



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3469

Objector: A parent

Admission Authority: Darlington Borough Council for community and voluntary controlled primary schools in Darlington

Date of decision: 24 July 2018

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2019 determined by Darlington Borough Council, for community primary schools in Darlington.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform to the requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

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 admission arrangements for September 2019 (the arrangements) determined by Darlington Borough Council, the local authority (LA), for the community primary schools in the area for which it is the admission authority.
2. The objection relates to the definition of a child's home address for the purposes of making an application for a place at a maintained school in circumstances where parents do not live together and the child lives

part of the time with one parent and part of the time with the other. The objector considers that the relevant parts of the arrangements are not fair as required by the School Admissions Code (the Code) and in addition that they breach the Equality Act 2010.

3. The objector has submitted an objection to the admission arrangements of Hummersknott School on a similar basis. I have dealt with this objection in a separate determination (ADA3383) as the LA is not the admission authority for Hummersknott School.

Jurisdiction

4. The admission arrangements for Darlington Borough Council were determined on 6 February 2018 by the Council.
5. The objector submitted an objection to these determined arrangements on 11 March 2018. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my powers under section 88I of the Act to consider the arrangements as a whole.

Procedure

6. In considering this matter, I have had regard to all relevant legislation and the School Admissions Code (the Code).
7. The documents I have considered in reaching my decision include:
 - a. the objector's form of objection dated 11 March 2018, documents attached to that form and subsequent emails;
 - b. the admission authority's response to the objection and supporting documents;
 - c. confirmation of when consultation on the arrangements last took place;
 - d. copies of the minutes of the meeting on 6 February 2018 at which the LA determined the arrangements;
 - e. a copy of the determined arrangements; and
 - f. information relating to eligibility for Child Benefit on the www.gov.uk website, relevant provisions in the Social Security Contributions and Benefits Act 1992 and the Child Benefit (General) Regulations 2006, as amended.

The Objection

8. The objector summarised the LA's definition of "home address" as follows:

"Where parents/carers are separated and the child lives for periods with both, the home address will be that of the parent who receives

child benefit. Where childcare arrangements are shared jointly between both parents, the local authority will consider the mother's home address to be the relevant address when considering the application unless legal documentation is provided to the contrary".

9. Paragraph 14 of the Code states: "*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.*" The objector maintains that where a parent is not eligible to claim Child Benefit, their address cannot be the child's home address, and that this is neither fair nor objective.
10. The objector also considers that treating the mother's home address as the relevant address unless legal documentation is provided to the contrary discriminates against fathers. This provision therefore fails to comply with the Equality Act 2010 and paragraph 3 of the Appendix to the Code of the Code which states that "*an admission authority **must not discriminate on the grounds of ... sex... against a person in the arrangements and decisions it makes as to who is offered admission as a pupil***".
11. The objector requested a copy of the LA's Equality Impact Assessment relating to this aspect of the admission arrangements, and eventually received a response stating that the information did not exist. The objector has, therefore, concluded that the LA is in breach of its obligation to undertake an Equality Impact Assessment which he claims is in breach of paragraph 7 of Appendix 1 of the Code. This states: "*Admission authorities are also subject to the Public Sector Equality Duty and therefore must have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity, and foster good relations in relation to persons who share a relevant protected characteristic and persons who do not share it*".
12. The objector further considers that it is unfair to rely upon legal documentation as evidence when the law provides for a "*non-intervention principle*" which means that Orders are only made as a last resort".

Other matters

13. In reviewing the arrangements, I have also given consideration to the admission arrangements as a whole. When I reviewed the arrangements for admissions to Darlington maintained schools in September 2019, I was concerned that they might not conform to various provisions of the Code as follows (relevant paragraphs of the Code in brackets):
 - a. the medical oversubscription criterion was unclear and appeared to be unreasonable (paragraphs 14 and 1.8);
 - b. the arrangements referred to maps of the rural and urban wards of Darlington but these were not published as part of the admission

arrangements. Also, the arrangements stated that particular provisions linked to the maps applied to some schools but did not say which. Both of these factors rendered the oversubscription criteria unclear (paragraphs 14 and 1.8 and 1.14).

I set out my concerns about these matters in a letter to the LA dated 20 June 2018 to enable the LA to provide further information and comment in response to the concerns.

Background

14. The LA is the admission authority for three community primary schools Harrowgate Hill Primary, Red Hall Primary and Whinfield Primary Schools. I have set out the oversubscription criteria; the definition of “home address”; and the note entitled “*medical criterion*” below.

