



Office of
the Schools
Adjudicator

DETERMINATION

Reference: ADA2975

Objector: A parent

Admission Authority: The Governing Body of St George's Church of England Primary School, Chorley, Lancashire.

Date: 18 November 2015

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 2016 determined by the governing body of St George's Church of England Primary School, Chorley, Lancashire,

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 about the admissions arrangements (the arrangements) for September 2016 for St George's Church of England Primary School (the school). The school is a Church of England voluntary aided school for pupils aged 4 to 11 years and the admission authority is the governing body. The objection is to the tie-breaker, which the objector considers does not comply with the School Admissions Code (the Code).

Jurisdiction

2. These arrangements were determined under section 88C of the Act by the governing body. The objector submitted the objection to these determined arrangements on 29 June 2015. 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.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the Code.

4. The documents I have considered in reaching my decision include:

- a) the objector's form of objection and supporting documents dated 29 June 2015;
- b) the response of Lancashire County Council, the local authority (the LA), to the objection;
- c) the response of the faith body, the Diocese of Blackburn (the diocese);
- c) the LA's composite prospectus for parents seeking admission to schools in the area in September 2015 and 2016;
- d) data from the local authority showing the number of applicants for September 2015;
- e) further communications from the objector, the LA and the diocese;
- f) a copy of the determined arrangements; and
- g) a report of an investigation into the consultation on the arrangements undertaken by the local authority.

The Objection

5. The objector argues that a 'distance' tie-breaker should not be used to separate applicants within each over subscription criterion. The objector argues that lower order criteria should be applied to separate applicants rather than distance. The objector considers that the arrangements do not comply with the tie-break requirements of paragraph 1.8 of the Code which ends with, "*Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.*"

Background

6. The school is an oversubscribed Church of England primary school in Chorley in Lancashire with a published admission number of 35. The report into standards by Ofsted published June 2012 declares it to be 'outstanding' in all aspects.
7. The oversubscription criteria, which the school describes as categories, are, in summary:
- (1) Children looked after and previously looked after;
 - (2) Children with medical /social needs;

- (3) Children whose parents worship at St Georges Church fortnightly for two years;
- (4) Siblings;
- (5) Children whose parents worship at St Georges Church monthly for 1 year;
- (6) Other children.

The oversubscription criteria as published say 'parents', but the supplementary information form (SIF) correctly requires only the name of one parent.

8. The arrangements under the subheading "Tie break" say, "*Where there are more applicants for the available places within a category, then the distance between the Ordnance Survey address points for the school and the home measured in a straight line will be used as the final determining factor, nearer addresses having priority over more distant ones. This address point is within the body of the property and usually located at its center. Where the cutoff point is for addresses within the same building, then the single measure between address points will apply and the Local Authority's system of a random draw will determine which address(es) receive the offer(s).*"

Consideration of Factors

9. The school is bound by the Code in a number of ways in its dealing with oversubscription. Paragraph 1.6 requires the school to show how pupils will be allocated a place, "*The admission authority for the school **must** set out in their arrangements the criteria against which places will be allocated at the school when there are more applications than places and the order in which the criteria will be applied.*" Paragraph 1.7 says "*All schools **must** have oversubscription criteria for each 'relevant age group' Oversubscription criteria **must** then be applied to all other applicants in the order set out in the arrangements.*" Paragraph 2.7 says "*Admission authorities **must** allocate places on the basis of their determined admission arrangements only*" and paragraph 1.8 ends with the requirement cited by the objector, "*Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated*". Taken together, I view these paragraphs as saying, having set out the means by which places will be allocated if there are more applicants than places, the school must allocate those places within the rules it set itself, and cannot make a decision on any other basis.
10. The school's arrangements as applied mean that if, for example, more applicants than there are places meet the criterion for church attendance fortnightly for two years (oversubscription criterion 3), and then those applicants would be ranked in order of distance of home from school. The objector argues that the "*tie-breaker in the school's admissions arrangements is being applied even where there are other means of separating the applicants i.e. incorrect application of the tie breaker is giving priority to applicants without siblings, despite siblings being one of the criteria.*" He says that the use of the tie-breaker is incorrect in two ways; first in ranking

applicants within a criterion and second, its use in making the final decision between two pupils. His view is that other, lower priority criteria should be used to rank and make the final decision between applicants. He writes *“if the admission authority considers that distance should have a higher priority than siblings then this surely should have been reflected in the arrangements by having distance as a criteria (sic) just above siblings.”* He continues that the tiebreaker of distance should only be used for the final criterion ‘other children’. He argues that ranking in the way he proposes would bring *“clarity”* and *“predictability”* to the admissions process. In correspondence, the objector writes that the use of the tie-breaker as shown is *“illogical”* and *“unfair”*,

11. The objector argues that the school does not conform with paragraph 1.8, and gives two examples to illustrate his view. The example gives “criteria 2” when meaning church attendance which is criterion 3 and “criteria 3” which should be 4 as it means sibling.

“Let’s say 34 people have been allocated places based on meeting criteria 2 ‘Church’, leaving 1 place remaining. There are two more applicants, one with a sibling at the school and the other with no sibling, but the latter lives closer than the applicant with a sibling.

