



DETERMINATION

Case reference: ADA 2843

Objector: A parent

Admission Authority: Tameside Metropolitan Borough Council

Date of decision: 30 June 2015

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by Tameside Metropolitan Borough Council for the maintained secondary schools within the Local Authority for admissions in September 2016.

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 decision within two months of the decision (or by 28 February following the decision, whichever is sooner) unless an alternative timescale is specified by the Adjudicator. In this determination I specify the date of 31 January 2016.

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 (the arrangements) for community secondary schools within the Tameside Metropolitan Borough Council for admission in September 2016. The objection is to the oversubscription criterion within the arrangements which provides priority for children receiving their primary education in Tameside.

Jurisdiction

2. These arrangements were determined under section 88C of the Act by Tameside Metropolitan Borough Council, the local authority (LA), which is the admission authority for the maintained schools. The objector submitted the objection to these determined arrangements on 16 March 2015. The objector has asked to remain anonymous and has satisfied the requirement of paragraph 24 of The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing a name and address to the Office of the Schools Adjudicator (OSA). 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 School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
 - a. the objector's email of objection dated 16 March 2015 and subsequent communication;
 - b. the LA's response to the objection and supporting documents;
 - c. the LA's composite prospectus for parents seeking admission to schools in the area in September 2015;
 - d. a map of the area identifying relevant schools and the LA boundary;
 - e. confirmation of when consultation on the arrangements last took place;
 - f. copies of the minutes of the meeting of the Executive Cabinet of the LA at which the arrangements were determined; and
 - g. a copy of the determined arrangements.
5. I have also taken account of information received during a meeting I convened on Thursday 18 June at the LA offices in Hyde Town Hall. This meeting was attended by the Assistant Director (Education), the Head of Legal Services and the Head of Admissions. At that meeting I received a draft copy of a paper on feeder schools which is currently progressing through the council's decision making process.

The Objection

6. The objector, a parent who wishes to remain anonymous, objects to the fourth criterion in the oversubscription criteria for all community secondary schools within the LA. He believes that this criterion gives preference to children in Tameside and is not legal. He suggests that the criterion does not conform to the Code. Paragraph 1.9b states that *"It is for admission authorities to formulate their admission arrangements, but they **must not**; b) take into account any previous schools attended, unless it is a named feeder school."*

Background

7. The LA was created in 1974 following local government reorganisation and is a geographically small authority (six by eight miles). It was formed from parts of three counties: Cheshire, Lancashire and Yorkshire. Secondary school locations have not changed since that time. There are fifteen secondary schools in the LA; six of these are

academies and three are voluntary aided schools which are designated as having a religious character. The admission arrangements for these nine schools are determined by either the academy trust or the governing body as the admission authorities. The remaining six schools are community secondary schools for which the LA is the admission authority.

8. In November 2014 the LA proposed amended published admission numbers (PAN) for some of its primary schools and there followed a period of consultation on the overall arrangements for both primary and secondary community schools. In these proposals the process of admissions and the oversubscription criteria within the arrangements remained the same as previous years. The closing date for consultation was 10 January 2015. I am satisfied that the consultation was carried out in line with the Code. The admission arrangements for all community schools in the LA were determined by the Executive Cabinet of the LA on 25 March 2015 and they were published on the LA's website.
9. The oversubscription criteria for maintained secondary schools in the LA are as follows;
 1. Looked after and previously looked after children
 2. Children and families with exceptional medical and social needs
 3. Siblings
 4. Children attending local authority maintained or academy primary schools in Tameside and pupils educated at home at the time of the application.
 5. All other applications on distance.

Appropriate notes to define criteria 1, 2, 3 and 5 are contained within the arrangements.

Notes under criterion 4 read as follows; *“Preference will be given to pupils living nearest to the school. When a parent has moved from further than half a mile to an address within half a mile of any Tameside Primary School, whilst their child is in Year 5 or 6, and they have chosen to keep their child at their current primary school, or where the child is educated at home and the address is within half a mile of a Tameside primary school, this will be considered as an exceptional circumstance under criterion 4, provided details are given on the special circumstances form together with satisfactory evidence of the house move.”*

Consideration of Factors

10. The objector will be applying for a secondary school place for his child in December 2016 to start in September 2017 and he wishes for his child *“to be allocated a secondary place based on a legal and fair policy*

in line with the admission Code.”