“(i) Looked After & Previously Looked After Children

(ii) Medical Reasons

Children with very exceptional medical factors directly related to the school placement. Applications under this criterion should be supported by written evidence from a professional practitioner (see further explanation).

(iii) Family Links

Children who have a brother or sister already attending the school and who are expected to be on the roll at the time of admission (see definition).

(iv) Rural

Children living within the Rural Wards of the Borough of Darlington who have been unsuccessful in obtaining a place at one of their preferred schools AND for whom the nearest alternative school would otherwise be more than two miles from their home will be given priority over other children for places at certain schools (see “Rural Wards” explanation).

(v) Distance (Rural Wards of Darlington Borough Council) -

Children who live nearest the preferred school measured from the front door of the home address (including flats) to the main school gate, via the shortest route which is paved/tarmaced. This will be based on the home address of the child. To remain consistent the Authority uses a Geographical Information System to measure all distances.*

(vi) Distance (Urban Wards of Darlington Borough Council) -

Children who live nearest the preferred school measured from the front door of the home address (including flats) to the main school gate, by the shortest walking route. This will be based on the home address of the child. To remain consistent the Authority uses a Geographical Information System to measure all distances. The Authority’s priority when measuring a route is to identify the shortest

route judged to be safe (safe is lit at regular intervals, paved/tarmaced). The Local Authority accepts there may be exceptions and will treat each case on its merits.

Home Address

The home address is used for applying the admissions criteria. This means that when a parent states a school preferences they must give the home address at the time of application. Parent/carers must not give the address of childminders or other family members who may share in the care of their child. For parents/carers who may have more than one property, reference should only be made to the property in which they and the child(ren) mainly reside (Monday to Friday).

Where parents/carers are separated and the child lives for periods with both, then the home address will be that of the parent that receives the child benefit. Where childcare arrangements are shared jointly between both parents, the LA will use the address of the parent receiving child benefit as the home address. If child benefit is not claimed then the LA will ask both parents to agree which address should be used as the home address.

If the main address has changed temporarily, for example where a parent/carer resides with extended family during a period of sickness or takes up temporary accommodation due to building works/renovation, then the home address remains that at which the parent/carer was resident before the period of temporary residence began. However, if they have sold your property (exchanged contracts) and have moved into temporary accommodation, then they will be required to provide evidence of their situation and a decision will be made based upon the evidence provided.

Medical Criterion

If a parent states a preference for a school and indicates their reason for doing so is 'medical', then they will be required to send a supporting letter from a professional practitioner. The supporting evidence should set out the particular reasons why the school in question is the most suitable school and the difficulties it would cause if the child had to travel to another school. The Local Authority reserves the right to make contact with the District Medical Officer for independent information regarding the child's condition. We may also seek advice from other qualified professionals, e.g. Psychologists or other specialist where necessary".

Consideration of Case

15. As outlined above, the objector considers that determining a child's home address by using receipt of child benefit is "*neither fair or objective*", and thus fails to comply with paragraph 14 of the Code. The objector also considers that the default provision of determining the mother's address as the home address *where childcare arrangements*

are shared jointly between both parents unless there are legal documents to the contrary is in breach of equalities legislation and paragraphs 3 and 7 of Appendix 1 to the Code.

16. I have set out the arrangements determined by the LA and these show that the definition of “*home address*” referred to by the objector is actually a little different from what is intended to be used in the 2019 arrangements. Whilst the first half of the definition, referring to the use of child benefit to determine address is as suggested by the objector, the section: “*Where childcare arrangements are shared jointly between both parents, the local authority will consider the mother’s home address to be the relevant address when considering the application unless legal documentation is provided to the contrary*” does not feature in 2019 arrangements.
17. I have considered the objection against the arrangements actually determined for 2019 as that is what the Act requires me to do. I wrote to the LA on 23 May 2018 because I could not find the determined arrangements for September 2019 on its website. The LA explained that it had made changes to its arrangements for the 2019/2020 admissions round and the determined admission arrangements reflect the changes. However, the LA explained, the amended arrangements for 2019 had been incorrectly titled on the LA’s website as 2018/19 arrangements, and that this was being corrected. The arrangements for 2019/2020 are now published on the website, and correctly titled.
18. I drew my concerns about the definition of “*home address*” in the 2019 arrangements to the attention of the LA. A response from the LA was received on 27 June 2018 which said that the LA had concerns that allowing separated parents to make a choice as to which parental address to use would unfairly disadvantage other families. The response stated: “*Year on year applications are received which provide false information pertaining to the home address of a child; without supporting documentation to verify their claim to residency, admission authorities are left with little choice but to accept information provided without proof. Whilst the local authority understands its responsibility to act in accordance with the code, it would welcome clarity around the use of child benefit from the adjudicator, who has stated that it ‘may not be compliant’ in order to acknowledge whether the authority’s 2019/20 planned arrangements would be compliant*”. It is not for me to give advice or offer “clarity” but, rather, to consider whether arrangements meet the relevant requirements of the legislation and Code, which I have done below. This consideration includes my views on the use of the address of recipients of Child Benefit for the purposes of determining a child’s address in certain circumstances.
19. Many admission authorities take great pains in deciding how to define a child’s home address and – equally importantly – what evidence they will accept to show that a child actually lives at the address given. There are two main reasons for this. Firstly, because of concerns relating to parents providing false addresses, or moving to an address on a