** Let’s say neither of the two remaining applicants meet criteria 2; the admission authority will allocate a place to the applicant that meets criteria 3 ‘sibling’.*

** If both meet criteria 2 resulting in criteria 2 being oversubscribed, the tie-break is invoked effectively disregarding the fact that one has a sibling and the place is allocated to the applicant that lives closest to the school.*

In the above examples, the two applicant’s cases are identical with respect to criteria 2, yet the priority flips between siblings and distance purely as a result of the number of other applicants which meet criteria 2.”

12. The school disagrees with the objector’s interpretation of paragraph 1.8. The school, the local authority and the diocese all made similar responses to this objection. The school argues that the Code requires places to be allocated in accordance with the priority order set out in the arrangements; that where there are more applications than there are places these need to be separated by a tie-break; that the choice of tie-break is for the school to determine in accordance with the Code. It is of the view that to refer to lower priority criteria would not meet the requirements of the Code, as the school would *“not just be assessing priority on a single criterion but across a range of criteria.”* The school suggests that to use the method set out by the objector may be in breach of paragraph 14 as the arrangements may be unclear to parents as well as paragraph 1.9a as by assessing eligibility under one criterion with reference to other criteria does not form part of the published admission arrangements.

13. The local authority considers the school's arrangements are lawful. It argues that *"The examples the objector provides are not logical and would be unlawful"* It counters the example given by the objector as follows *"If one place remained and there were two applications to be considered within criterion 3 (where both families met this criterion based on church attendance) then the tiebreak would be applied. The governing body could not consider that one family also had a sibling who would be at the school. This would be taking the next criterion - 4 - into account. This would be contrary to the determined policy, which requires applying the criteria in priority order."*
14. Similarly, the diocese is of the view that the tie-breaker is clear and fair as it enables the ranking of each applicant within the criteria as set and published by the school, it says that *"The objection essentially asks for positive consideration of one criterion above another at the point of tiebreak, which overly complicates admissions, leading to less clarity. The objector has priorities that are different to that of the school and, as such, favors siblings over distance when separating the worship criterion"*.
15. I have considered the objector's example which in my view does not explain how if there are 36 applicants for 35 places and all meet the church attendance criterion the first 34 came to be allocated leaving just one place which the objector suggests should be decided by reference to the next oversubscription criterion. If there are more applicants who meet criterion 3 than places available then a clear fair way of distinguishing between them all has to be put in place. The school can, as long as it abides by the Code, decide how it will prioritise applicants. It must set out how places will be allocated; have oversubscription criteria; and have a way of separating applicants if more meet a criterion than there are places available. The school has decided to use distance to prioritise applicants at the point where there are more applicants remaining who meet a particular criterion than there are places available.
16. The objector says a cumulative method should apply instead. However, the procedure suggested by the objector could not work in all circumstances when a tie-breaker may be needed. If, for example, the number of applicants meeting both criteria 3 and 4 exceeded the number of places and then criterion 5 would have to be applied, but this would not help as those who have already met criterion 3 have exceeded criterion 5. The use of distance is a clear tie- breaker which the school can use at any point, criterion 3 or 4 or 5 or 6, when there are too many applicants who meet a criterion for the places left for all those who would like to attend the school. The school has decided to give priority to those living nearer the school when it needs to apply a tie break. The school has set out clearly how its oversubscription criteria are applied. Having determined its oversubscription criteria as required by the Code, the school must adhere to them.

17. Paragraph 1.8 of the Code requires that an admission authority has a clear and fair tie-breaker. The school has chosen to use distance as it is entitled to and does not contravene the Code in doing so. The arrangements also set out what happens if more than one applicant lives in the same building, but they do not make clear that in the unlikely event of more than one applicant for a final place living exactly the same distance from the school, but in separate buildings, random allocation would be used in those circumstances. The wording needs to be made explicit about this to avoid any doubt I do not uphold the objection to the use of distance as the tie-breaker when the number of applicants meeting an oversubscription criterion exceeds the number of places.
18. The objector also raises matters of clarity. I have therefore considered the school's arrangements with reference to paragraph 14 of the Code which says. *"In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."* I am satisfied that if parents look at the school's arrangements they are able to see that after children looked after and previously looked after, then children with special circumstances, the next priority is for those who worship fortnightly at church. If there are more applicants who meet this criterion than places then the child who lives closest to the school will be at the front of the queue and the child who lives furthest away will be at the end and the other children ordered between them accordingly. If places remain then applicants in the next priority/oversubscription criterion would be ranked in a similar way. I find this meets a test of clarity. I note the objector's view that he considers it may be difficult to predict whether a child would obtain a place, but the parent does know whether they attend the church with the frequency required for priority and how near the school they live. If there are more applicants than places then not all children will be able to be allocated a place. I do not consider the school is in breach of paragraph 14 of the Code.

Conclusion

19. The objector believes that if more applicants meet a criterion than there are places available then applicants who also meet a lower criterion should be ranked more highly than pupils who do not, and the tie-breaker should have required this way of operating. The governing body must set out how places will be allocated if the school is oversubscribed and has chosen to separate and prioritise applicants within a criterion by the distance of the applicant's home from school. The use of distance to prioritise applicants within an oversubscription criterion does not contravene the Code and therefore I do not uphold the objection.

Determination

20. 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 by the governing body of St George's Church of England Primary School, Chorley, Lancashire, for September 2016.

Dated: 18 November 2015

Signed:

Schools Adjudicator: Miss Jill Pullen