



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3509 North Yorkshire County Council

Objector: An individual

Admission authority: North Yorkshire County Council for community and voluntary primary schools in North Yorkshire

Date of decision: 6 June 2019

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 2020 determined by North Yorkshire County Council for community and voluntary controlled primary schools in North Yorkshire.

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 an individual, (the objector), about the admission arrangements (the arrangements) for community and voluntary controlled primary schools in North Yorkshire. The objection is to the methodology for determining a child's home address in cases where a child's parents are separated and the child lives with both parents, and the provision in the arrangements for dealing with cases where parents are unable to agree which school their child should attend.
2. The local authority (LA) for the area in which the schools are located is North Yorkshire County Council. The LA is the admission authority for these schools.

Jurisdiction

3. These arrangements were determined under section 88C of the Act by the LA on 21 February 2019. The objector submitted his objection to these determined arrangements

on 25 March 2019. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

Procedure

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 objector's form of objection dated 25 March 2019 together with further correspondence and information;
 - b) the LA's response to the objection and supporting documents;
 - c) the LA's online composite prospectus for parents seeking admission to schools in the area in September 2019;
 - d) confirmation of when consultation on the arrangements last took place;
 - e) copies of the minutes of the meeting of the LA on 21 February 2018 at which the arrangements were determined; and
 - f) a copy of the determined arrangements.

The Objection

6. The objector considers that the methodology used by the LA to determine a child's home address in cases where parents are separated does not operate to allocate a place for the child which best serves the child's interests. The objector's view is that the policy merely determines where the child mainly resides. The objector cites his own circumstances as an example of how the arrangements operate unfairly. I have deliberately not referred to the objector's personal circumstances in this determination in order to protect his privacy. It can be helpful for adjudicators to have specific examples brought to their attention in order to understand how arrangements can work in practice. However, my function here is to determine whether the arrangements are unreasonable and whether they operate unfairly. I do this from an objective and impartial perspective.

7. Paragraph 14 of the Code requires that "*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*".

8. The objector also indicated initially that he did not consider that the arrangements describe sufficiently and clearly how distance from home to school is measured. However,

he indicated subsequently that he did not wish to pursue this part of the objection. In my view, the arrangements are clear in this regard.

Background

9. The admission arrangements in question apply to all community and voluntary controlled primary schools in the area for which North Yorkshire County Council is the admission authority. The oversubscription criteria are set out clearly, and can be summarised as follows:

- I. Looked after and previously looked after children.
- II. Children who have special social or medical reasons for admission to a particular school.
- III. Children living within the normal area of the school.
- IV. Children living outside the normal area for the school.

10. The arrangements afford a level of priority to applicants based upon what the arrangements describe as the normal area for each school. I am satisfied that normal area is the same as what the Code describes as a catchment area and I have used that term in this determination. The use of catchment areas means that a child's home address will be a significant factor in determining whether the child will have priority for a particular school. The catchment areas for each school can be identified by clicking on a hyperlink.

11. This objection focuses upon how the arrangements determine a child's home address in the case of parents who are separated and where the child spends part of his or her time with both parents. Clearly, where a child of separated parents lives for 365 days with one parent, then that parent's address will also be the child's address. The arrangements contain a section entitled "Separated parents" which reads as follows:

"Separated parents

If the child's parents are separated or divorced, there are various things you need to consider depending on your situation.

What if the child's parents live at separate addresses?

If the residency of your child is split between both parents, we consider the home address to be the address where the child lives for the majority of the school week (Monday to Friday). Parents will be required to complete and return a split residency form detailing the split. [Please contact us](#) to request the form.

If the child spends equal amounts of time at both addresses, you will be asked to nominate which address you wish to use for the purpose of allocating a school place. If you fail to do so, we have the right to nominate the address that we consider appropriate, which will normally be that at which child benefit is received. If you do not receive child benefit we will use the address being used for GP registration purposes.

Please read the information about what address to use here, including the section about making a fraudulent application, before you apply. We may ask for evidence of your child's place of permanent residence.

By submitting an application for a school place, you are stating that you have parental responsibility for the child named on the form, or if you share parental responsibility, that you are in agreement regarding the preferences stated on the application for a school place. In accordance with the school admission code (2014), we may only offer one school place per child.

What happens if the parents cannot agree on the choice of school?

In the case of disputes between parents, there is an expectation that parents will resolve these themselves and make a single application which both parents are in agreement with. We can not accept more than one application per child. If we receive conflicting instructions for a child, we will not be able to process the application or allocate a place for your child.