temporary basis for the sole purpose of improving their chances of being offered a place at the school of their first preference. Secondly, because a child may live at more than one address – either because he or she spends time with both parents and they do not live together – or because parents do live together but have more than one property. Where a child lives at more than one address, the arrangements must make clear which address will be treated as the child’s home address for the purposes of an application for admission to the school.

20. It is understandable that the LA would wish to have a definition of “*home address*” which is clear and can be applied consistently. This is also in the interests of parents applying for a place at the school. To some degree, I can understand why the LA has chosen to link the determination of home address to the receipt of child benefit in the case of a child whose parents are separated. There is no doubt that this provision is clear. A person is either in receipt of Child Benefit, or he or she is not. There is no room for doubt, and there is a link to residence. A person can only claim Child Benefit for a child who lives with him or her. However, that is not the whole story as I go on to outline below.
21. Where parents separate, either parent can claim Child Benefit but only one parent will be entitled to receive it. In some cases, a child will live with one parent and have no contact or only non-residential contact with the other. In these cases, the position is straightforward. The parent with whom the child lives is the only parent entitled to claim. Where a child lives with both parents, the parents can agree between them who should claim. Where they cannot agree, both can apply and HMRC will award the benefit to the parent with whom the child spends most of his/her time. Because it is a condition of receipt of Child Benefit that the child lives with the applicant, it may be that the LA has assumed that the person receiving Child Benefit will be the person with whom the child lives most of the time. But this does not necessarily follow.
22. In the first place, it is possible that neither parent will be in receipt of child benefit and in the second, the person who claims it may not be the person the child spends most time with. In order to explain why this would happen, it is necessary to say a little about Child Benefit and the circumstances in which it can be claimed and received. The objector suggested that a person earning £50,000 per year is not eligible to claim Child benefit. This is not correct: there is no income limit on claiming Child Benefit. However, a person who earns £50,000 or more before tax each year and who claims Child Benefit would then have to start paying a Child Benefit tax charge. The tax increases the more the person earns over £50,000. If the person’s income goes above £60,000, the extra tax payable will cancel out what the person receives in Child Benefit. Where one of the parents earns more than £50,000 and the other less than this, it is entirely reasonable for the parent who is not earning more than £50,000 to claim the benefit. That parent will be eligible to do so as long as the child lives with him or her for some of the time.

23. I appreciate that the LA is looking to have a clear definition of home address which can be applied consistently. However, the effect of the definition in some cases has been will be to ascribe a home address to a particular child which is probably not where the child lives for most of the time, and is not where the child lives on the days that he or she attends school.
24. There are other ways of achieving certainty and consistency in defining the home address of a child who lives with more than one parent. In relation to parents/carers who have more than one property, the child's home address in the 2019 arrangements is the address at which the child mainly lives Monday – Friday. I wondered why should the children of separated parents, where the parents also have more than one property, should be treated differently.
25. Children of separated parents who live in two places have two homes, so I also wondered whether the LA could accept either address, and the parents could decide between them where the child should live on school days so that he or she could have a reasonable daily journey to and from school. The LA has said that, allowing separated parents to choose which of two addresses is the home address, would unfairly disadvantage the children of separated families. I am not sure that it would. It merely recognises that some children actually do live in two places. However, it is not for me to dictate the wording to be used. My role is to determine whether the existing wording complies with the Code.
26. The current definition provides that where Child Benefit is not claimed, parents can agree which address is the home address. I cannot see that it would be reasonable to allow separated parents to agree which address is the home address between them where Child Benefit is not claimed, but not to allow parents to agree where Child Benefit is claimed. As above, the fact that one parent is receiving Child Benefit should not preclude parents being able to agree which address should be the "*home address*", provided only one address can be put forward.
27. The daily living arrangements for any child are a question of fact, and so the definition must arrive at the relevant facts. The definition in the LA's arrangements does not do this in cases where a child lives for the majority of the time, and on most school days, with the parent who is not receiving Child Benefit. As I have said above, I do understand the LA's reasons for linking the definition to receipt of Child Benefit. However, given the way the benefits and tax regime operate, I do not consider that it is a definition which a reasonable admission authority should have adopted. There will be cases where the definition will arrive at the wrong address for children who genuinely do live at an address which would give them admission to their preferred school.
28. I also consider that the operation of the definition creates an unfairness in the case of a child whose parents are separated who may agree between themselves which of them should claim Child Benefit where

