



DETERMINATION

Case reference: REF3341

Referrer: A parent

Admission Authority: Essex County Council for community and voluntary controlled infant, junior and primary schools in Essex

Date of decision: 12 December 2017

Determination

I have considered the admission arrangements for September 2018 determined by Essex County Council for community and voluntary controlled infant, junior and primary schools in Essex in accordance with section 88I(5) of the School Standards and Framework Act 1998. I find that there are 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 by 28 February 2018.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), an objection was referred to the adjudicator by a member of the public (the referrer), about the admission arrangements for Hamilton Primary School (Hamilton), a community primary school for pupils aged 4 to 11, and Prettygate Infant School (Prettygate), a community infant school for pupils aged 4 to 7. The objection was to the admission arrangements for admission to Prettygate and Hamilton for Reception and arises from the number of places available in each school, and the oversubscription criteria. The objection was to the admission arrangements for 2017 and was received by email on 30 May 2017. The deadline for an objection to admission arrangements for 2017 is 15 May 2016. The deadline for an objection to the 2018

arrangements is 15 May 2017 and so this deadline would also have been missed had the objection been to the 2018 arrangements.

2. An objection is not required to be determined by the Adjudicator unless it is received on or before 15 May in the year preceding the year of entry to which the arrangements apply (Regulation 23 of the School Admission (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations)). However, as the arrangements have been brought to the attention of the adjudicator, I have decided to use the power conferred under section 88I(5) of the Act to consider whether the arrangements conform with the requirements relating to admission arrangements
3. The local authority for the area in which the school is located is Essex County Council (which I will refer to as Essex) which is also the admission authority for both schools and for all community and voluntary controlled infant, junior and primary schools within Essex. The local authority is a party to this referral. Other parties to the referral are the referrer and the schools.

Jurisdiction

4. The arrangements were determined under section 88C of the Act by Essex. Essex, as admission authority, is required to comply with the School Admissions Code (the Code) and all relevant legislation. I have used my powers under section 88I of the Act to consider the arrangements for both schools and for admission to all primary, infant and junior schools for which Essex is the admission authority.

Procedure

5. In considering this matter I have had regard to all relevant legislation and the Code.
6. The documents I have considered in reaching my decision include:
 - a. the referrer's form of objection dated 30 May 2017 and the attached document headed "Adjudicator submissions".
 - b. the local authority's response and supporting documents;
 - c. the LA's composite prospectus for parents seeking admission to schools in the area in September 2018;
 - d. further correspondence between the Office of the Schools Adjudicator and the parties, together with attached documents and maps;
 - e. confirmation of when consultation on the arrangements last took place;

- f. copies of the minutes of the meeting at which the local authority determined the arrangements; and
 - g. a copy of the determined arrangements.
7. I also held a meeting at Essex's offices on 31 October 2017 attended by representatives from the local authority's admissions team and by the referrer. I would like to thank the referrer for her well researched and clear submission and Essex's admissions team for their submissions and for the data and information they helpfully provided.

The Referral

8. Although the objection is out of time I will set out the issues raised by the referrer. The referrer in essence raises two related issues. The first is the fact that the number of places available in reception at Hamilton was significantly lower than the number of children living within its catchment area and seeking a place at the school. The second is that the determined admissions criteria for both Hamilton and Prettygate give a higher priority to all applicants with a sibling already attending the school (whether resident within or outside the school's catchment area) than to other applicants within catchment. These issues are considered in detail below.

Other Matters

9. In considering the arrangements as a whole it appeared to me that there are a number of other areas in which the arrangements may not conform with the requirements. These are considered in detail below.

