



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: REF3486

Admission Authority: Rochdale Borough Council for Community and Voluntary Controlled Schools in Rochdale

Date of decision: 18 December 2018

Determination

I have considered the admission arrangements for September 2019 for all community and voluntary controlled schools in the Borough of Rochdale in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the clarity of the final oversubscription criterion, the arrangements do not conform with the requirements. I have also found that there are other 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 within two months of this determination unless an alternative timescale is specified by the adjudicator. In this case I set a deadline of 28 February 2019.

Jurisdiction

1. The admission arrangements for 2019 for all community and voluntary controlled schools in the Borough of Rochdale (the arrangements) were determined by the Borough of Rochdale Council (the Council) under section 88C of the School Standards and Framework Act 1998 (the Act) on 22 January 2018.
2. During the course of the work of the Office of the Schools Adjudicator the arrangements came to my attention. It appeared to me that the final oversubscription criterion giving priority for school places on the basis of "*Relative proximity and ease of access*" may not be clear and so not conform with paragraph 1.8 of the School Admissions Code (the Code). I have therefore used my power under section 88I of the School Standards and Framework Act 1998 (the Act) to consider the

arrangements as whole. In doing so I noted four other ways in which the arrangements did not appear to conform with the Code.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
 - a. a copy of the determined arrangements;
 - b. a document confirming that the arrangements had been determined by the Council; and
 - c. correspondence with the Council on the matters raised.

I have also taken account of information received during a meeting (the meeting) with representatives of the Council that I convened on 28 November 2018 at the Council offices.

Background

5. The Borough of Rochdale covers an area of 159 square kilometres covering both urban and rural areas. There are 12 state-funded secondary schools and 69 state-funded primary schools in the Borough. The table below shows the number of each type of school. The local authority is the admission authority for, and so determines the admission arrangements for, the community and voluntary controlled schools and it is these schools which are the subject of this determination.

| | Primary | Secondary |
|----------------------|---------|-----------|
| Community | 30 | 4 |
| Voluntary Controlled | 8 | 0 |
| Voluntary Aided | 23 | 3 |
| Foundation | 3 | 1 |
| Academy | 5 | 4 |
| Total | 69 | 12 |

The “*Relative proximity and ease of access*” oversubscription criterion

6. Paragraph 14 of the Code says “*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.” More specifically, paragraph 1.8 of the Code says “Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.”*

7. The oversubscription criteria determined by the Council are:
 1. Looked after and previously looked after children
 2. Children with exceptional medical or welfare needs
 3. Children with older siblings attending the school
 4. Children with strong church connections (for voluntary controlled schools only)
 5. Children eligible for the service premium
 6. Relative proximity and ease of access
8. Five paragraphs in the arrangements describe the last oversubscription criterion.

“Once places have been allocated using criteria (I), (II), (III), (IV) and (V), any remaining places are allocated on the basis of relative proximity and ease of access to the school but also other schools nearby.

Distance will be determined by measuring the shortest, suitable walking distance to the preferred school and deducting the shortest suitable walking distance to the nearest or next nearest alternative school. This figure will give the difference in distance that one child would have to travel compared to another, and so establish a priority ranking. This will mean that those living furthest from an alternative school will have priority for their nearest school. The nearest/next nearest school will include all community, voluntary controlled, foundation and academy schools whether in the Borough or not.

In the event of a tie break situation, priority will be given to the child who has the longer journey to the nearest/next nearest school. If after this it is still not possible to decide on who should be offered the place then any final place will be decided by the drawing of lots.

It should be noted that in looking at ease of access bus routes are not used. Nationally, the suitable walking distance for primary age children up to 8 is up to 2 miles and for children over 8 it is up to 3 miles, with the assumption that the journey can be undertaken on foot, accompanied as necessary. Walking routes are deemed to be along recognised lit, paved routes which, in general, are overlooked by houses and as such are likely to be relatively safe to walk. Unlit, unmade-up shortcuts are not taken into account in calculating walking

distances, even if they are public rights of way.

Walking distances are measured using a computerised mapping system which uses the Ordnance Survey integrated network to measure from the centre point of the child's home to the main gate of the school applied to, and to the nearest/next nearest school. In the event of a tie-break within a block of flats, those living furthest from the communal entrance will be given priority."

9. A parent may be aware of which school they live nearest to, although in some urban areas there may well be two or more schools both close to and similar distances from some homes. Parents are less likely to be aware which school is their "*next nearest*" school. This is particularly likely to be the case here as distances are measured by a walking route on a computer system parents do not have access to and voluntary aided schools are not taken into account when "*nearest*" and "*next nearest*" school is defined. It also appeared to me that a parent may have difficulty knowing which school terms such as "*preferred school*" and "*alternative school*" referred to in the above description. Nor was it clear to me from the description in the arrangements how the various measurements would be used to rank applicants for any particular school.
10. I was also concerned that the measurement of distance by a walking route might introduce subjective decisions such as where a child might cross a road, or which footpaths may be useable. The Code requires that oversubscription criteria are objective.

