



DETERMINATION

Case reference:	ADA3090
Referrer:	A parent
Admission Authority:	The London Borough of Merton for Rutlish School, Merton
Date of decision:	24 June 2016

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 for September 2017 determined by Merton Borough Council for admissions to Rutlish School.

I have also considered the arrangements in accordance with section 88I(5). I determine that there are other matters which do not conform with the requirements relating to admission arrangements in the ways 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 within two months of the date of this determination.

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 parent (the objector) about the admission arrangements for September 2017 (the arrangements) for Rutlish School (the school), a voluntary controlled school for boys aged 11 to 18 years in the London Borough of Merton.

Jurisdiction

2. These arrangements were determined on 15 March 2016 under section 88C of the Act by the London Borough of Merton, the local authority, which is the admission authority for community and voluntary controlled schools in Merton.

3. The objector has asked to have his or her identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) by providing details of a name and address to me. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under

section 88I of the Act to consider the arrangements as a whole.

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 objector's form of objection dated 11 April 2016 and subsequent correspondence;
 - b. the local authority's response to the objection, supporting documents and further correspondence;
 - c. correspondence from the school regarding the objection;
 - d. the local authority's 2016 composite prospectus for parents seeking admission to schools in the Merton area;
 - e. confirmation of when the consultation on the arrangements took place; and
 - f. a copy of the determined arrangements.

The Objection

6. The objection relates to the decision by the local authority to introduce a cross sibling priority for this boys' school with Ricards Lodge High School, a girls' school in the local authority area. The objector states that the arrangements for admissions to Year 7 do not comply with paragraph 1.12 because of the lack of close links between the two schools below sixth form level. The objector also believes that the introduction of the cross sibling priority is unfair and breaches paragraph 1.8 of the Code.

Other Matters

7. Having reviewed the arrangements as a whole, I noted that some other aspects appeared not to conform with the requirements relating to admissions. The aspects that appeared not to comply with the Code (relevant paragraph in brackets) are:
 - the lack of a final tie-breaker to decide between two applications that cannot otherwise be separated (paragraph 1.8); and
 - the reference regarding children with a statement of special educational needs which names the school may need to be relocated so that it is clearly applicable to secondary school admissions, and the wording requires updating (paragraph 1.6).

Background

8. Rutlish School is a voluntary controlled comprehensive school for boys in Wimbledon with a published admission number of 240. On its website, the school

says it *“has been successfully educating young men for over a hundred years... We offer a broad and balanced curriculum that is designed to meet the needs, the interests and the abilities of each student... We aim to create an environment where students behave responsibly and contribute fully as they develop a clear sense of belonging to the school community.”*

9. The school works closely at sixth form level with Ricards Lodge High School, a community comprehensive school for girls in Wimbledon. The two schools offer joint sixth form provision with joint sixth form admission arrangements, a pooled sixth form budget, and a wide range of courses and activities.

10. The local authority states that *“the schools market themselves jointly as ‘the best option for local parents in the Wimbledon area’... they would like to give families the security that once one sibling is offered a place, so would others of either sex. However, the schools are some 2.2km apart (straight line distance)...”*

11. The 2017 arrangements published for community and voluntary controlled schools by the local authority say that if there are more applications than the 240 places available in Year 7, places will be allocated according to the oversubscription criteria which I have summarised below:

- i) Looked after children or previously looked after children;
- ii) Children who have professionally supported medical or exceptional social needs;
- iii) Siblings of children attending main 11-16 school at the time of admission. (The explanatory note below the oversubscription criteria explains that sibling applies to either Ricards Lodge High School or Rutlish School);
- iv) Children of permanent staff in the main 11-16 school who have been employed at the school for two or more years at the time the application for admission to the school is made, and/or recruited to fill a vacant post for which there is a demonstrable skill shortage;
- v) Straight line distance between the child’s home address and the main school.

12. The London Borough of Merton participates in the Pan-London Co-ordinated Admission Scheme for entry to secondary school, and parents may express up to six school preferences on the common application form. The local authority provided admissions data for the school for the last three years which I have summarised in the table below. The data shows that in each of the admission years the school was not oversubscribed by parents choosing the school as their first preference. In 2016, the last place available at this boys’ school on national offer day was allocated to a child living 2584 metres from the school, but I am aware that the admissions process for 2016 is not yet complete. Looking at the data for 2014 and 2015, it can be seen that in each of these admission years, the last place on national offer day was allocated to a child living at a similar distance from the school, but the final place at the end of each admission process, was not limited by distance from the school. The local authority said that the school *“whilst ending up undersubscribed, has an intake which is predominantly Merton residents.”*