We will require evidence of either parental agreement, in the form of written confirmation from each parent, or a court order. If an agreement has not been reached before the normal admissions round has closed, all preferences will be suspended and we will seek to offer a place at the nearest school, with places available, to the child's principal permanent residence.

Consideration of Case

12. It is the objector's view that the admission arrangements should identify a child's home address as the address that would afford a high level of priority for the child at the school which it would be in his/her best interests to attend. So, for example, if the child's best interests would be served by the child attending a primary school which is equidistant to the addresses of both parents, then the child's home address would be deemed to be an address which would allow the child to be offered a place at that school. This, he argues, would provide a continued balance in the child's life and enable him/her to build up a social network of friends accessible from both homes. The objector advocates an individual approach for the children of separated parents, and the possible use of a Panel to determine what would be in the child's best interests.

13. The LA's response to the objection largely summarised the arrangements themselves. Nevertheless, I have set it out here. The LA's view is that the arrangements are clear and set out comprehensively "a complete breakdown of the requirements and actions needed in respect of the children of separated families". The arrangements state which address should be used and explain in some detail how the arrangements work with reference to specific examples. The LA says that, via a hyperlink, there is a more detailed explanation specifically in respect of parents who live at separate addresses. A child's home address is the address where the child lives permanently for most of the time. If a child lives at two addresses, the LA considers the home address to be the address where the child lives for the majority of the week (Monday to Friday). It is a requirement that parents complete and return a split residency form detailing the split. Parents are requested to contact the local authority for an appropriate form.

14. The LA points out that the arrangements state that, where a child spends an equal amount of time at both parents' addresses, the parents will be asked to nominate which address they wish to use for the purpose of allocating a school place. If they fail to do this, the LA will nominate the address that it considers appropriate, which will normally be that at which child benefit is received. In a case where child benefit is not received, the LA uses the address being used for GP registration purposes. The LA says that further information is available within the Information for Parents section which is specific to cases when both parents cannot agree on the choice of school. I have read this additional information. It is clear and easily accessible.

15. In the case of disputes between parents, the LA says that there is an expectation that parents will resolve this issue themselves and make a single application which both parents agree with. The arrangements explain that the LA cannot accept more than one application per child. If conflicting instructions are received for a child, the LA cannot process the application or allocate a place for the child. Therefore, the LA requires evidence of parental agreement in the form of written confirmation from each parent or a court order. Presumably, this would be an order stating which parent has overriding responsibility for determining the child's schooling or an order recommending that the child attend a particular school (as exists in the present case). If an agreement has not been reached before National Offer Day (16 April 2019 in the case of admissions to primary schools in September 2020), the local authority says that it will seek to offer a place at the nearest school with places available to the child's principal address.

16. The objector's response to this was as follows: *"I accept the policies are largely in place as required, my objection is to the suitability, fairness and practicality of these policies for children in certain split family circumstances. The policies are far too heavily weighted around geographical locations of homes and schools and not which school actually suits a child's best interests when looking at split families. Where appropriate the court system has moved away from awarding principle custody or 'residence' of a child to one parent for good reason, indeed I believe the 'residence' order has been superseded. It is extremely healthy for many children... to feel they live with both parents i.e.: they have one life lived in two homes. The school admission policy in my opinion should respect this approach led by the legal system. A school admissions policy that is to determine a child's 'principle residence' is no longer acceptable. Neither is the 'principle residence' policy in the best interests of many children when awarding school places when they do really live a balanced life spent equably between two homes. This admissions policy can result in a child losing the balance they have in their life, polarisation of life and increased travelling distances to school from their other home. Awarding a school place next to a 'principle residence' can result in the balance of life becoming tipped so that the child ends up living two lives, one in each home which can be detrimental compared to the alternative".*

17. As stated previously, I do not intend to refer in detail to the objector's personal circumstances in this determination, but I feel bound to say that the objector is trying to do what he considers best for his child. He feels he has not found anybody who will help him in this – neither the court nor the local authority has facilitated the outcome he wants. I hope

the objector understands that I cannot order the local authority to provide a place for his child at the school of the objector's choice, and require that the other parent agree for the child to attend that school. This is not within my powers and, indeed, is not the purpose of the adjudicator in considering objections to admission arrangements. What I can do is determine whether or not the arrangements are reasonable, lawful and Code compliant in their treatment of the children of separated parents; including in relation to cases where children spend nearly or exactly equal amounts of time with both parents.

18. This is a highly emotive area. In situations where parents are unable to agree on which school to express a preference for, it is very likely indeed that one parent will feel aggrieved by not being able to secure what they consider to be in their child's best interests. The sole question for me, however, is whether the arrangements comply with the Code. In reaching my conclusions, I have taken into account all of the information submitted to me.