11. There are two elements to the objection which I will deal with in turn. Firstly, the objector suggests that the LA is giving preference to applicants living in the LA and by doing this is acting in an illegal manner. The case law relating to this is the ‘Greenwich judgement’; a legal case in 1989 which established that *“maintained schools may not give priority to children for the sole reason that they live within the LA’s administrative boundaries.”*
12. The LA maintains that the criterion does not give preference to children living within the LA but to those receiving their primary education in the LA area which is different. The LA does accept that the arrangements help to ensure that children living in the LA children are not unfairly disadvantaged when applying for places in community high schools compared with children living in the LAs which border it.
13. The current criterion gives priority to children attending local authority maintained or academy primary schools in the LA and pupils educated in private schools or at home at the time of the application; it does not require that these children live in the LA. I have looked at the data for the attendance of out of area pupils at the primary schools within the LA. This information shows that there is a small percentage of pupils (3.8 per cent) who live outside the LA but attend the primary schools within the LA boundary.
14. Under the current criterion, all the children in the primary schools, including those who are living out of the LA area, are given priority for admission to community secondary schools. I therefore conclude that the current criterion does not give preference to only those children who live in the LA and I therefore do not uphold this element of the objection.
15. The second part of the objection relates to the suggested non-compliance of the arrangements to the Code at paragraph 1.9b. The objector maintains that the arrangements do not comply because criterion 4 refers to all LA maintained and academy primary schools in the LA without naming specific feeder primary schools.
16. The LA explains that in order to fulfil its duty to ensure that there are sufficient school places for the residents it has undertaken a *“specifically tailored approach”* to the arrangements and has taken a number of factors into consideration when establishing this approach. The LA reports that it took the following into account when it first introduced the current arrangements in 2003 and amended them in 2008; the history of the creation of the LA, the position of its schools, advice from counsel in 2007, adjudicator determinations prior to 2006, a report from the Local Government Ombudsman in 2006 and the creation of the Tameside Campus Vision (an innovative approach to secondary placements in which children could attend a number of secondary schools in order to facilitate a personalised learning curriculum).

17. The LA reports that criterion 4 was added to the arrangements after lengthy consideration in 2003 and it has remained largely unchanged since that time. The original criterion related only to attendance at LA maintained primary schools. Minor amendments since that time have added children educated at home and children attending private schools and academies located in the LA to this criterion. More recently it has included a clause to cover children moving house while they are in year 5 or 6.
18. Paragraph 1.9b of the Code is clear that account **must not** be taken of any previous schools attended unless those schools are named feeder schools. Oversubscription criterion 4 in the admission arrangements takes account of the previous schools attended by applicants for the schools which are the subject of the objection. It does so without naming them as feeder schools. Oversubscription criterion 4 does not comply with the Code and I therefore uphold this element of the objection.
19. I have upheld the objection but there are other significant implications for the LA when they are changing their arrangements which I have taken into account when considering the timeframe for the amendments. If criterion 4 is simply removed from the arrangements then, after the relatively small numbers of looked after and previously looked after children, children with exceptional educational or social needs and the rather larger number of siblings the main criterion for priority would be distance between home and school. With this in mind the LA's greatest concern is the position of the schools in relation to the LA boundary. The LA was created in 1974 and became responsible for the maintained schools within its boundaries. There has been some rationalisation of the schools in the LA but the locations of these schools remain broadly the same as when the LA was created. The LA reports that all the neighbouring LAs have either defined catchment areas and/or a named feeder school systems in place.
20. I have studied the map of the LA and its schools and it is clear that the six community schools covered by this determination are geographically located in the outer areas of the LA and four of them are close to boundaries with other LAs. These four schools are located in the north east, east, south and south west of the LA. There are major urban conurbations located in the centre, the west and the north west of the LA. At the meeting on the 18 June the LA identified a number of areas of social deprivation in the LA including some based in the centre, the west and the north west. A major concern for the LA is that in several of these deprived areas children may live further away from all LA secondary schools than children who live in the bordering LAs.
21. I have also studied the admission arrangements for schools and authorities which border the LA and have found that catchment areas and/or feeder school systems are in place. Children living in bordering LAs have an automatic priority within these systems for their local school. The result of a successful cross boundary application may mean that should a pupil resident in the LA be unsuccessful in an

application to an LA school then the next available secondary school place out of the LA might be an unreasonable distance from home.