Background

10. Hamilton is a community primary school, maintained by Essex, for boys and girls aged 4 to 11. It has a published admission number (PAN) of 60. It is a very popular and heavily oversubscribed school located fairly centrally in Colchester, on a small city site within a densely populated area of Victorian era housing. At its last inspection in November 2014 it was judged by Ofsted to be outstanding. Hamilton has what is referred to as a priority admission area, as do the other community primary and infant schools in Colchester. I am satisfied that the term "priority admission area" has the same meaning as catchment area for the purposes of the requirements relating to admissions. For consistency I will refer to priority admission areas as catchment areas throughout this determination as that is consistent with the terminology used in the Code. Hamilton is situated in the east of its catchment area.
11. Prettygate is a community infant school maintained by Essex for boys and girls aged 4 to 7. It also has a PAN of 60. It is located to the west of Hamilton. It is situated in a less densely populated area than Hamilton and has fewer children living within its catchment area than Hamilton. It is a popular school although less oversubscribed than

Hamilton. At its last inspection in February 2016 it was judged by Ofsted to be good. Prettygate has a catchment area which shares its eastern boundary with the catchment area of Hamilton.

12. For many years most infant and junior schools in Essex's area have been paired, and the current determined arrangements reflect this in arrangements which provide for admission to the junior school of pupils at the paired infant school. These will be considered in more detail below.

The Determined Admission Arrangements

13. The determined admission arrangements for Prettygate and Hamilton have been amended in some respects following correspondence with the local authority. For the purposes of this determination, in respect of both schools, I will consider the determined admission arrangements for entry in September 2018, as set out on the local authority's website in May 2017. The 2018 determined admission arrangements for junior schools for which Essex is the admission authority are as follows:

"There is no guarantee of a place for children living in the priority admission area. Looked After Children and previously looked after children (as defined above) and children attending the partner infant school who request a place at the junior school will be allocated a place providing an application is received by the closing date. In the event of oversubscription any remaining places will be allocated using the following criteria in the order given:*

1. *children with a sibling attending the school or the named partner infant school;*
2. *children living in the priority admission area;*
3. *remaining applications.*

In the event of oversubscription within any of the above criteria, priority will be determined by straight line distance from home to school, those living closest being given the highest priority.

**For applications received after the start of Year 3 Looked After Children and previously looked after children will be given priority ahead of all other applicants."*

14. For infant schools, including Prettygate, the oversubscription criteria are as follows:-

"There is no guarantee of a place for children living in the priority admission area. In the event of oversubscription places will be allocated using the following criteria in the order given:

1. *Looked After Children (as defined above);*
2. *children with a sibling attending the school or the named partner junior school;*
3. *children living in the priority admission area;*
4. *remaining applications.*

In the event of oversubscription within any of the above criteria, priority will be determined by straight line distance from home to school, those living closest being given the highest priority.”

Provisions of the Code referred to in this determination

15. Paragraph 14 of the Code which reads:

*“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.”*

16. Paragraph 15 a), d) and e) of the Code, the relevant part of which reads as follows:

*“a) All schools **must** have admission arrangements that clearly set out how children will be admitted, including the criteria that will be applied if there are more applications than places at the school. Admission arrangements are determined by admission authorities.*

d) In the normal admissions round parents apply to the local authority in which they live for places at their preferred schools. Parents are able to express a preference for at least three schools. The application can include schools outside the local authority where the child lives: a parent can apply for a place for their child at any state-funded school in any area. If a school is undersubscribed, any parent that applies must be offered a place. When oversubscribed, a school’s admission authority must rank applications in order against its published oversubscription criteria and send that list back to the local authority. Published admission arrangements must make clear to parents that a separate application must be made for any transfer from nursery to primary school, and from infant to junior school.

e) All preferences are collated and parents then receive an offer from the local authority at the highest preference school at which a place is available. For secondary schools, the offer is made on or about 1 March (known as National Offer Day) in the year in which

the child will be admitted. For primary schools, the offer is made on or about 16 April, in the year in which the child will be admitted.”

