



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA3316

**Objector:** A member of the public representing a campaign group

**Admission Authority:** Nottinghamshire County Council for the community and voluntary controlled schools in its area

**Date of decision:** 21 November 2017

### **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 2018 determined by Nottinghamshire County Council for the community and voluntary controlled schools in its area.**

### **The Objection**

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 member of the public (the objector) on behalf of a campaign group known as "Fairness4 Siblings". The objection concerns the consultation that took place prior to the determination of the 2018 admission arrangements (the arrangements) for community and voluntary controlled schools that have been determined by Nottinghamshire County Council (the local authority).
2. The parties to this objection are Nottinghamshire County Council as the admission authority for the community and voluntary controlled schools in its area and the objector.

### **Jurisdiction**

3. The arrangements were determined on 20 February 2017 under section 88C of the Act by the local authority, which is the admission authority for the community and voluntary controlled schools in its area. The objector

submitted his objection to these determined arrangements on 12 May 2017. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act. I am also satisfied that it is within my jurisdiction as an objection to the arrangements, as although it is concerned with the consultation process it raises a substantive issue about the content of the arrangements.

## **Procedure**

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
  - a. the objectors' form of objection dated 12 May 2017 and subsequent submissions;
  - b. the local authority's response and supporting documents concerning the objection;
  - c. confirmation of when consultation on the arrangements took place;
  - d. copies of the documentation used in the consultation; and
  - e. minutes of the meeting at which the arrangements for September 2018 were determined.

## **The Objection**

6. The objector says that the local authority failed to consult on the proposed admission arrangements for the schools as it is required to by paragraphs 1.42 – 1.45 of the Code and, in particular, that the information presented to consultees was confusing and likely to mislead them so that they would provide a response that supported the local authority's preferred stance. The objector goes on to argue that a significant proportion of the responses indicated support for a high level of priority for all siblings above that given to catchment children and that this option should have been considered by the local authority when it determined its arrangements.

## **Background**

7. The local authority is the admission authority for the community and voluntary controlled primary schools in the county of Nottinghamshire and outside the city of Nottingham. Each of these schools has a designated catchment area that 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 also given on the grounds of faith. That element of priority is not germane to the objection or my consideration of it and so is not referred to further in this determination.

8. For admissions to schools in September 2015, the local authority's admission arrangements for voluntary controlled and community schools (other than those with a faith designation) included oversubscription criteria summarised as follows:
  - a. looked after and previously looked after children;
  - b. children living in the catchment area with a sibling in the school at the time of admission;
  - c. children living in the catchment area;
  - d. children living outside the catchment with a sibling attending the school at the time of admission;
  - e. other children living outside the catchment area.
9. Arrangements for September 2016 and for September 2017 were different to 2015 following a decision made by the local authority to remove the priority for out of catchment siblings. The oversubscription criteria for those two years were in summary:
  - a. looked after and previously looked after children;
  - b. children living in the catchment area with a sibling in the school at the time of admission;
  - c. children living in the catchment area;
  - d. children living outside the catchment.
10. Between 3 October 2016 and 27 November 2016, the local authority consulted on changes for admission arrangements in 2018. The local authority had a duty to consult as the admissions authority for community and voluntary controlled schools in the area because there were changes proposed to the published admission numbers for some schools and some changes to the way it was proposing to coordinate admission arrangements across the area.
11. At the time of the consultation, the arrangements for 2016 and 2017 for one of the schools in the area were being considered by the Adjudicator. This followed the objector and some others objecting to the arrangements for one of the community schools concerned because they felt that children living outside the catchment area of that school with a sibling in the school at the time of admission were being treated unfairly. In the knowledge of this objection but without knowing the outcome, the local authority made a comment in its consultation that it was not proposing to change the oversubscription criteria any of the schools in the area for 2018 but it did offer respondents the opportunity to comment on this view. I shall look at this in more detail below.
12. The determination ADA3202 concluded that the 2017 arrangements for the individual school concerned were unfair. The determination was published on

31 January 2017. The determination explained that the Code required the local authority to amend its arrangements for 2017 by 28 February 2017.

