



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3202, ADA3245, ADA3246, ADA3248

Objector: A number of parents

Admission Authority: Nottinghamshire County Council for High Oakham Primary School, Mansfield, Nottinghamshire

Date of decision: 31 January 2017

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2017 determined by Nottinghamshire County Council for High Oakham Primary School, Mansfield.

I have also considered the arrangements in accordance with section 88I(5) and find that these 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 or by 28 February following the determination whichever is sooner unless an alternative timescale is specified by the adjudicator. In this case, I specify a deadline of 28 February 2017.

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 two parents, the objectors, about the admission arrangements (the arrangements) for High Oakham Primary School, Mansfield (the school), a community school for children aged four to 11 for September 2017. The objection concerns the absence of a priority category for siblings of children already at the school for those living outside the school's catchment area. The objectors complain that this**

priority was removed from the arrangements for September 2016 following a defective consultation and that the arrangements for 2017 are unfair.

2. Referrals have also been made to the adjudicator by three sets of parents to the school's admission arrangements for September 2016 on the grounds that there was a defective consultation prior to their determination.
3. The local authority for the area in which the school is located is Nottinghamshire County Council and it is the admission authority for the school. The local authority is a party to this objection, as are the school and the referrers.

Jurisdiction

4. These arrangements were determined under section 88C of the Act by the local authority, which is the admission authority for the school. The objectors submitted their objection to these determined arrangements on 13 May 2016. 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 decided to use my power under section 88I of the Act to consider the arrangements for 2017 as a whole. I also received referrals objecting to the school's admission arrangements for September 2016 which were made after the last date on which these arrangements could be the subject of an objection. I have decided that it is not appropriate for me to determine any issues in relation to the arrangements for September 2016 including the concerns raised by the objectors about the consultation carried out prior to their determination. I have set out my reasons for this decision in subsequent paragraphs of this determination. For the avoidance of doubt, this determination is in respect of the arrangements for High Oakham Primary School and not other community and voluntary controlled primary schools in Nottinghamshire.

Procedure

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
6. The documents I have considered in reaching my decision include:
 - a. the objectors' form of objection dated 13 May 2016 and emails from the three referrers each dated 18 August 2016;
 - b. the local authority's response and supporting documents concerning the objection and the referrals and further correspondence from it and from the objectors;
 - c. Annual Reports of the Chief Schools Adjudicator dated November

2013, December 2014 and November 2015;

- d. confirmation of when consultation on the arrangements last took place;
- e. copies of the minutes of the meeting at which the arrangements for September 2016 and September 2017 were determined; and
- f. a copies of the determined arrangements for September 2016 and for September 2017.

The Objection and the Referrals

7. The objectors say that:

(i) the determined admission arrangement are unfair because they do not provide priority to siblings who live outside the school's catchment area compared with other children living outside the catchment area, and so contravene paragraph 1.8 of the Code;

(ii) the determined admission arrangements do not comply with paragraph 1.10 of the Code because they are common to most community and voluntary primary schools in Nottinghamshire and have not been considered on an individual school basis, and

(iii) the consultation which took place prior to the determination of the school's arrangements for September 2016, when a previous priority for siblings living outside the school's catchment area was removed, failed to meet the requirements of paragraph 1.44 of the Code.

8. The referrers have each repeated this last complaint about the school's admission arrangements for September 2016, saying that the council had failed to carry out an adequate consultation prior their determination. My jurisdiction under paragraph 88I does not extend to a consideration of such a consultation.

Other Matters

9. When I looked at the arrangements for the school which had been determined by the local authority for September 2017, I noticed that they failed to contain a statement concerning the deferred entry of children below compulsory school age and that this may not meet the requirements of paragraph 2.16 of the Code. I therefore wrote seeking the local authority's comments on this concern.

10. I also informed the local authority that its admission arrangements may fail to comply with the requirement in paragraph 14 of the Code that the criteria used to decide the allocation of school places are fair, and have sought its comments on this further concern.