17. Paragraph 1.6 of the Code, the relevant part of which reads as follows:

“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”

18. Paragraph 1.7 of the Code, which reads as follows:

*“All schools **must** have oversubscription criteria for each ‘relevant age group’ and the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and all previously looked after children. Previously looked after children are children who were looked after, but ceased to be so because they were adopted (or became subject to a child arrangements order or special guardianship order). Further references to previously looked after children in this Code means such children who were adopted (or subject to child arrangements orders or special guardianship orders) immediately following having been looked after. Oversubscription criteria **must** then be applied to all other applicants in the order set out in the arrangements.”*

19. Paragraph 1.8 of the Code, the relevant part of which reads as follows:

*“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation”*

20. Paragraph 1.9 of the Code the relevant part of which reads as follows:

*“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”

21. Paragraph 1.10 of the Code, the relevant part of which reads as follows:

“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 the local circumstances.”

22. Paragraph 1.11 of the Code, the relevant part of which reads as follows:

*“Admission authorities **must** state clearly in their arrangements what they mean by ‘sibling’ (e.g. whether this includes step siblings, foster siblings, adopted siblings and other children living permanently at the same address or siblings who are former pupils of the school). If an admission authority wishes to give some priority to siblings of former pupils, it **must** set out a clear and simple definition of such former pupils and how their siblings will be treated in the oversubscription criteria (bearing in mind the restrictions set out in paragraph 1.9 above).”*

23. Paragraph 1.14 of the Code which reads as follows:

*“Catchment areas **must** be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school.”*

24. Paragraph 2.1 of the Code, the relevant part of which reads as follows:

“For applications in the normal admissions round, local authorities must provide a common application form (CAF) that enables parents to express their preference for a place at any state funded school, with a minimum of 3 preferences in rank order, allowing them to give reasons for their preferences. While parents may express a preference for any state funded school – regardless of whether it is in the local authority area in which they live - admission authorities must not give any guarantees that a preference will be met.”

25. Paragraph 2.14 of the Code which reads as follows:

*“Each admission authority **must** maintain a clear, fair and objective waiting list until at least **31 December** of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria. Priority **must not** be given to children based on the date their application was received or their name was added to the list. Looked after children, previously looked after children, and those allocated a place at the school in accordance with a Fair Access Protocol, **must** take precedence over those on a waiting list.”*

26. Paragraphs 2.16 and 2.17 of the Code, the relevant parts of which read as follows:

“Admission of children below compulsory school age and deferred entry to school

2.16 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.*

Admission of children outside their normal age group

2.17 Parents may seek a place for their child outside of their normal age group, for example, if the child is gifted and talented or has experienced problems such as ill health. In addition, the parents of a summer born child may choose not to send that child to school until the September following their fifth birthday and may request that they are admitted out of their normal age group – to reception rather than year 1. Admission authorities must make clear in their admission arrangements the process for requesting admission out of the normal age group.”

27. Paragraph 3.1 of the Code which reads as follows:

*“The Schools Adjudicator **must** consider whether admission arrangements referred to the Adjudicator comply with the Code and the law relating to admissions. The admission authority **must**, where necessary, revise their admission arrangements to give effect to the Adjudicator's 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. An Adjudicator's determination is binding and enforceable.”*

Consideration of Case

Admission Arrangements for Transfer from Infant School to Junior School

28. Under the provisions of section 88M of the School Standards and Framework Act 1998 and of the Regulations every local authority is required to adopt a qualifying scheme for the co-ordination of pupil admissions (which I will refer to as the scheme). The scheme must set out the process for admission of pupils during the normal admissions

round for the normal year of entry to each school. For infant and primary schools the normal year of entry is Reception. The normal age of entry for junior schools varies but for community junior schools (in Essex it is Year 3. It follows that Essex is required to have a qualifying co-ordinated admissions scheme which provides for admissions to Year 3 in junior schools.