Admission year	PAN	Total Applications	First Preferences	Number of children allocated for each oversubscription criterion						Distance on offer day/m	Final distance/m
				SEN	P/LAC	Social / Medical	Siblings	Children of staff	Distance		
2016	240	691	197	3	0	0	33	1	203	2584	n/a
2015	240	648	176	3	1	0	46	1	189	2804	all
2014	240	603	162	8	0	0	35	n/a	197	3471	all

13. The local authority estimated that if the cross sibling priority had been in place for admissions in 2014 and 2015, there would have been no extra siblings at the school as it *“became undersubscribed during the admissions process. Given the increasing popularity of Rutlish, we expect it to be oversubscribed at the end of this year’s process, and so 2016 would potentially have a 20% increase in siblings at the school.”*

Consideration of Case

14. The objection concerns the cross sibling priority in the school’s 2017 admission arrangements. As the cross sibling priority was included for the first time in the school’s 2017 arrangements, a change had therefore been made to the school’s arrangements. The Code at paragraph 1.42 requires that *“when changes are proposed to admission arrangements, all admission authorities must consult on their admission arrangements”* and paragraphs 1.43 to 1.45 specify how that consultation must be conducted.

15. Paragraph 1.43 requires that the *“consultation must last for a minimum of 6 weeks and must take place between 1 October and 31 January in the determination year.”* In the period 7 January to 18 February 2016 the local authority conducted a public consultation regarding the 2017 arrangements for all community and voluntary controlled schools in the London Borough of Merton. The change to include a cross sibling priority in the 2017 arrangements for Rutlish School and Ricards Lodge High School was part of that consultation.

16. I note that the consultation was for the required period of six weeks but was not completed by 31 January 2016, the date specified in the Code. The local authority explained that the start of the consultation on the 2017 arrangements for all community and voluntary controlled schools in Merton was delayed due to changes to the priority areas for two community primary schools which required further discussion and negotiation. The consultation period started on 7 January 2016, immediately after the final proposal for the two community primary schools was agreed, and the deadline of 18 February 2016 was set to allow the full six weeks for the consultation. The late start to the period of consultation resulted in the late determination of the arrangements, some two weeks after the deadline specified in the Regulations and the Code. However, the failure to determine by the prescribed

deadline does not affect the status of these determined arrangements, the validity of the objection or my jurisdiction to consider the objection.

17. Consultation documentation was available on the local authority's website throughout the period, in compliance with the Code at paragraph 1.45. The local authority also included in the consultation all primary and secondary schools, early years providers and childminders in the borough, and requested they share the consultation documentation with parents. All neighbouring local authorities were also consulted and requested to share the consultation information with admission authorities in their area. The local authority did not consider there to be any other relevant parties with whom to consult. The appropriate parties specified in paragraph 1.44 were included in the consultation.

18. Apart from the delay to the start of the six week consultation period, and that delay has been explained by the local authority, I consider that the consultation met the requirements of the Code.

19. The objector said that the introduction of a cross sibling priority to the school's admission arrangements does not meet the requirements of paragraph 1.12 of the Code because of the lack of close links below sixth form level between the school and Ricards Lodge High School.

20. Paragraph 1.12 of the Code states that *"some schools give priority to siblings of pupils attending another state funded school with which they have close links (for example, schools on the same site, or close links between two single sex schools). Where this is the case, this priority **must** be set out clearly in the arrangements."* Rutlish School is voluntary controlled and Ricards Lodge High School is a community school, therefore the two schools are state funded.

21. Paragraph 1.12 of the Code provides for a cross sibling link between, for example, two single sex schools with close links. The Code does not give any further detail about what is meant by close links in this context. The objector *"concedes"* that there are close links at sixth form level between the two schools but was *"not convinced that the main schools comply with the requirement."* The objector added that *"the wording in section 1.12 is somewhat vague so I would ask for a ruling on whether the schools satisfy the criteria for 'close links'."*

22. The school and Ricards Lodge High School provided a joint response detailing a large number of links between the two schools at sixth form level and in Year 11 as preparation for sixth form. A further joint response confirmed that few joint activities exist between the schools for Years 7 to 10 but these were expected to increase. The local authority commented that *"the Code does not provide clear criteria of what 'close links' should constitute. The schools have provided a list of measures showing a far greater relationship than that of two separate schools, which will continue to expand."*

23. Paragraph 1.12 of the Code permits a cross sibling priority between two single sex schools which have close links. The school has demonstrated it has close links with Ricards Lodge High School through joint sixth form provision, joint sixth form admission arrangements, a pooled sixth form budget, and a wide range of courses and activities. I am satisfied that the links which exist between Rutlish School and

Ricards Lodge High School are sufficient for the purposes of the Code.