19. Admission authorities are required to comply with parental preference unless to do so would prejudice the efficient provision of education or the efficient use of resources. What this means, in the case of separated parents, is that in order to be clear admission arrangements must provide a means of determining which parent is able to express a preference and what should happen where parents are unable to agree upon which school they would like to express a preference for. Where priority is determined by distance or residence within a catchment area, it will be important for the arrangements to establish clearly the child's home address. The starting point in these arrangements is that a child's home address is the address where the child lives for the majority of the school week. My view is that this is both objectively reasonable and fair because its underpinning rationale is that children should be able to attend local schools which are reasonably accessible from home on school days.

20. Where a child spends an equal amount of time living with both parents, the parents can nominate the address of either parent. It is reasonable and fair for arrangements to provide that parents should be able to choose to nominate an address which will give them the best chance of getting a place for their child at the school they both consider that he/she should attend. But it is also entirely foreseeable that some parents who are separated may not be able to agree upon which school their child should attend. The arrangements make provision for this because they have to do so in order to be clear to parents what the process is in these circumstances. This is a requirement of paragraph 14 of the Code. Where parents are unable to agree, the LA may nominate an address. This is either the address of the parent in receipt of child benefit or the address at which the child is registered with a GP. These are both simply objective points of reference.

21. It may be the case that the parent who is not in receipt of child benefit or whose address is not the address registered with the child's GP will perceive such provisions to be unfair. But this is a mechanism enabling the LA to choose an address objectively in order that the admission process can be taken forward. Where the parents both have parental responsibility and are in active dispute to the extent that the LA has received an application

from each parent naming a different school, the LA cannot take forward either application unless there is a court order determining which parent is able to decide the question of schooling or unless the parents are able to reach agreement. Again, there is objective provision for what happens in these circumstances in the arrangements.

22. The objector suggests that, in cases where separated parents are unable to agree on a school for their child, a Panel should be convened to determine what would be in the child's best interests. As it happens, even where I determine that existing arrangements do not conform to the requirements of the Code, I cannot tell admission authorities which arrangements they are to have. My role, should I determine that arrangements are not compliant, is confined to making clear the ways in which they are not compliant, and requiring that they must be revised by a specified date.

23. However, it is not my view that the arrangements fail to conform to the law or the Code. My view is that the arrangements are clear, objective and fair. It is not the role of admission authorities to determine what is in the best interests of children in the context of school admissions. That decision is a decision for the child's parents and, if parents cannot agree, it is a decision which must be determined by a court. In this particular case, a court has expressed a view about which school the child should attend. There is something of a lacuna here because a court cannot order the admission of a child to a particular school, but it can determine which parent's preference should prevail where parents each want their child to attend a different school. The arrangements make provision for what should happen where a child lives at more than one address and provision for cases where separated parents are unable to reach agreement. The arrangements anticipate the difficulties which may arise and make objective provision as to what should happen.

24. I absolutely understand that a parent who has nearly equal shared care might perceive the arrangements to be unfair. But it seems to me that it is reasonable for a set of admission arrangements to make a clear determination of which home address is the applicable address. Whatever provision is made, there exists the possibility that one parent will be aggrieved. But choosing the address at which the child spends most of his/her time is a reasonable and fair a way of choosing between the two addresses in the circumstances. In cases where a child spends an equal amount of time living with both parents, it is hoped that parents will agree which address to nominate, but it is also reasonable for the LA to be able to nominate where parents are unable to agree.

25. Admission authorities are permitted to have oversubscription criteria, and proximity to the home address is widely recognised as a lawful, reasonable and fair way of determining priority for school places in the event that there are more applications than places available. As I have said, I cannot require the LA to establish a Panel whose function would be to determine which school it would be in a child's best interests to attend in a case where the child's parents are separated. I accept that it is important for children of separated parents to have balanced lives, but LAs have no powers to choose schools for children (unless the LA has parental responsibility for the child). This is a matter for the child's parents, or for the courts to determine which parent should be able to express a

preference for a school in the event that parents are unable to agree which school their child should attend.

Summary of Findings

26. I find that the aspects of the arrangements which make provision for determining the home address of children whose parents are separated and for how to proceed in cases where parents are in dispute about which school their child should attend are not unclear, unfair or unreasonable. The reasons for these findings are that the arrangements anticipate the difficulties which can arise in these cases, and make reasonable provision as to what should happen if these difficulties should arise.

Determination

24. 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 2020 determined by North Yorkshire County Council for local authority maintained schools in North Yorkshire.

Dated: 6 June 2019

Signed:

Schools Adjudicator: Marisa Vallely