the child does not actually live with that parent during the school week.

29. I return now to the concern raised by the LA that “*without supporting documentation to verify their claim to residency, admission authorities are left with little choice but to accept information provided without proof.*” The LA appear to be confusing two things here. It appears to be suggested that the LA consider receipt of Child Benefit as proof that a child lives at a particular address; however, the arrangements do not require receipt of Child Benefit as proof of address in cases where parents are not separated. Some admissions authorities do require specified evidence as proof of address, and it is perfectly reasonable for an admission authority to do this, but it would need to be a requirement for both separated and non-separated parents. Documentation indicating receipt of Child Benefit is sometimes stipulated as one of a number of forms of proof – e.g. utility bills, council tax bills etc.
30. The purpose of using receipt of Child Benefit to determine the relevant home address for a child whose parents have separated in the arrangements is not to provide proof of where the child lives, but to determine which of two possible addresses is the relevant one. As I have said above, in the case of separated parents where a child has more than one home, receipt of Child Benefit can only be proof that the child lives with the parent in receipt of the benefit for some of the time. As this objection illustrates, a child can live with a parent who is not in receipt of Child Benefit during the school week.
31. I consider that the operation of the definition creates an unfairness to separated parents who may agree between themselves which of them should claim Child Benefit for financial reasons where the child actually lives for the majority of the school week with the parent who has not claimed the benefit. I also consider that it is unreasonable to allow separated parents who do not claim Child Benefit to agree which address should be the home address, but not to allow this in the case of other separated parents. I therefore uphold this objection on the basis that the determined arrangements are not fair or reasonable. Paragraph 3.6 of the Code allows an admission authority to vary its arrangements in order to comply with a determination of the adjudicator or a mandatory provision of the Code. The admission authority must now vary its arrangements in accordance with the Code.

Other matters

32. The medical oversubscription criterion states that: “*The Local Authority reserves the right to make contact with the District Medical Officer for independent information regarding the child’s condition. We may also seek advice from other qualified professionals, e.g. Psychologists or other specialist where necessary.* Paragraph 1.8 of the Code requires that “*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation*”. Also relevant is paragraph 14 of the Code.

33. I was unclear from the arrangements as to the circumstances in which it would be reasonable to test the evidence provided by a professional medical practitioner who knows the child in question by obtaining the opinion of a professional who has no knowledge of the child, and who may not be a specialist in the relevant area of medicine. There would need to be a valid reason to seek an independent opinion, and the circumstance where this would be necessary must be set out clearly in the arrangements. My concern was that serious issues arise from sharing a child's personal medical information in terms of data protection and privacy rights under Article 8 of the European Convention on Human Rights. The arrangements do not state clearly the circumstances in which it would be necessary for the District Medical Officer to give an opinion; whether he/she would be required to examine the child; or that this could only be done with the child, or parents' consent.
34. When I reviewed the arrangements, I searched on line for references to the District Medical Officer Darlington and District Medical Officer County Durham (Durham being the county in which Darlington is located). I found no information. The LA has now confirmed that the post no longer exists, and that the relevant information is now sought from a consultant paediatrician in Community Child Health, Ward 22, Darlington Memorial Hospital. I do not consider it to be reasonable for the LA to "*reserve the right*" to refer a child's personal and sensitive personal data to any professional who has no knowledge of the child other than in wholly exceptional circumstances which must be specified in the arrangements.
35. I accept that it may sometimes be necessary to seek further specialist advice, but again the arrangements must explain the circumstances where it would be necessary to do so. Sending a child's sensitive medical information to a specialist also raises concerns about the child's privacy rights and compliance with data protection requirements. Paragraph 14 of the Code requires that admission arrangements must be reasonable. It may be reasonable to seek further information from other professionals who are working with the child – for example psychologists and other specialists. But again, the circumstances where this can be done must be set out explicitly, and the fact that consent is necessary must be made clear. Because the arrangements are both unreasonable and unclear in this respect, I have concluded that this aspect of the arrangements is not compliant with paragraphs 1.8 and 14 of the Code.
36. In response to my concerns, the LA has agreed to amend the arrangements to remove the reference to the District Medical Officer and substitute the correct information. The LA also explained that it "*looks only to seek an unbiased professional opinion about a child's condition in relation to the school(s) they have applied for, stating reasons why the child could not access any mainstream setting*". The LA propose the following revision to the arrangements in order to comply with relevant legislation:

“If you state a preference for a school and indicate your reason for doing so is ‘medical’ then you are required to send a supporting letter from a professional practitioner who is involved in the care of your child (within the last 6 months). The supporting letter must detail why the school(s) applied is/are the only one(s) that can accommodate the child’s medical condition.

The local authority reserves the right to seek independent advice from other qualified professionals, e.g. Psychologists or other specialists on the condition that the child has, to ascertain an awareness of the limitations it would mean to the child”.

37. I wondered why the LA would assume a professional medical practitioner who knows the child in question would be assumed to be biased. They would certainly need reasonable grounds to assume this. If the intention is to obtain independent medical advice where the evidence provided by the parents leads the LA to believe that the person writing the supporting letter is biased, the arrangements must say this. The LA will also need to satisfy itself that it has the legal gateways to share a child’s personal data in this way. If there is no legal gateway, the arrangements must not say that the LA can share this personal data because that would be misleading. If the LA intends to rely upon the consent of the parents to share their child’s personal data, this needs to be made clear.
38. If the intention is to seek specialist advice in relation to the specific manifestations of a particular medical condition and how this would limit access to other schools, the arrangements must say this. Paragraph 3.6 of the Code allows an admission authority to vary its arrangements in order to comply with a determination of the adjudicator or a mandatory provision of the Code. The admission authority must now vary its arrangements in accordance with the Code.
39. In relation to the maps of the rural and urban wards, my concern is that the process of allocation is not clear to parents unless they are able to see a map of the different wards, or there is a description of these areas in the arrangements. The rural and urban wards are catchment areas for the purposes of the Code. Paragraph 1.14 of the Code states that *“Catchment areas **must** be designed so that they are reasonable and clearly defined”*. There is also reference to these wards in the oversubscription criteria. Because the arrangements are unclear in this respect, I have concluded that this aspect of the arrangements is not compliant with paragraphs 1.8, 1.14 and 14 of the Code.
40. The LA has explained that the map outlining the areas which are urban and rural and an associated list are available on the Council’s website under the *Starting Primary Education* heading, but are absent from the *Guide for Parents*. The local authority will look to rectify this by their inclusion in the 2019/20 guide. This will help parents but it is not an entire answer to the point. The Code defines as admission

arrangements as “*the overall procedures, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means to determine whether a school place is to be offered*”. The maps are part of this. Indeed, without seeing the maps and being able to tell whether or not they live in an urban or rural area, a parent would not be able to work out the level of priority which would be given to an application for a place at a particular school. The maps need to be published as part of the determined admission arrangements. If they are published only in the *Guide for Parents* which is published each year in September, then parents and others are denied the opportunity to scrutinise the arrangements in full and object to them if they wish to do so.

41. Paragraph 3.6 of the Code allows an admission authority to vary its arrangements in order to comply with a determination of the adjudicator or a mandatory provision of the Code. The admission authority must now vary its arrangements in accordance with the Code.

Summary of Findings

42. The objection is based upon the argument that the definition of “*home address*” set out in the arrangements, as it applies to separated parents, is both unreasonable and unfair in its effect. My findings are that that the definition is one which no reasonable admission authority could have adopted having taken into account all relevant circumstances, and that the operation of the definition results in an unfairness. Therefore, the arrangements do not conform to paragraph 14 of the Code, and I uphold this part of the objection.
43. The objector also states that the definition of “home address” is discriminatory. I do not uphold this part of the objection because the provision referred to in this respect does not form part of the arrangements for admission to the LA’s maintained schools in September 2019.
44. Because the arrangements for this school have come to my attention, I also find that there are other matters which do not conform to paragraphs 1.8, 1.14 and 14 of the Code. These are the paragraphs entitled “*Medical Criterion*” which is both unclear and unreasonable, and the absence of maps outlining the rural and urban wards which renders the arrangements unclear.

Determination

45. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2019 determined by Darlington Borough Council, Darlington, County Durham.
46. I have also considered the arrangements in accordance with section

88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

47. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

Dated: 24 July 2018

Signed:

Schools Adjudicator: Marisa Vallely