Background

11. The local authority is the admission authority for all community and voluntary controlled primary schools in the county of Nottinghamshire outside the city of Nottingham and thus for High Oakham Primary School. Each of these schools has a designated catchment area which is used to give priority to applications when a school is oversubscribed. The local authority has determined admission arrangements which are common to all of these schools other than a group of voluntary controlled schools designated with a Church of England character for which some priority is given on the grounds of faith. The arrangements for the school were determined as part of the determination of these arrangements.
12. The school is popular and oversubscribed, having received 234 expressions of preference by parents for the 60 places available there in September 2016. 134 of these preferences were satisfied by having a higher preference for another school met, leaving 40 whose continuing preference for the school could not be satisfied.
13. For admissions to the school in September 2015, the local authority's admission arrangements included oversubscription criteria which can be summarised as follows:
 - a. looked after and previously looked after children;
 - b. children living in the catchment area (with priority given to those with a sibling already attending the school);
 - c. children living outside the catchment (with priority given to those with a sibling already attending the school);
 - d. other children.
14. The admission arrangements for the school for September 2016 and for September 2017 do not give any enhanced priority to children who live outside its catchment area if they have a sibling at the school. Such children are considered alongside all other children not living in its catchment area with priority among them being determined by how far each lives from the school.
15. For admissions in September 2016, the local authority was able to admit 11 children from outside the school's catchment area. The objectors live outside the school's catchment area. They were unsuccessful in obtaining a place there for their child, who has three older siblings at the school. The objectors have submitted their objection to the arrangements determined by the local authority for the school for September 2017 following this experience. The objectors say that, as the arrangements for 2017 are the same as those for 2016, what they believe to have been an unfairness experienced by themselves will be repeated for many others in September 2017 in connection with applications for places at schools

for which the local authority is the admission authority.

Consideration of Case

16. I shall consider first the second part of the objection, which is that the admission arrangements for the school have not been set by the admission authority in the light of its individual circumstances, but are the same arrangements that are used for the majority of schools for which the local authority is the admission authority. The objectors believe that this causes a breach of paragraph 1.10 of the Code, which says:

“This Code does not give a definitive list of acceptable oversubscription criteria. It is for admission authorities to decide which criteria would be most suitable to the school according to local circumstances.”

17. The objectors complain that the local authority did not consider on a school by school basis the effect which removing the priority for siblings living outside a school’s catchment area would have before deciding to make this change to its admission arrangements for September 2016. The local authority’s response to this part of the objection does not appear to me to address in any meaningful way this concern, but simply states that its admission arrangements *“are for community and voluntary controlled schools”*. The objectors also consider that the change introduced by the local authority had not been in response to specific problems associated with individual schools and that this was again contrary to what paragraph 1.10 says.

18. The local authority gives the impression by its response that it is of the view that when it determines the admission arrangements for the schools for which it is the admission authority it is necessarily doing so collectively. Indeed, it made the point in its response to me that it had removed the priority for out of catchment siblings from the arrangements for all these schools, which is in fact what the objectors complain about. I agree with the local authority that there is no provision which prevents it from determining common arrangements for the schools for which it is the admission authority. However, it is also at liberty to set different arrangements for different schools and, of course, actually does so in relation to voluntary controlled Church of England schools. The question raised by the objection is whether the Code in paragraph 1.10 places a requirement on an admission authority for more than one school to set arrangements for each based on that school’s individual circumstances.

19. My reading of the paragraph is that it does not create the kind of requirement that the objectors say exists. Rather, I consider that its effect is instead to do no more than state that oversubscription criteria in general are available for each admission authority to adopt or reject as it considers appropriate to the circumstances of the schools for which it is the admission authority. That is, I see no requirement concerning the admission arrangements for individual

schools in this paragraph. While the council is at liberty not to determine common arrangements for schools, it is equally at liberty to do so, therefore, as it has done for the majority of the schools for which it is the admission authority, including High Oakham Primary School. For this reason, I do not consider that the arrangements breach paragraph 1.10 of the Code and I do not uphold this part of the objection. However, I do think that paragraph 1.10 is relevant to my consideration of the complaint of unfairness concerning the arrangements, as I shall explain below.