22. Another consideration is future school place planning. The planning paper approved by the LA's executive council in March 2015 shows that the LA is planning for an increased demand in secondary school places to accommodate a demographic 'bulge' of pupils who are currently in primary schools and which will reach the secondary sector in September 2017. This adds further to the LA's concern of pupils coming into LA secondary schools from other LAs.
23. At the meeting I asked about the volume of out of area applications over the past three years and I was provided with a table which shows that in 2013, 253 out of area (or 'extra district') applications were received which was 9.9 per cent of the total applications. In 2014 there were 277 which was 10.6 per cent and in 2015 there were 334 which was 11.9 per cent. In some LAs the number of pupils applying from out of the area is balanced by the number of pupils who live in the LA but apply outside. The figures for this LA show that in 2013, 124 pupils applied to schools out of the LA, in 2014 the number was 92 and in 2015 the number was 179. This shows that the LA is a net importer of children into secondary schools. The LA reports that discussions with LAs across the whole Greater Manchester area indicates that this increase in applications is set to rise as pressure for places increases in the next few years.
24. At the meeting on 18 June 2015 the Assistant Executive Director, Education acknowledged that the nature of the LA schools has changed significantly over recent years with the establishment of academies and that much of the rationale behind the introduction of the oversubscription criteria in 2003 and 2008 has now been superseded. She shared with me a paper which is due to go to the LA's Executive Cabinet on 24 June 2015. In this paper the Cabinet is asked to agree that a consultation is undertaken which proposes the introduction of named feeder primary schools for the community secondary schools. The paper includes detailed consideration of the most appropriate ways of fulfilling the legal requirements of the Code whilst supporting the children of the LA and alternatives considered include the use of a distance criterion, the establishment of catchment areas and the introduction of named feeder schools. The paper refers to recent judgements when defining what is meant by a named feeder school and it concludes that named feeder primary schools associated with the secondary schools should be included in the admission arrangements for community secondary schools in the LA.
25. The paper acknowledges that as the proposals flow from an objection to the admission arrangements then in order to comply with the Code the LA does not have to consult on the arrangements. This is in line with paragraph 3.6 of the Code which states that "*once admission arrangements have been determined for a particular school year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code,*

admissions law, a determination of the Adjudicator or any misprint in the admission arrangements.” The LA suggests that, although legally not required to consult, in this case it would be “*good practice to do so, and in the spirit of good governance and transparency*”. The paper proposes a system in which primary schools are named feeder schools to the community secondary schools and as this is such a significant change I agree that it would be sensible to consult on the proposals. This will mean that time is required to consult and then to agree amendments to the arrangements and I have taken this into consideration when establishing the timeframe for amendments to be made.

Conclusion

26. I conclude that the arrangements do not give preference to children who live in the LA as suggested by the objector. However, I further conclude that the arrangements do not comply with paragraph 1.9b of the Code; oversubscription criterion four takes account of previous schools which are not named feeder schools.
27. I have seen the paper which proposes the introduction of a named feeder primary school system for community secondary school admissions.
28. I understand the issues that this determination poses for the LA. The LA is tasked with providing school places for its children, projections of numbers of required secondary places in the next few years shows an increase and a demand for school places from out of the LA is a serious concern for the LA. At the meeting the LA indicated that it is proposing to introduce a named feeder school system and is planning consultation on this. The timeframe set by the LA is short; it anticipates that the final decision on proposed changes will be taken at an Executive Cabinet meeting on 26 August 2015 in time for inclusion in the prospectus published in September 2015. The Code at paragraph 3.1 states that the admission authority must revise the arrangements within two months of the decision or by 28 February whichever is the sooner unless an alternative timescale is specified by the Adjudicator. I am of the view that more time is needed for this. I am therefore requiring that the arrangements are amended in line with the Code as soon as possible but at the latest by 31 January 2016.

Determination

29. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by Tameside Metropolitan Borough Council for the maintained secondary schools within the Local Authority for admissions in September 2016.
30. 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 decision

within two months of the decision (or by 28 February following the decision, whichever is sooner) unless an alternative timescale is specified by the Adjudicator. In this determination I specify the date of 31 January 2016.

Dated: 30 June 2015

Signed:

Schools Adjudicator: Ann Talboys