24. The final requirement of Paragraph 1.12 of the Code is that the cross sibling priority **must** be set out clearly in the arrangements. The school's arrangements are published by the local authority, the admission authority for both schools, on its website in Appendix B, the arrangements for community and voluntary controlled schools. The arrangements are generic for all community and voluntary controlled schools but the note related to the oversubscription criteria (iii), the sibling priority, clearly states that *"Ricards Lodge and Rutlish School have a cross-sibling policy; qualifying siblings attending either school will be considered under priority (iii)."* I consider that the cross sibling priority has been set out clearly in the arrangements.

25. The school is a state funded, single sex school with links to Ricards Lodge High School. The school wished to have in its arrangements a cross sibling priority with Ricards Lodge High School and the local authority, as the admissions authority, has clearly set out the cross sibling priority in the 2017 admission arrangements. The local authority consulted on the change which introduced the cross sibling priority before it determined the school's arrangements. I am persuaded that the cross sibling priority complies with paragraph 1.12 of the Code. I do not uphold this part of the objection.

26. The objector had a second concern that the cross sibling priority is unfair and breaches paragraph 1.8 of the Code because the chances of two otherwise identical families getting **all** children into local schools would rest on the sex of the eldest child. The objector explained further that as Rutlish School accepts only boys and Ricards Lodge High School accepts only girls, *"a family living close to Rutlish with an eldest boy would gain a massive advantage in ... getting all siblings (irrespective of sex) into these schools than would a family with an eldest girl. The converse would be true for families close to Ricards Lodge where the family with an eldest girl would gain the advantage. The schools are not particularly close so it is entirely possible that a home would qualify for one school on distance criteria but not the other."*

27. The objector understood that *"around one third of the Ricards Lodge High School intake comes from Wandsworth. A joint sibling policy ... could lead to boys from Wandsworth gaining access to Rutlish the school"* which would reduce the places available for local families. The objector suggested that *"in order to treat children fairly irrespective of sex it would make sense to judge distance criteria to whichever of those schools were closer."* As much of the objector's remaining correspondence relates to the particular personal circumstances of the objector's family then, as such, I consider that it is beyond the scope of this determination.

28. The local authority understood the point made by the objector about a family gaining an advantage based on the sex of their eldest child, but asserted that as paragraph 1.12 of the Code expressly permits a cross sibling policy, it does not believe the criterion in itself can be deemed as unfair or against equalities legislation.

29. The local authority responded that while places in Ricards Lodge High School have been allocated to families in Wandsworth, north of Merton, those families *"are unlikely to request Rutlish as it has not been a popular choice for Wandsworth residents due to its own boys' school offer... This year Rutlish School has offered just 8 of 240 places to non-Merton residents so the sibling arrangement will not provide*

an influx of out-borough applicants.” If distance were instead measured from a mid-point between the two schools, although this may benefit the objector’s personal circumstances, the local authority notes that *“it would create a big shift to the existing admissions pattern for Ricards Lodge, moving the measurement point by over 1km. Not only would this have a huge impact on those who would ordinarily expect to gain a place, but would disrupt the balance of places between Merton and Wandsworth causing place planning issues in Wandsworth and providing Merton with a surplus of places.”*

30. The local authority added that *“any change in admission policy will impact on some potential applicants, this change [the cross sibling priority] is minimal.”* The local authority said the cross sibling priority may increase the number of siblings at the school by up to 20 per cent, that each *“10 additional siblings would decrease distance offers by approximately 100 metres.”* So if there were a further 20 siblings, the offer distance would reduce by approximately 200 metres. The objector said that the 20% figure for additional siblings was an underestimate, and that we should *“assume the probability of any child being a boy or girl is roughly even I would assume an even distribution of boys to girls.”* The current sibling rule prioritises only those boys who have an elder brother and only those girls with an elder sister. If there are, on average, two children per family, this estimate would be around 50% of the population (boy+boy and girl+girl). The objector concluded it would be reasonable to expect double of number of children qualifying for sibling priority as a result of the cross sibling rule.