20. The objectors say that the admission arrangements are unreasonable and unfair and in breach of paragraph 1.8 of the Code, which says:

*“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs...”*

21. The objectors link their complaint about the fairness of the arrangements to the removal of the priority previously given to siblings not living in the school's catchment area, leaving arrangements which only give priority to siblings if they live in the catchment area. They say that the previous arrangements, which provided a relatively low priority to siblings living outside the school's catchment area since all children living within the catchment area had a higher priority, were fair. They have referred me to a decision of the adjudicator in 2011. Then, the adjudicator, when considering an objection that Nottinghamshire's arrangements at that time were unfair because they gave insufficient priority to all siblings, found that they were not unfair. This was because the adjudicator considered that the separate sibling priority for those living inside and those living outside the catchment area struck an appropriate balance between the need to ensure that children can go to local schools and the need to allow access to schools attended by a child's older sibling. The objectors also state their belief, based on a document published by the local authority which I have seen, that the change introduced into its arrangements for September 2016 was prompted by a comment made in the Annual Report of the Chief Schools Adjudicator in 2014. This Report expressed concerns about admission arrangements for schools which gave a high priority to all siblings (above those living in a catchment area or close to a school), but the objectors say that this was in any case not relevant to the local authority's previous arrangements since these did not give priority to all siblings over catchment children. Further, they say that the Annual Report of the Chief Schools Adjudicator in 2015 raised concerns about the use of a priority for siblings linked to residence in a catchment area and also that this is the situation created by the arrangements which were determined for September 2016 and for September 2017. I shall consider what these Annual Reports have had to say, and also what

they have not said, below.

22. The local authority responded to the objection and the supporting papers provided by the objectors at length and there has followed a substantial correspondence involving both parties. I shall make reference to those elements of this correspondence which are relevant to my consideration of the objection.
23. In its initial response, the local authority said that it did not consider its arrangements unfair or unreasonable. It said that the removal of the priority for out of catchment siblings had been taken as a result of concerns that under the pre-existing arrangements some children living close to a school but outside its catchment area were unsuccessful in securing a place because those with siblings but living further away had a higher priority. It said that a proposal to remove that priority had been included in the consultation which it had carried out before determining its arrangements for September 2016, and that *"it is for admission authorities to decide which criteria would be most suitable according to the local circumstances"*, as stated in paragraph 1.10 of the Code. It said that the change was not made as a result of the contents of the Chief Schools Adjudicator's Report of 2014, but did not respond to the other references made by the objectors, as the objectors subsequently pointed out to me.
24. The objectors have in further correspondence raised misgivings about the local authority's decision-making process, but these are not matters for me to consider. The objectors have stated that 11 parents of children who have older siblings at the school were unable to secure a place there for the younger sibling in September 2016, an assertion which the local authority did not initially refer to in its responses. I therefore asked the local authority for its comments on this statistic, and these are considered below. The objectors have also expressed their view that a particular unfairness has been created by the immediate application of the new arrangements since they contain no "preserved priority" for those whose older sibling was already at the school before their introduction. They have alluded to a recent example in which another local authority included a preserved priority when removing a priority for siblings from its admission arrangements, and complain that this should have been considered in this case. The local authority's comment was that what had been done elsewhere was not relevant to its own view of local needs when determining its arrangements, and that there was no specific requirement within the Code that it should take such matters into consideration.
25. The objectors have also provided me with an analysis of the admission arrangements for September 2017 of 27 other county and 119 metropolitan local authorities. This is given as evidence of the prevalence elsewhere of admission arrangements which contain the approach to priority for siblings which existed previously in Nottinghamshire, and of the use of "preserved priority" where admission authorities had removed a sibling priority. A third analysis

provided to me by the objectors drew on a paper published in 2012 by the organisation "Population Matters" using 2010 data which showed a relationship between family size and ethnicity in the UK. The objectors say that larger families are likely to be affected disproportionately by the arrangements which the local authority has determined, as are those with lower incomes who are more likely to rent rather than own their place of residence and so be more likely to move address. They argue that this causes a further breach of paragraph 1.8 of the Code because the arrangements cause unfair disadvantage to those from particular racial or social groups. Although it has had the opportunity to do so, the local authority has made no direct comment on any of this information but has asserted that:

"As the admission authority for community and voluntary controlled schools in Nottinghamshire, the County Council consulted on and determined a change of policy with respect to the oversubscription criteria for 2016-2017 to meet local priorities within Nottinghamshire. The Council considers that the arrangements for 2016-2017 and for 2017-2018 are reasonable, clear, objective and procedurally fair. Parents can look at the arrangements and understand easily how places will be allocated.....Nottinghamshire County Council considers that it has complied with the statutory requirements for consultation and determination of the admission arrangements for 2016-2017 and 2017-2018."