29. The Regulations set out that the scheme must provide for every parent to be required to complete a common application form (CAF) on which to express at least three preferences (in Essex parents may normally express four preferences) ranked in order. A local authority must, as far as is reasonably practicable, ensure that each parent receives a single offer of a place at the highest ranking of the schools for which they are eligible for a place. The scheme must also set out the timetable for the process.
30. The requirement for every local authority to have a scheme of this kind ensures that admissions to schools within the admissions round for the normal year of entry to the school are as fair as possible.
31. Essex have a scheme for entry to primary and junior schools in September 2018, which is published on their website (the Essex scheme). The Essex scheme sets out the process for admission to primary and infant schools for Reception. That part of the Essex scheme complies with the legal requirements.
32. The Essex scheme, in part 9, also describes the process for admissions to Junior Schools. The Essex scheme states that parents who wish their children to transfer to a partner junior school need not complete a CAF. Instead they need only sign a “transfer register” which is kept at the partner junior school. The Essex scheme states that signing the transfer register constitutes a formal application for a place.
33. However, the Adjudicator’s role is to consider the admission arrangements determined by an admission authority, rather than the scheme itself. Having determined the Essex scheme, Essex are required by the provisions of Regulation 26 (6) to take all reasonable steps to secure its adoption “*by themselves and each governing body who are an admission authority...*”. Regulation 32 provides that the obligations imposed on a local authority (as admission authority) under the scheme are to be treated as duties imposed on them under the Act. Consequently, admission arrangements must comply with the scheme and the scheme itself must comply with the Regulations. Compliance with a compliant scheme is a requirement relating to admission arrangements under section 88I(5) of the Act.

34. The relevant provisions of the Essex scheme are adopted into the admission arrangements determined by Essex. The determined admission arrangements for 2018 set out the position as follows:

“Year 2 to Year 3 Applications

Parents of children in Year 2 of an infant school have to make an application to transfer to the partner junior school. In most infant schools in Essex a child is guaranteed a place at the partner junior school provided an application for that place is made by the closing date and the child is still in attendance at the school at the time applications are determined. For parents who wish their child only to transfer to the partner junior school the application simply involves registering at the junior school. Parents who wish to apply for a Year 3 place at schools other than the partner junior school will need to complete an application form...”

35. I find that the determined admission arrangements are based on a co-ordinated admissions scheme that is not compliant with the relevant statutory provisions. I find that the admission arrangements in this respect do not conform with the requirements relating to admission arrangements.

36. I also find that the admission arrangements do not comply with the Code in relation to admissions to partner junior schools, in that;

- a. The Code prohibits an admissions authority from giving any guarantee that a preference will be met (paragraph 2.1). The guarantee given in Essex’s admission arrangements does not comply with the Code.
- b. Paragraph 15 (d) of the Code requires that admission arrangements make clear to parents that a separate application must be made for any transfer from infant to junior school. This means a separate application within a co-ordinated scheme, not simply registration at the partner junior school. I find that the admission arrangements do not comply with the Code in this regard.
- c. Paragraph 15 a) of the Code requires that *“All schools **must** have admission arrangements that clearly set out how children will be admitted, including the criteria that will be applied if there are more applications than places at the school”*. The determined arrangements do not provide for a single set of criteria which are applied to all applicants. The admission arrangements set out two processes, one using the Common Application Form and the other a process of registration at a

partner junior school. The two processes are not mutually exclusive and may overlap, as considered in the next paragraph.

- d. The arrangements do not ensure that each parent, in respect of each child, receives a single offer. The Code sets out this requirement at paragraph 15 (e). A parent with a child in Year 2 at an infant school could sign the transfer register for the partner junior school and fill out a CAF stating preferences for other junior schools. That parent may ultimately receive two offers.

37. The determined admission arrangements relating to entry to Year 3 in junior schools from partner infant schools do not comply with the requirements for admissions in the normal year of admission within the normal admissions round.

38. It has been said on behalf of the admission authority that the process for transfer from infant to junior schools has been in place for a long time. During that time no complaints about the process have been received, no objections regarding that process have been referred to the Adjudicator and no Adjudicator considering the admission arrangements in past years has raised the issue. In addition, the admission authority have stated that parents find the process straightforward and that the admission authority is taking a pragmatic and user friendly approach. I accept that this may be the case. However, the requirements regarding co-ordination of admissions and the adoption of those requirements into admission arrangements are mandatory and the admission arrangements insofar as they relate to the transfer from infant schools to partner junior schools, do not comply with those mandatory requirements.