31. The local authority agreed that the 20% increase in siblings was an estimate, as it cannot be assumed that all those with siblings at one of the single sex schools would wish a younger sibling to have a single sex education, nor can it be assumed that, even if they did, they would choose either Ricards Lodge or Rutlish as that single sex school. In addition, it cannot be assumed that families who want a single sex education will simply consider Ricards Lodge and Rutlish School because of the new cross sibling policy. Parents will also consider travel routes and logistics, the selective grammar schools, the faith schools, other existing comprehensive schools in the area, and the new school to be opened in the borough. The local authority explained that the new school, a co-educational free school, *“has been approved for September 2017 (although it is quite possible this will not open until September 2018). This school is to serve the Wimbledon area, though a site has not yet been agreed. However, given the area it is to serve, it will be an option for parents in the vicinity of both Ricards Lodge High School and Rutlish School.”*

32. The local authority said that three other secondary schools in Merton *“have all been undersubscribed in the last three years, which means the majority of Merton residents are eligible for at least four schools for either sex child, so have some genuine choice in the admissions process, without taking in oversubscribed, Catholic or out borough options. Merton is a net exporter of pupils at Year 7, with many families eligible for places in neighbouring local authority schools.”* The local authority provided the names of 16 schools in neighbouring boroughs which *“for 2016 entry ... each offered over 20 places to Merton residents, showing there is other significant local choice.”*

33. The objector referred to two single sex schools in Merton with the same religious designation and appeared to accept they have a cross sibling priority

because they are closer in proximity. The objector then mentioned two single sex schools in an adjacent London borough that do not use a cross sibling priority even though they are part of the same academy trust. However, it is not compulsory for single sex schools with close links to operate a cross sibling priority and paragraph 1.10 of the Code makes clear that *“it is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances.”*

34. The objector said that the schools could market themselves jointly in the Wimbledon area under the existing admission arrangements, and questioned the need for the cross sibling priority. The schools responded jointly that they have *“a committed, growing working relationship to develop jointly as the best option for local families in the Wimbledon area.”* The local authority said that another *“part of the reason the schools would like to introduce this policy is so that they have a level playing field with the new school to provide an ‘offer’ to families that once a first child is offered a place, all their children can be educated at ‘RR’ (Ricards Lodge and Rutlish).”* The Code at paragraph 1.12 provides for a cross sibling link between, for example, two single sex schools with close links; the local authority pointed out that the Code does not require the school to justify having a cross sibling priority. As stated already, it is for admission authorities to decide which criteria would be most suitable according to the local circumstances, and a cross sibling priority is permitted by the Code for schools with close links.

35. The objector suggested that all sibling policies disadvantage single child families, and that single child families will be disadvantaged further by the cross sibling priority as even more siblings will qualify for a place. The objector also said that *“due to the ... location of selective schools in Merton there is some asymmetry in choice and availability. The asymmetry will further increase with demand.* The objector said that demand for school places has increased over the years and is *“a particular problem for the western part of the borough where the council has done a very good job in expanding secular and inclusive primary provision.”*

36. The local authority responded that local families have been able to access Rutlish School and although *“there may be a particular group who may not be able to access Ricards Lodge, this group would exist with or without the change to a cross sibling policy, which makes a marginal difference... For any group unable to access any of Merton’s schools... a significant number of alternative options exist.”*

37. The objector said there has been more than 20 forms of entry added at Merton primary schools since 2008, and as these children reach secondary age the distance at which places are offered will decrease. The local authority acknowledged that there is growth in pupil numbers coming through its primary schools, which will ultimately increase the number of secondary school places required in future admission years but with *“expansion at existing schools as well as a new secondary school”* the local authority believes that *“parental demand will continue to be met.”*

38. The local authority confirmed *“that there has been primary growth in Merton, and the 21 form entry expansion at Year R has taken place over a period of 7 years.”* Part of the local authority’s response to this expansion is a new co-educational secondary school to serve the Wimbledon area. The distance at which places are offered *“may change with additional demand, as they already do on an annual basis due to swings in popularity. However, it is not clear why this is particularly relevant to*

the cross sibling arrangement as there will be no loss of places within Merton as a result...The new secondary school will provide further choice."

39. The local authority clarified that its role is to provide sufficient school places and added that *"we are fortunate in Merton that we are able to do this whilst also being able to offer genuine choice of at least two schools for most parents. We are not able to guarantee the preferred single sex school option for the objector or any other parent."* Nevertheless, the local authority recognised that admissions arrangements are subject to annual review and the introduction of the proposed policy will be reviewed annually.

40. The objector commented further that *"the greatest overlap between the catchments is and will always be the central Wimbledon area. This change [the cross sibling priority] will adversely affect those children to either side of the borough who are of the 'wrong' sex. I cannot see this as anything but discrimination... this proposal would increase the level of discrimination which we already have."* The local authority responded *"that no discrimination occurs as single sex schools, faith designated schools, and a joint sibling arrangement are all permitted within current legislation. Whilst these combinations may reduce choice for some parents, it increases it for others."*

41. From the data in paragraph 12 above, it appears that for several years these single-sex schools have been undersubscribed. In other words, Year 7 places have been allocated to all the families who nominated Ricards Lodge High School as the preferred school for their daughter, and the remaining places were available for other applicants living quite far (up to almost 5 kilometres) from the school. Similarly, places were allocated to all the families who nominated Rutlish School as the preferred school for their son, and places were still available for all the other applicants irrespective of how far they lived from the school. As the two schools are 2.2 kilometres apart, in my view, the extent of the overlap between the catchment circles around these two schools must therefore have been extensive.