26. It is of course open to any admission authority to make changes to its admission arrangements in any year by following the procedure set out in the Code for doing so. As a result, there can be no expectation that admission arrangements will not be changed. Equally, there is no "correct" set of admission arrangements for a given set of circumstances since the requirements of the Code can be met in more than one way. I will consider below the local circumstances relating to this school in as much as I have been able to ascertain them. I will also refer to the consultation which the council carried out prior to the determination of its admission arrangements for September 2016, which is the subject of the third part of the objection and which was the reason for the referrals of the arrangements for September 2016 which have been made to me.

27. My concern here is to consider whether the arrangements are in themselves fair. The objectors have cited in their objection paragraph 1.8 of the Code when complaining that the removal of the priority for out of catchment siblings was unfair, and the local authority has responded to me with its view about the fairness of this change and its reasons for rejecting the objectors' view. Although paragraph 1.8 refers to fairness in a specific way, that is to the procedural fairness of the oversubscription criteria which an admission authority uses, it is clear to me that the matter at issue is whether the arrangements which have been determined are fair. I have made it clear to the local authority that my concern is that they may not be fair and have asked it whether it has further comments to make in the light of the

knowledge that I would consider the arrangements against what is set out in paragraph 14 of the Code. I shall do so in the context of my understanding of the local circumstances of which the local authority will have been aware of when deciding the admission arrangements for the schools for which it is the admission authority, in the manner described in paragraph 1.10 of the Code. The local authority has responded by saying, as it had previously, that it considers that its arrangements are clear and objective since parents can easily see from reading them how places will be allocated. It also considers the arrangements to be fair and has referred to the provision which it makes for different categories of vulnerable children and to the fact that its arrangements provide fair access for all children to local schools since out of catchment siblings are not excluded for consideration for places.

28. The local authority has said that it accepts that the question of the fairness of its admission arrangements lies in the balance which they strike between two competing needs. These are the extent to which children will always be able to access a place at their local school and the likelihood that a sibling of a child already at a school will be able to do so if the family does not live in its catchment area. It has also told me that *“the intention of the council was to ensure that, as far as possible, local schools are able to offer local places for local children”*. Given the catchment area system which operates in Nottinghamshire, it seems to me that this objective is already being met if most children can secure a place at their catchment area school, and as I shall indicate below, the evidence which I have seen is that this is so. It therefore seems to me to be strange for the local authority to extend its definition of “local” to those living by definition in the catchment areas of other schools. The removal of the priority previously given to siblings not living in the catchment area of a school means that places for all those living outside the catchment area are prioritised on distance from the school only. So siblings may or may not be admitted, as with all other children living outside the catchment area, depending on how close to the school their home is. A comparison of first admissions (offers on national offer day) to the school in 2015, when the sibling priority was in place, and in 2016, when it was not, is set out below:

	Places allocated to children outside catchment	Successful applications of siblings living outside catchment	Unsuccessful applications of siblings living outside catchment	Successful applications outside catchment with no sibling

2015	12	7	nil	5
2016	11	4	9 – 11*	7

* This is the best available information: the local authority says 9 claimed a sibling link but this was not confirmed by it as it was no longer relevant. The local authority also says others may have had a link but not stated this, for the same reason. 11 is the figure claimed by the objectors.

In 2015 the furthest admission from the school was 3.7 miles in the case of those with a sibling and 0.3 miles for those with no sibling. In 2016 the furthest admission was from 0.7 miles. It is not possible from this limited amount of information to draw firm conclusions about the effect of the change. It is nevertheless clear that, the result has been that children without siblings obtained places from further outside the school's catchment area in 2016 than in 2015 and that there was a significantly reduced chance for those with a sibling link but living outside the catchment area to obtain a place at all, compared with the previous arrangements. This is of course in line with the local authority's intention in introducing the change to its admission arrangements. While I am concerned only with the arrangements for this school, I note that information provided to me by the local authority suggests that this pattern would not be very different in other parts of the local authority area.

29. As I indicated earlier, both the objectors and the local authority have referred to recent Annual Reports of the Chief Schools Adjudicator and comments which have been made there to the difficulties which can arise when priority is given to siblings in the admission arrangements of primary schools. Each of the parties has said that the other has misread or misrepresented these different comments, and so I have looked at them all carefully and the context in which they were made. This context includes the different versions of the Code in force at the time.