Admissions to Hamilton Primary School and Prettygate Infant School. Catchment areas and siblings from out of catchment.

39. There are two separate but related issues raised by the referrer. The first is that a high proportion of those parents resident within the catchment area who put Hamilton as their first choice do not gain a place at the school. The second is that some of those children would have gained a place but for the admission of siblings of pupils already at the school who are resident outside the catchment area. The position at Prettygate is different. In recent years all children living within the catchment area for Prettygate, whose parent(s) put Prettygate as a first preference, gained a place. For that reason I do not find there is an issue with the use of a catchment area for Prettygate.

40. Table 1, below, gives the data for Hamilton for the years of admission 2014 to 2017. For each year the PAN was 60. The table shows the

number of children living within the catchment area whose parent(s) put Hamilton as their first preference (“in-catchment first preference children”). It then shows the number of children admitted because they have siblings already in the school although they live outside the catchment area (“out-of-catchment siblings”). The remaining places are then allocated to in-catchment applicants (some of whom will also have siblings in the school). The sixth column (in bold) gives the number of in-catchment first preference children not admitted, followed by a column showing that number as a percentage of the number of in-catchment first preferences overall.

Table 1

Hamilton Primary First Preferences

Year	Published Admission Number	In catchment 1 st preferences	Out catchment siblings admitted	In catchment children admitted (of which siblings)	In catchment not admitted	In catchment pupils not admitted as %
2017	60	82	2	58 (16)	24	29
2016	60	87	3	57 (29)	30	34
2015	60	61	2	58 (15)	3	5
2014	60	74	4	56 (8)	18	24

41. Table 1 demonstrates that in each of the years considered a significant number of in-catchment first preference children did not gain a place in Hamilton, their catchment school. In 2015 the number was relatively small, only three pupils did not gain a place. However, in 2014, 2016 and 2017 the numbers were higher, with approximately between a quarter and a third of children not gaining a place.
42. I acknowledge that the admission arrangements make it clear that “*There is no guarantee of a place for children living in the priority admission area*”. The admission authority is right to make this clear. In any catchment area based admission arrangements there will be fluctuations in demand and the availability of places and it would be wrong (and in breach of the Code) to give a guarantee. However, the rationale for catchment areas is for each school to have a set geographical area surrounding it, and to give priority for admissions to children living within that area. The relationship between living in the catchment area and the opportunity to gain admission to the school is essential to the concept of catchment areas.
43. For catchment areas to be an appropriate approach to admissions there must be a reasonable correspondence between living in the catchment area and the chance of gaining a place. Where, in three out of the last four years of entry to a school, such a high proportion of

in-catchment first preference children did not gain a place, my view is that the necessary level of correspondence is not met.

44. I also note that within the group of in-catchment first preference children it is not random who does, and who does not, gain a place. Priority is given within this group to children with a sibling already attending the school. This number is shown in brackets in the fifth column of Table 1. The number is variable but in each year constitutes a significant proportion of those admitted. For the remaining places within this group priority is given based on straight line distance from home to school. The result is that first born children (who will not have older siblings at Hamilton) living in those parts of the catchment area furthest from Hamilton, are the least likely to gain a place.
45. It may be that these levels of in-catchment children seeking a place at Hamilton will not continue in future years. The admission authority have provided figures which suggest that the numbers of in-catchment first preferences may fall in future years. This is based on the figures for GP registrations, set out in Table 2 below.

Table 2

		Latest GP Regs Jan 2017
Admission Year	Birth Year	Hamilton
2015	10/11	90
2016	11/12	126
2017	12/13	125
2018	13/14	96
2019	14/15	79
2020	15/16	112

46. It is clear that GP registrations do not translate straightforwardly into the number of in-catchment first preferences for Hamilton, when the children reach the relevant age. However, the figures in Table 2 do show a reduction in registrations from a high point corresponding to entry in 2016 and 2017. In the meeting held with the admission authority on 31 October 2017 it was agreed that no firm conclusion could be drawn from these figures and that the numbers of in-catchment first preference children is likely to exceed the number of places available in future years.
47. This position is exacerbated by the priority given to children with siblings already attending the school who are living out of catchment. Table 2 shows that the number of such siblings admitted, and therefore the number of in-catchment first preferences displaced, has fluctuated between two and four. This is not in itself a great number nor is it a high

proportion overall. However, each year it increases the already high number of in-catchment first preference children displaced.