13. The local authority had been consulting on arrangements for 2018 prior to the publication of the adjudicator's determination in preparation for its annual cycle for determining those arrangements. It was scheduled to meet on 20 February 2017 to determine the arrangements for September 2018 in the light of that consultation and, following its publication on the 31 January 2017, the determination.
14. The local authority determined the arrangements for September 2018 which included the changes proposed in the consultation in relation to published admission numbers and the coordination of arrangements. It also considered the comments made about the oversubscription criteria and the Adjudicator's determination and decided to revert to the oversubscription arrangements that had been used in September 2015 and which are set out in paragraph 8. above.
15. The determination ADA3202 had found the 2017 arrangements school unfair in respect of siblings. In reinstating the priority that had been given to siblings in 2015 and earlier years the local authority has addressed the findings of the determination for all the schools for which is it the admissions authority.

### Consideration of Case

16. This objection to the arrangements for 2018 has to be viewed in the context of the previous objections lodged against the arrangements for 2016 and 2017. In the previous objections the main issue was the removal in those years of the priority for out of catchment siblings over other out of catchment children that had been present in the 2015 arrangements and in previous years. In this current objection the argument is two-fold and linked. It is that the local authority failed to consult properly about the arrangements for 2018 and that this in turn was linked to a flawed decision making process when the arrangements were determined by the local authority on 20 February 2017. In particular, the objector argues strongly that the local authority *"failed to consider the full range of options that should have been considered once the consultation result was established.....The option of giving ALL siblings the same high priority SHOULD have been considered [emphasis in original]"*
17. The Code at paragraph 1.42 says "when changes are proposed to admission arrangements, all admission authorities **must** consult on their admission arrangements....." Paragraph 1.43 says that *"consultation must last for a minimum of six weeks and **must** take place between 1 October and 31 January of the determination year."* Paragraph 1.44 sets out who must be consulted and paragraph 1.45 says that *"for the duration of the consultation period the admission authority **must** publish a copy of their full proposed admission arrangements (including the proposed published admission number)...."*
18. The local authority was not proposing to make any changes to its oversubscription criteria. However, it was proposing some changes to published admission numbers and some other aspects of its coordinated

admission arrangements. It was therefore under a duty to carry out a consultation. It carried out the consultation between 3 October and 27 November 2016. In conducting the consultation, the local authority published its proposed coordinated prospectus for all the schools in the area. In response to my enquiries, the local authority explained how it consulted with the parties listed in paragraph 1.44 of the Code and provided copies of emails and other communications with these parties. In the previous objections, an element of the objection had been about how parents of children aged between 2 and 18 had been consulted. In this case, the local authority documents how it wrote to schools, playgroups and nursery providers providing posters for display and asking for assistance in informing parents of the consultation. The proposed arrangements and the consultation document itself was available on the local authority website.

19. The objector appears to be satisfied that the consultation meets the requirements of the Code as set out in paragraphs 1.42 – 1.45 in respect of who was consulted with and the efforts made by the local authority to communicate with them. I too am satisfied that this is the case. I am also satisfied that the local authority published its proposed arrangements as required by paragraph 1.45 of the Code.
20. I have also taken into account the decision of the Supreme Court in R (Moseley) v LB Haringey [2014] UKSC 56, referred to by the objector, which endorsed a number of principles, drawn from existing case law, as to what is required for a consultation to be lawful. I summarise these as saying that a lawful consultation is one which:
  - a. takes place when proposals are at a formative stage;
  - b. provides sufficient reasons for the proposal “to permit intelligent consideration”;
  - c. allows adequate time for consideration and response;
  - d. can show that the decision-maker has conscientiously taken the consultation responses, or a summary of them, into account before the decision is made;
  - e. takes into account the characteristics of those being consulted in the way the consultation is carried out; and
  - f. recognises that the demands of fairness are likely to be higher when the proposal is likely to deprive someone of an existing benefit.
21. It is not the function of an Adjudicator to conduct a judicial review of the decision making process. I have, however, considered whether the evidence shows that the consultation was carried out in accordance with those principles.
22. The timetable for consulting on and determining admission arrangements is set out in the School Admissions (Admissions Arrangements and Co-ordination of Admission Arrangements) Regulations 2012 (the Regulations) and in the Code as noted above. This includes the timetable for consultation

which for 2018 arrangements had to take place between 1 October 2016 and 31 January 2017 and had to last for at least six weeks. The consultation in this case has to be considered in the context of the specific statutory requirements set out in the Regulations. Paragraph 13(2) of the Regulations says “....*consultation must relate to the arrangements (including any supplementary form) which the admission authority propose to determine as the admission arrangements for the school for the particular academic year.....*”.