30. The Code recognises that a priority for siblings is a legitimate part of admission arrangements, but does not require that a sibling priority is used by admission authorities. Problems which have arisen when a sibling priority is used have been recognised by the Chief Schools Adjudicator as occurring where schools are oversubscribed and where priority has been given to all (my emphasis) those with a sibling link, since in those circumstances first-born children living in a school's catchment area may not secure a place. The problem caused by parents securing a place for an older child but then changing address has been pointed out in the case of admission arrangements which allow that parent to retain the same priority for a place if they move out of the catchment area. The most recent Report referred specifically to the use of a separate priority for siblings living in a catchment area and for those living outside it as one means of combating this effect. However, in so doing, the Report was not pointing specifically to problems associated with arrangements in which a sibling priority exists only for those living in a school's

catchment area as the objectors say it does.

31. Although the local authority has told me that comments made in the Reports were not the reason for its decision to consult upon the removal of the priority for out catchment siblings, it has nevertheless repeatedly referred to them both in published documents concerning this change and in correspondence resulting from the objection. However, there is nothing in what has been said in these Reports which would lend support to the local authority's approach in removing the priority for siblings among those living outside the school's catchment area. Rather, as I say above, the value of its previous approach has been pointed to by the Chief Schools Adjudicator.
32. The local authority responded to the objection about the admission arrangements of the school in terms of the general principles which lay behind its determination of the common admission arrangements for most of the primary schools for which it is the admission authority, rather than with reference to the school itself. Clearly, the school is part of this larger picture comprising these schools and the context provided by Nottinghamshire as a whole. This context and the points made to me about it by the local authority are therefore something to which I have necessarily had regard in considering the objection.
33. For example, the local authority has given me three case studies which illustrate beneficial effects of its change, two of which concern circumstances where a school was oversubscribed by applications from parents living within its catchment area. However, the objectors have pointed out that the local authority's published data on first admissions to schools in Nottinghamshire in 2014 and 2015 shows that there were only 10 and 4 cases respectively across the approximately 300 primary schools in the county of a school being oversubscribed from within its catchment area. The local authority has not commented on this interpretation of its data. The local authority points out that its new arrangements allow a child living in a catchment area of an oversubscribed school who is not allocated a place there to secure a place at a second school which is nearer to their home than would have been the case previously. Even here, however, it is clear to me that the new arrangements also mean that any younger sibling of such a child will not benefit from the previous priority as an out of catchment sibling should the parents later seek to secure a place at the same school for that child. The local authority also did not initially comment on the objectors' interpretation of this same data. The objectors' analysis suggested that in the two years 2014 and 2015 approximately 17 per cent of the roughly 9,000 applications for a place at a primary school in the county had been from parents of siblings who did not live within the preferred school's catchment area. Because of the potential significance of this statistic I asked the local authority if it could confirm its accuracy and it has responded to this request without commenting directly on the figure given by the objectors. Instead, it provided me with its own analysis. My understanding of the figures provided to me is that they can be

said to show the following:

(i) that 9728 children sought a place at a primary school in 2014 and 9966 did so in 2015. In 2016 this figure rose to 10076;

(ii) of these applications the number of allocations of places for individual children in oversubscribed community and voluntary schools in the county in each year were:

<u>2014</u>	<u>2015</u>	<u>2016</u>
3752	4455	3516

(iii) in 2014 and 2015 the number and percentages of out catchment siblings offered and refused places at these schools were:

	<u>2014</u>	<u>2015</u>
offered places	509 (91%)	635 (89%)
not offered places	50 (9%)	82 (11%)

(iv) in these two years, as a percentages of the total numbers of children allocated places in these schools (3752 and 4455 respectively), applications from individual out of catchment siblings had represented:

	<u>2014</u>	<u>2015</u>
	14.9%	16.1%

(v) also in these two years, the relative numbers and percentages of children allocated places at these schools from outside the catchment area who had a sibling link and who had no sibling link were:

	<u>2014</u>	<u>2015</u>
sibling link	509 (45%)	635 (48%)
no sibling link	619 (55%)	691 (52%)
total	1128	1326

(vi) for 2016, the figures can only provide the total number of children living out of catchment areas who were allocated places, and this was 1043 out of the total of 3516 offered places.