48. I have also considered the actual schools which the in-catchment first preference children (who did not gain a place at Hamilton) were admitted to, as set out in Table 3 below. These destinations are set out for the years 2014 to 2017 in Table 3 below. None of these children gained their first preference, which was for Hamilton.

Table 3

The percentages are rounded up or down to the nearest whole number so may not total 100. The distances from home to school are shown for shortest walking distance. The final row in each table records those children who did not gain entry to any school expressed as a preference by their parent(s) but were allocated a place at the nearest school with space (NSWS).

2017

Preference	Number	%	Number within 1 mile	Between 1 and 2 miles	Between 2 and 3 miles	Over 3 miles
2	4	17	0	2	1	1
3	6	25	2	3	0	1
4	9	38	1	4	1	3
NSWS	5	21	0	5	0	0

2016

Preference	Number	%	Number within 1 mile	Between 1 and 2 miles	Between 2 and 3 miles	Over 3 miles
2	13	43	5	5	1	2
3	4	13	0	4	0	0
4	3	10	0	1	1	2
NSWS	10	33	4	0	6	0

2015

Preference	Number	%	Number within 1 mile	Between 1 and 2 miles	Between 2 and 3 miles	Over 3 miles
2	1	33	0	1	0	0
3	0	0	0	0	0	0
4	1	33	0	1	0	0
NSWS	1	33	0	1	0	0

2014

Preference	Number	%	Number within 1 mile	Between 1 and 2 miles	Between 2 and 3 miles	Over 3 miles
2	3	16	1	2	0	0
3	3	16	2	0	1	0
4	4	22	3	1	0	0
NSWS	8	44	4	2	2	0

49. Over the four years covered by the table a total of 75 in-catchment first preference children did not gain a place at Hamilton. Of that 75, 24 (32%) of children did not gain a place at any school listed as a preference. 17 (23%), gained a place at their fourth choice, 13 (17%) at their third choice and 21 (28%) at their second choice. Over half the children, 41 (55%), were placed at their fourth choice of school or at a school for which their parent(s) had not expressed a preference.
50. For children aged under 8 years it is widely accepted that a reasonable walking distance to school is two miles or less. Over the period 2014 to 2017 22 children were allocated places that were more than 2 miles safe walking distance from their home. In some cases this may be because parents, after Hamilton, expressed preferences for more distant schools. Nevertheless, this demonstrates that not all children were gaining a place at a local school having not gained admission to Hamilton.
51. These figures reflect the disadvantage in a catchment area system for those in-catchment pupils who do not gain a place at their catchment school. This disadvantage is threefold.
- In-catchment pupils whose parents put Hamilton as a first preference but do not gain a place are then second (or lower) preference children for admissions to their other preference schools.
 - The other schools preferred are likely to have a catchment area of their own. These children live in the catchment area for Hamilton and not in the catchment area for another school. All children within the catchment area of that other school will have a higher priority than this group.
 - These children are also likely to live further from another school than children within that school's catchment area, or children outside catchment but living nearby.
52. As stated above Hamilton is situated to the east of its catchment area. For children living in the west of Hamilton's catchment area, and who are least likely to gain a place at Hamilton, there is an additional disadvantage in that in many cases their next nearest school is

Prettygate. Although Prettygate is less oversubscribed than Hamilton, few out-of-catchment children without a sibling already attending the school gain entry. Out-of-catchment children with siblings already attending Prettygate have a higher priority than other out of catchment children. The result is that many pupils living in the west of Hamilton's catchment area, but without an older sibling already attending Hamilton or Prettygate, are the least likely to gain a place at Hamilton and also the least likely to gain a place at their next nearest school.