23. The local authority therefore had to consult on the proposals at the time and in the form that it did, that is by setting out its own proposals. I therefore consider that principles a and c above were satisfied.
24. I also consider that sufficient reasons were provided. The purpose of consultation on admission arrangements is so that the admission authority is informed about the views of consultees, primarily in relation to proposed changes. In this case, the local authority voluntarily highlighted one area in which a change had previously been made and asked for views and comments on whether the change should be reversed. It also asked for comments on proposed changes to some published admission numbers for individual schools and the timescale for the admissions process. These proposals are not the subject of this objection. I do not consider that it was required to do more to comply with principle b.
25. The local authority has shown that the consultation responses were presented to the committee responsible for determining the arrangements, and has explained that it did not intend to consult on extending sibling priority any wider than it has done. It was not required to. It has also made the valid point that taking consultation responses into account does not mean simply tallying them up and deciding to follow the majority view, although in fact in this case a majority favoured extending sibling priority to out of catchment siblings and this has been done. I do not think it has failed to take the consultation responses into account as required by principle d.
26. The number of online responses indicate a reasonable level of engagement and that the matter had reached the attention of those entitled to be consulted. No one was being deprived of an existing benefit as the result of the proposed admission arrangements, or those eventually adopted. There is no issue under principles e or f.
27. The consultation in this case has to be considered in the context of the specific statutory requirements set out in the Regulations and the Code. Paragraph 13(2) of the Regulations says “....*consultation must relate to the arrangements (including any supplementary form) which the admission authority propose to determine as the admission arrangements for the school for the particular academic year.....*”. These requirements themselves reflect the facts that arrangements fall to be determined each year, can be changed each year (subject to consultation) and, following the determination, can also be objected to and may have to be changed as a result of a successful objection.

28. Were I to find that the consultation was unfair, which I do not, I would have to consider whether the local authority has complied with the requirements of the Regulations and the Code. The Adjudicator's decision in ADA3202 required the local authority to change its arrangements for 2017. This was by virtue of regulation 19 of the Regulations and paragraph 3.6 of the Code, a change for which no consultation was required. Having done so and reverted to the oversubscription criteria used up until 2015, the local authority had to determine the arrangements for 2018; It was open to it to decide on no change to the (revised) 2017 arrangements in respect of the sibling priority. As with every set of admission arrangements published there remains the potential for an objection about the substance of the arrangements subject to the limits set out in the Regulations and the Code.
29. I also observe that the consultation about admissions arrangements differs from other consultations about changes in policy in two important respects. The first is that the Code requires the arrangements to be determined annually with a consultation if any changes are proposed. The second is that there is a statutory right to object to determined arrangements and if an objection is upheld by an Adjudicator revisions must be made.

### **Summary**

30. The admission authority consulted on its admission arrangements for 2018. I have satisfied myself that it met the requirements of the Code in carrying out this consultation. The objector refers to case law principles and the local authority satisfied these principles. In considering these principles I have drawn attention to the Code's requirement that admission authorities determine admission arrangements annually and the potential for an objection to be made which can require an admissions authority to revise its arrangements after it has determined them. The Code requires consultation when change is proposed or every seven years if there are no changes made in that period.
31. The local authority was required to review its 2017 arrangements to give effect to the determination ADA3202 and was not required by the Code to consult before doing so. It revised these arrangements by reverting to the criteria that had been used in the 2015 arrangements. Having revised the arrangements for 2017 it was able to take account of the responses received from its consultation alongside the determination of 31 January 2017 when it met on 20 February 2017 to determine its arrangements for 2018. It decided that for 2018 it would retain the levels of sibling priority which featured in the revised 2017 arrangements.
32. I do not uphold the objector's objection that the consultation for the 2018 admission arrangements was flawed.

### **Determination**

33. 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 2018 determined by Nottinghamshire County Council for the community and voluntary controlled schools in the area.

Dated: 21 November 2017

Signed:

Schools Adjudicator: David Lennard Jones