree that both have a strong claim. The only way to achieve a totally satisfactory outcome is to ensure that there are sufficient places for both categories.
43. It would appear that until recently there was sufficient spare capacity in the borough to allow for a comfortable margin for parental choice. But rising demand is putting increasing pressure on the system. If, as a result of previous choices, many schools now have significant numbers from beyond their designated catchment the position could deteriorate. With or without this decision, both out-catchment siblings (of children outside the transition years) and some in-catchment first time applicants may increasingly fall below the cut-off point for admission. If this were to happen parents from both groups will be understandably aggrieved. It should also be noted, with the oversubscription priorities as they now are, there may be an increasing problem related to the younger siblings of children in out-catchment schools (from non-protected year groups) who are not there through choice, but because they were displaced from their first preference catchment school. They will be doubly disadvantaged if a place is available neither at their catchment school, because it remains oversubscribed, nor the out-catchment school attended by the older sibling because they have an even lower priority there.
44. It is beyond the scope of this determination to resolve this dilemma and I understand that the LA is seeking to ameliorate the situation by creating additional school places. I would also suggest that reviewing the overall approach to primary catchments could also contribute to a more lasting solution.

Conclusion

45. For the reasons set out in paragraph 31 above I conclude that the objection to St Winifred's admission arrangements was a mistake and I therefore did not pursue it.
46. For the reasons set out in paragraphs 32 to 34 above I conclude that, there were no flaws in the consultation and publication process leading to the determination of the arrangements.
47. For the reasons set out in paragraphs 37 and 38 above I believe that

the decision of the authority to adopt a lower level of priority for out-catchment siblings was appropriate and that this is compliant with the Code.

48. For the reasons set out in paragraphs 39 to 41 above I conclude that the potential disadvantage to parents who may have made decisions on the basis of the previous policy justifies introducing a transitional arrangement to benefit siblings of children who started primary school in 2008, 2009 or 2010. Consequently I consulted the parties on a suitable form of words and I therefore determine that a new category will be added to the list of oversubscription criteria as set out below.

Determination

49. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined for St Winifred's RC School.
50. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objections to the admission arrangements for primary schools determined by Stockport MBC.
51. The arrangements will be modified by the addition of a new category as follows:
"D. Children who will have a sibling who joined the reception class in September 2008, 2009 or 2010 and will still be at the school at the time of admission."*
Existing categories "D" to "G" to be relabelled "E" to "H" respectively

Dated: 13 October 2011

Signed:

Schools Adjudicator: Mr Alan Parker