53. It follows that in-catchment first preference children who do not gain a place at Hamilton have a significantly lowered possibility of gaining places at their other preference schools. This position is confirmed by the data in Table 3.
54. I find that to operate catchment area based admissions in these circumstances is potentially unreasonable and unfair, contrary to the provisions of paragraphs 14 and 1.8 of the Code. I find that the exacerbation of this problem by giving priority to out-of-catchment siblings is also potentially unreasonable and unfair.
55. Considered in isolation I would be minded to find that the admissions arrangements for Hamilton are unreasonable and unfair for the reasons given above. However, in reaching my decision I have to consider the wider context. Hamilton is one of many schools maintained by Essex. Across Essex's area many schools have catchments and give a higher priority to out-of-catchment siblings than to in-catchment children without a sibling already attending the school. A change to admission arrangements for Hamilton will have an effect on admissions for other schools.
56. I have considered some possible ways to deal with this issue. The most straightforward way to tackle the issue would be to increase the number of pupils admitted to Hamilton in each admissions round. However, the school already admits up to its capacity and is situated on a small, inner city plot of land. It lacks outdoor space and pupils have to travel to access playing fields. To add more school buildings, whether temporary or permanent, would further diminish the small amount of outdoor space available. The local authority have also looked at purchasing land to add to the available school space but have found this is not practical. I accept that expanding the school is not a viable solution.
57. Essex have been carrying out a programme of expanding school place capacity across the area where possible and more places are now available locally and more will be available in the near future.

Unfortunately, these additional places do not significantly reduce the pressure on Hamilton.

58. The admission authority could change the priority given to children living out of catchment with siblings already at the Hamilton. However, this priority is also applied in the other schools for which Essex is the admission authority. To change this in relation to one school would potentially have a knock on-effect across the county. The admission authority have considered the merits of this level of priority for out of catchment children with siblings at the relevant school. Their position is that the benefits of giving priority to all siblings, so that all children in a family (of the relevant age) can attend the same school, outweighs the prejudice to in-catchment first children seeking a place.
59. This is a question of balance and, where a school is heavily oversubscribed with in-catchment applications, it may be that it would be fair to give priority to in-catchment children without a sibling already at the school above out of catchment siblings. In some more isolated rural schools Essex have changed the priority in this way but do not, on balance, consider it appropriate in an urban setting. Other schools within the Colchester area have the same arrangements as Hamilton and there is an argument for consistency across schools. In terms of the overall issue of first preference in-catchment children not getting places at Hamilton, a change to the priority afforded to out-of-catchment children with siblings already at the school would not go far towards addressing the problem. In my view it would be better to consider the sibling issue within the broader context of deciding on an appropriate approach to the issue of insufficient places for catchment children at Hamilton.
60. Essex operate a system of catchment areas across the schools in the county for which it is the admissions authority. It is not straightforward to change catchment area boundaries and a change to one is likely to have a ripple effect, requiring changes to others. Nor would it necessarily be practical to abandon catchment areas in one part of the area and to keep them in others.
61. The problem is complex and there is no simple solution. Any change to admission arrangements would affect not only Hamilton but also other local schools, and potentially schools across the county. In my view it would be appropriate for Essex urgently to undertake further work to seek to address the issue. This is likely to involve a formulation of possible approaches, a consultation with schools, other admission authorities, parents and other stakeholders before deciding on a solution. Taken in this wider context I do not find that the admission arrangements for Hamilton are unreasonable or unfair.

62. This should not be seen by the admission authority as a justification for taking no action. As set out above I have found the admission arrangements for Hamilton to be potentially unreasonable and unfair. It is only in the wider context that I find that they are compliant with the Code and the relevant law. Should this matter come before an adjudicator in future that context may have changed (and inaction may in itself be a change of context) and a different conclusion may be reached when the issues are balanced.

Other issues relating to the admission arrangements

63. **Previously Looked After Children.** The admission authority noted of its own volition that the necessary reference to previously looked after children having the highest priority (alongside looked after children) in the published oversubscription criteria (paragraph 1.7 of the Code) had been inadvertently omitted and have corrected this error.