34. These figures show that each year there are a large number of parents (about six or seven hundred) seeking a place at an oversubscribed school which is not their catchment area school at which they already have an older sibling in attendance there. The figures seem to me to confirm the general level of this demand for out of catchment places for younger siblings at oversubscribed schools claimed by the objectors.

35. It is also clear that the county's primary schools have in recent years met a significant proportion of the relatively high level of demand for places at schools which are oversubscribed. Under the local authority's previous admission arrangements this capacity allowed around 90 per cent of parents (in 2014 and 2015) with a sibling link at an oversubscribed school which was not their catchment school to secure the place they were seeking for their younger child. At the same time under these arrangements, across the county, such admissions were fewer in number than of those of children from outside catchment areas who had no sibling link.
36. The data supplied to me by the local authority showed the total number of refused applications for places in the three years 2014, 2015 and 2016. However, since as it helpfully pointed out to me some children will have been refused places at more than one school, these figures did not represent individual children. Nevertheless, they are of help when considering the position of those with no sibling link living out of school catchment areas in order to compare it with the more precisely known position for those with a sibling link set out above. The number of children living outside catchment areas who were refused a place will be lower than the total number of refusals as a small number of schools are oversubscribed within catchment. It is therefore possible to say that in the two years 2014 and 2015, at least (by my calculation) 619 out of maximum number of 1549 applications (or 40 per cent) in 2014 and 691 out of 2002 (or 35 per cent) in 2015 were successful.
37. Taking all this evidence as a whole, it seems to me that there was a reasonable recognition in 2014 and 2015 of the competing claims of those with a sibling connection and those without one in the pattern of admissions of those living outside school catchment areas of oversubscribed schools. The former had a very good chance of having this connection recognised and of gained a place, while the total number of those without a sibling but who nevertheless gained a place still outnumbered them. Although the larger group, such parents had a reasonable chance of securing a place at their preferred school. So the evidence which I have, based on what can be ascertained about the effect of the revised admission arrangements in 2016 on admissions to the school, is that this balance between the necessarily competing interests of the two groups has now been significantly upset. All of this forms the backcloth to the objection that the school's oversubscription criteria are procedurally unfair and my own concern that the arrangements as a whole may be unfair. My view is that this context is relevant to my consideration of whether the arrangements determined for 2017 are fair, given the practical impact which they will have for families, which I will discuss below.
38. It is the local authority's argument that it has determined arrangements which are clear and objective and I agree that this is the case. It also says that has done so in the light of local circumstances and I shall consider what it has had to say on this

point shortly. However, arrangements must also be fair, and in coming to a view about whether this is the case for the school's determined arrangements I have borne in mind the following:

(i) the apparent reasonableness and fairness of the previous arrangements;

(ii) the nature of the sibling link itself and of the competing claims for a place at a school for those living outside its catchment area;

(iii) the proportion of parents applying for places at the school, and at schools throughout the county, who live outside the catchment area and have a sibling connection with it, and therefore the scale on which the change made to the arrangements is likely to have its effect; and

(iv) the absence from the arrangements of any retained priority for those with a sibling connection pre-dating the date of the change.

39. The local authority has repeatedly said that its view was that it wished to give a higher priority to the admission of local children to local schools, something which will evidently be achieved by the revised arrangements. It has told me that this came to the fore initially as a result of views expressed by elected members who were concerned about cases put to them in their constituency roles. Nevertheless, I have seen no evidential basis for the local authority's view that a change to arrangements which on such an analysis appeared to be working well was necessary, or that if it was, that it needed to be achieved by the means which have been chosen. The local authority has not contested the data presented by the objector which was said to show that very few schools in the county are oversubscribed from within their catchment areas and has itself given me the data which shows that in 2016 65 per cent of all allocations of places did not involve oversubscribed schools. For the remaining places, there was, as I have set out above, in any case a reasonable chance that those living outside school catchment areas and not having a sibling at the school would be able to secure a place. This does not speak to me of a widespread problem necessarily requiring the approach which has been adopted. It is dangerous to oversimplify the complex demographic and geographical factors which lead to the establishment of defined catchment areas. However, where these operate on a county-wide basis, it is at least conceivable that it would be possible to address any systematic need to ensure a higher proportion of local admissions, if it exists, for example by reviewing the definitions of the relevant catchment areas themselves.