42. I understand the objector's concern that, for example, child A living outside the overlap area may be displaced by child B living further from the school but with a higher priority because of an older sibling at the other school. As the overlap area is large, it seems to me that child A would have to be living quite some distance from the school for this to be an issue. It also seems to me that other families will benefit from the cross sibling priority. Nevertheless, I recognise that the extent of the overlap area may change in the future, and am reassured by the local authority's confirmation that the admission arrangements and the introduction of the cross sibling priority will be reviewed annually. I have not found evidence of unlawful discrimination in the 2017 arrangements.

43. Taking into consideration all the evidence available to me, I consider that the introduction of a cross sibling priority is not unfair. I accept that the cross sibling priority may reduce choice for some parents, but it will increase choice for other families. The Code permits admission authorities to decide which criteria would be most suitable for the school according to the local circumstances. The school already has close links with Ricards Lodge High School, with whom it offers joint sixth form provision. Due to planned changes in the local circumstances, the school believes that to better support families in the Wimbledon area, the way forward is to introduce

a cross sibling priority with Ricards Lodge High School. The local authority, as the admissions authority for both schools, has consulted on the change to introduce a cross sibling priority and has determined the arrangements accordingly. I also note that the local authority has confirmed that admissions arrangements are subject to annual review, when the impact of the cross sibling will become clear. I am not persuaded that the cross sibling priority is unfair and I do not uphold this second part of the objection.

44. I have also used my power under section 88I of the Act to consider the arrangements as a whole and whether they conform to the requirements relating to admissions. Any aspects appear to which contravene the Code could be amended immediately by the local authority as a permitted variation under paragraph 3.6 of the Code.

45. The arrangements for community and voluntary controlled secondary schools available on the local authority's website do not appear to include a final tie-breaker to decide between two applications that cannot otherwise be separated, which appears to contravene paragraph 1.8 of the Code. The local authority acknowledged that the relevant final tie breaker was available in the arrangements for primary schools, but not in the arrangements for secondary schools. The local authority explained that to decide which child has the higher priority between two applications where home to school distance is equal, *"rank order will be randomly generated by the local admissions system."* The local authority said *"we are happy to make this clear in the arrangements"* but has yet to do so.

46. The arrangements for community and voluntary controlled primary schools include a reference regarding the admission of children with a statement of special educational needs which names the school, but yet again, the secondary arrangements do not appear to contain a similar reference, which appears to contravene paragraph 1.6 of the Code. It may be that the local authority has intended to provide the compulsory information required by the Code, such as the final tie breaker mentioned above, and the reference to the admission of children with a statement of special educational needs, but the layout of the arrangements is confusing, so that it appears to apply only to applications for a primary place school and not to secondary applications as well. Paragraph 14 of the Code makes clear that *"parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."* The local authority must review the layout of the arrangements to ensure that parents can access easily the information related to their application for a school place.

47. To comply with paragraph 1.6 of the code, the wording of the reference regarding children with a statement of special educational needs which names the school needs to be updated to include a reference to children with education, health and care plans which are replacing statements of special educational needs.

Summary of Findings

48. There are two aspects to this objection. The first is whether the cross sibling priority complies with the requirements of paragraph 1.12 of the Code. As there are close links between the school and Ricards Lodge High School, both state schools,

and the priority is set out clearly in the arrangements, I am satisfied that the cross sibling priority complies with paragraph 1.12.

49. The second aspect is whether or not the cross sibling priority is unfair and breaches paragraph 1.8 of the Code. For the reasons stated above, I am satisfied that the cross sibling priority does not breach paragraph 1.8

50. For these reasons I do not uphold the objection to the 2017 admission arrangements for Rutlish School.

51. I have also identified other ways in which the arrangements do not comply with the requirements relating to admissions. With respect to these other matters, the arrangements must be revised within two months.

Determination

52. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2017 determined by Merton Borough Council for Rutlish School.

53. I have also considered the arrangements in accordance with section 88I(5). I determine that there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

54. 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 within two months of the date of this determination.

Dated: 24 June 2016

Signed:

Schools Adjudicator: Ms Cecilia Galloway