64. **Reference to residence orders.** Paragraph 1.7 of the Code refers to child arrangement orders (which have broadly replaced residence orders) and not to residence orders, which are referred to in Essex's admission arrangements. The admission authority have voluntarily agreed to make the appropriate amendment.

65. **Definition of sibling.** The second sentence of the definition of "sibling" in the admission arrangements refers to "biological siblings" leaving the status of adopted siblings unclear. The admission authority have agreed to add the words "*and adopted*" after the word "*biological*".

66. **Waiting Lists.** Paragraph 2.14 of the Code requires the admission authority to state in their arrangements that "*each added child will require the list to be ranked again in line with the published oversubscription criteria*". The admission authority have agreed to add the appropriate wording.

67. **Named feeder schools.** The admission authority of its own initiative has agreed to remove references in its oversubscription criteria to "*the partner junior school*" and to insert in each case the name of the relevant school.

68. **Home address.** By an oversight the admission authority had omitted to include amendments made to the 2017 arrangements (following a previous Adjudicator's determination) in the 2018 arrangements. These relate to clarification of the position where children live at more than one address for part of the week. The admission authority has agreed to make the appropriate amendments to the 2018 arrangements.

69. **Summer born children.** The admission arrangements say “*The parent would not however be able to defer entry...beyond the academic year for which the original application was accepted*”. Wording similar in effect appears in the Primary Education in Essex Booklet. Whereas the Code (2.16 b), refers to the beginning of the final term of the school year. The admission authority have agreed to clarify this by making appropriate amendments to the arrangements.
70. The determined arrangements refer to parents being able to “*request*” deferred entry and part-time schooling. As paragraph 2.16 of the Code makes clear parents have a right to defer entry. The word “request” suggests that a request may be made but can be refused, which it cannot. The admission authority have agreed to make appropriate amendments to the arrangements, removing the word “*request*”.
71. Paragraph 2.17 of the Code sets out the right of parents of summer born children to request that they are admitted to Reception class in the September after their fifth birthday, that is into the year group below that usually appropriate to the child’s age. The admission authority will then consider the request in accordance with the provisions of paragraph 2.17. The admission authority’s Primary Education in Essex Booklet explains the process in detail. The booklet makes it clear that a parent may request entry to reception in the September following the child’s fifth birthday prior to the closing date for applications for starting in the September following the child’s fourth birthday. The wording of the determined admission arrangements is not clear and appears to say that the parent must wait until the admission round preceding the child’s fifth birthday before applying and then the council will decide whether to allow the request to start in reception. The admission authority have agreed to rectify this inconsistency in line with the clearer explanation set out in the Primary Education in Essex Booklet.

Summary of Findings

72. The objection was not referred within the time limit and so is not within my jurisdiction.
73. I find that the arrangements for admissions to community and voluntary controlled junior schools in Essex are not compliant with the Code and the relevant law in relation to transfer from infant school to partner junior school as set out above. I acknowledge that in respect of the admission arrangements for 2018 these provisions will already have been applied and that it would not be appropriate to make the necessary changes for admission in September 2018. The necessary changes are required to be made for the determined arrangements for September 2019 which must be determined by 28th February 2018.
74. I do not find that the catchment area for Hamilton Primary School and the priority given to out-of-catchment siblings, when considered in the

wider context, fail to conform with the requirements of the law and the Code relating to admission arrangements.

75. I find that in a number of other matters set out above the admission arrangements are not compliant with the Code and the relevant law and note that the admission authority has taken or is taking steps to remedy these issues.

Determination

76. I have considered the admission arrangements for September 2018 determined by Essex County Council for community and voluntary controlled infant, junior and primary schools in Essex in accordance with section 88I(5) of the School Standards and Framework Act 1998. I find there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

77. 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 by 28 February 2018.

Dated: 12 December 2017

Signed:

Schools Adjudicator: Tom Brooke