40. Having children at more than one primary school, even if these are geographically not distant from each other, must cause disruption and expense that would otherwise be unnecessary, and is also very likely to impact on the lives of all concerned including the children themselves especially for this age group. If this is brought about without adequate reason, my view is that unfairness has resulted. It

is of course the case, as the local authority has said to me, that removing the priority for out of catchment siblings reduces the unfairness which it had identified as occurring for those without a sibling connection living outside the catchment but relatively near to the school. All addresses in the county are in the catchment area of a primary school. So if I consider the position of two parents both living in the catchment area of a particular school (A) but both preferring a different school (B). If one parent already has a child at B he or she will have a sibling connection with school B but the second parent with no child at school B will have no link to the school. The arrangements no longer recognise the sibling link in terms of priority for a place and both applications are treated on the same basis. I do not see that it can be a reasonable approach to set aside the ties of sibling relationships, which are real and important relationships with a school for the reasons I have just stated, in order to facilitate more admissions for those with no such relationship when both groups live in the catchment area of a different school.

41. It also seems to me to be relevant to my considerations about the fairness of the arrangements to include the scale of the impact which they will have locally on families. Families who would previously have stood a very good chance of securing a place at the school where there was an older sibling even though they did not live in the school's catchment area, are likely to find that this possibility is now very significantly reduced. This is an important part of the local context. Taking the lower figure of 15 percent of relevant applications for places from the discussion above, and using the 2016 proportion of allocations that involved oversubscribed schools, something like 470 families per year across Nottinghamshire will be affected. Because of the importance of the sibling link and its consequences for families and comparing this with the improved benefit to another family of securing a place for a first child at a preferred school, this is a significant statistic in my consideration of the change introduced.

42. It would have considerably mitigated the effect likely to be experienced by these families if the arrangements had preserved the priority given to out of catchment siblings in cases where the link had been formed before the date of their implementation. Parents would then have been able to make domestic decisions in the light of the changed arrangements rather than, as has been the case, having new arrangements which impact on the decisions which they took in the past, quite possibly in the light of the arrangements in place at the time. However, the local authority has stated that:

“Elected Members were of the opinion that to delay implementation of this change of policy would lengthen the time of negative impact for local children and would effectively extend the unfairness which had been identified.”

43. The local authority has told me that cross-party workshops had been conducted in October 2014 *“essentially at the request of Elected Members”* and that these had led to cross-party agreement on the

need to consult about a proposed policy change. There is no reference in the material used as briefing for these workshops to any consideration having been given to the use of a preserved priority approach. It was not a matter on which there was any consultation, since the consultation which the local authority went on to conduct did not set out any options that were, or that might be, considered alongside the proposed change. In the event, the determined arrangements do not contain a preserved priority and the effect of the revised arrangements has not been mitigated.

44. In summary, because of:

- (i) the apparent reasonableness of the previous recognition of competing interests which had been achieved by previous arrangements but which has now been removed;
- (ii) the absence of an evidential basis which would support the need for the change which has been made;
- (iii) the strong reasons for recognising sibling links especially for primary school admissions;
- (iv) the scale on which those with a sibling link no longer have it recognised in the light of the need for this to happen in the prevailing local circumstances, and
- (v) the absence of any mitigation of this effect for those whose sibling link was already established

I have concluded that the arrangements which the local authority determined for the school for September 2017 are unfair and in breach of paragraph 14 of the Code, and I uphold the objection concerning the fairness of the arrangements.

45. The objectors have raised further concerns which touch upon the fairness or otherwise of the arrangements which I must also consider. They say that the arrangements fail to be fair and to comply with paragraph 1.8 of the Code because they are likely to unfairly disadvantage those from particular racial or social groups. The first disadvantage alleged is that larger families are disadvantaged to a greater extent than smaller families by the arrangements and that there is a link between family size and ethnicity. This second assertion appears to be based, from what I have seen, on sound evidence, but I am less certain about the first part. It seems to me that it can be seen that in the local circumstances described above, those with siblings and who live outside their preferred school's catchment area are now considerably less likely than previously to obtain a place there. But it also seems to me that the effect does not depend on family size, so long as there are siblings. It would not have been different for the objectors for example if they had had only one older sibling attending the school and not three. So I cannot see a greater disadvantage for families from racial groups which tend to

have larger family groups than for those which tend to have smaller families and do not uphold this part of the objection on these grounds.

46. I think it is a more telling argument that those less well-off are more likely to occupy rented accommodation than those who can afford to buy their homes, and that this seems to introduce the possibility of more frequent changes of address. If this were so, then there would be a greater chance of families moving between school catchment areas while children are of school age and of this introducing the effect complained of by the objectors in the absence of a priority for out of catchment siblings in the admission arrangements of schools. However, while these are undoubtedly reasonable assumptions, I have seen no evidence to substantiate their effect in relation to this case, and so while I think it very likely that the objector's concerns are well founded, I do not uphold this part of the objection on these grounds.

47. I turn now to the matter of the consultation which the local authority carried out prior to the determination of its admission arrangements for September 2016. The objectors and the referrers all made a complaint about this consultation process, which in my view constitutes an objection about the arrangements for 2016, and not those for 2017, since it concerns the process involved in the determination of the former. Each of these complaints was received after the deadline for making objections to these arrangements, which was 30 June 2015, and so I am not required to consider them. Given the conclusion which I have in any case reached concerning the fairness of the arrangements for September 2017, doing so would not add anything to my judgement about the arrangements themselves, and I leave the matter there.

48. Paragraph 2.16 of the Code has the following to say:

*“Admission authorities **must** provide for the admission of all children in the September following their fourth birthday. The authority **must** make it clear in their arrangements that, where they have offered a child a place at a school:*

- a) that child is entitled to a full-time place in the September following their fourth birthday;*
- b) the child's parents can defer the date their child is admitted to the school until later in the school year but not beyond the point at which they reach compulsory school age and not beyond the beginning of the final term of the school year for which it was made; and*
- c) where the parents wish, children may attend part-time until later in the school year but not beyond the point at which they reach compulsory school age.”*

49. The local authority has said that it recognises that its determined

admission arrangements for both September 2016 and for September 2017 contain no statement on this matter and although it has told me that it intends to rectify this omission, I have been given no evidence that this has happened. The admission arrangements for both years fail to comply with what the Code requires.

50. I have set a deadline of 28 February 2017 for the arrangements of the school to be changed. This is the deadline for the determination of arrangements for admission to the school for September 2018. Parents will already have applied for places at the school for 2017 based on its existing arrangements and it would not be fair for different arrangements now to apply to the consideration of those applications. That said, new arrangements determined in the light of this determination will apply to the waiting list which the local authority is required to maintain by virtue of paragraph 2.14 of the Code.

51. I have made clear that my determination relates only to the school which is the subject of the objection. I have nevertheless considered data which has been provided to me by the objector and by the local authority which relates to the whole of Nottinghamshire as it is relevant context. As I have set out above, the local authority is not bound to determine common arrangements for all the schools for which it is the admission authority. However, it has done this for the majority of these schools. In making this determination I have not considered or taken into account the specific impact of these common admission arrangements on any other school in Nottinghamshire. It is for the local authority to consider what, if any action, it wishes to take in relation to other schools in Nottinghamshire in the light of this determination.

Summary of Findings

52. I have set out my reasons for not upholding that part of the objection which stated that the local authority had breached the requirements of the Code because it failed to determine admission arrangements for the schools for which it is the admission authority on an individual school basis.

53. I have also explained why I have come to the view that the arrangements which the local authority determined for the school for September 2017 are unfair in the local circumstances because they give no priority to siblings of children already in attendance for those living outside the catchment area. This unfairness has not been offset by the retention of a priority for those children whose sibling connection had been established prior to the date of the change. As I result, I uphold the objection that the arrangements fail to comply with paragraph 14 of the Code.

54. The arrangements fail to comply with paragraph 2.16 of the Code because they do not include a statement setting out the matters specified there.

Determination

55. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2017 determined by Nottinghamshire County Council for High Oakham Primary School, Mansfield.
56. I have also considered the arrangements in accordance with section 88I(5) and find that these do not conform with the requirements relating to admission arrangements in the ways set out in this determination.
57. 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 or by 28 February following the determination whichever is sooner unless an alternative timescale is specified by the adjudicator. In this case, I specify a deadline of 28 February 2017.

Dated: 31 January 2017

Signed:

Schools Adjudicator: Dr Bryan Slater