Meaning of relative proximity and ease of access

11. During the course of the meeting the Council representatives told me that the purpose of this criterion was to give priority to children who would have longer journeys to other schools. They explained how this priority was established. I set out my understanding of this process below.
 - The computer system calculates the distance from the child's home to the school which has been applied for (distance a)
 - The computer system establishes which is the nearest school for this purpose not including the one applied for, to the child's home and calculates the distance from the child's home to that school (distance b)
 - Distance b is subtracted from distance a
 - If the application is for the child's nearest school, then the result will be negative and the absolute value will represent the additional distance which the child would have to walk to the next nearest school
 - If the application is for a school which is not the one nearest the

child's home, the result will be positive and will represent how much farther the walk to the school applied for is than that to the child's nearest school

- The numbers generated are used to produce a ranked list for each school

12. This means that if a child has applied for their nearest school, then those with farther to go to the nearest alternative school have higher priority for places. If the school applied for is not the child's nearest, then priority goes to those who have the least additional distance to walk compared to the distance to their nearest school.
13. In my view, this process is not described clearly in the arrangements so parents would not understand easily how places for a school will be allocated. It is not easy to explain the process succinctly and during the meeting the Council representatives told me that they find it necessary to explain the process to independent appeal panel members in another form and that they are considering alternative wording for the arrangements themselves.

Identification of schools

14. Once it is understood what is meant by "*Relative proximity and ease of access*", parents still need to know which their nearest school is, and if they decide to apply for their nearest school, what their next nearest school is so they can understand the degree of priority they will have. At the meeting the Council representatives told me that parents are able to telephone the admissions team for that information. This is not stated in the arrangements, nor is there any other guidance, such as maps showing nearest areas for each school, to be found in the arrangements or on the Council's website.
15. On the face of it, a criterion giving priority to children who would have farther to walk to other schools is reasonable and fair. It is, though, predicated on an implicit assumption that all children can, if they choose, attend their nearest school. However, when I asked if all schools could physically accommodate children for whom it was their nearest, I was told it was not the case that all schools could accommodate all children for whom it was the nearest.
16. In such situations, the children who would not be offered places at their nearest school would be those with the shortest journeys to other schools. However, the proximity of the nearest school would lead to those children having low priority for those other schools. At the meeting I put it to the Council representatives that a child could find they have low priority for all schools, as there was a nearer school even though they could not get a place there and this may not be fair. The representatives agreed that this could happen but they were not aware of it having occurred; they said that generally the arrangements worked well.

17. A similar possible unfairness is recognised in the arrangements where voluntary aided schools are not included in the list of types of school which are considered as the nearest or next nearest school. The list reads "*all community, voluntary controlled, foundation and academy schools whether in the Borough or not.*" The Council explained that voluntary aided schools are omitted because it may be impossible for a child living near one to meet faith-based oversubscription criteria and so would not be able to access their nearest school.
18. Not all voluntary aided schools are schools with a religious character and some academies have a religious character and so may give priority on the basis of faith. Furthermore some voluntary aided schools which are permitted to give priority on the basis of faith do not do so. In my view it would be unfair and not consistent with the Council's approach to voluntary aided schools to consider an academy which gives priority on the grounds of faith as a nearest or next nearest school.
19. Another inconsistency arises because eight of the schools to which these arrangements apply are Church of England voluntary controlled schools and the arrangements themselves give higher priority to children on the basis of faith than of geographical location at those schools. Therefore, a child could find that they cannot get a place at their nearest school because it is a voluntary controlled school where children are offered places on the basis of faith ahead of children for whom it is the nearest school.
20. Although the Council proposed removing academies with a religious character from the list of possible nearest or next nearest schools, I think it unreasonable to include, or exclude schools on the basis of the type of school rather than their admission arrangements.
21. Similar issues could arise if there were any single sex or selective schools in the local authority area or neighbouring areas. During discussion of these matters at the meeting I was assured that there were no single sex or selective schools to be taken in to account.

Measurement of distance

22. The arrangements refer to "*suitable walking distance*" and say this is measured by "*a computerised mapping system which uses the Ordnance Survey integrated [transport] network*". My concern was that there may be scope for subjective decisions about walking routes, for example, is it assumed that a child would walk an extra 200m to cross the road at a pelican crossing, or is it assumed that they would cross the road at the first opportunity. A footpath that may be a perfectly acceptable route on a day in June, could be an unlit muddy path in December, how would decisions about the inclusion of this path be taken?
23. In correspondence on this matter the Council said that the software "*calculates accurate walking distances using pedestrian routes that*

meet the local authority's definition of a safe walking route." It continued to say *"the route calculated is measured down a central point in the road so does not make subjective decisions such as where a child would cross the road."*

24. In discussion at the meeting the Council representatives assured me that it did not consider a route down the central point in the road to be safe. They explained that all routes are decided and measured by the software after any roads or paths considered unsuitable for a child to walk along have been excluded as options for all children. This means that no decisions are required to be taken by the person operating the software and although the distance measured may not be the one actually walked it is an objective measure of the journey and treats all potential journeys and thus all children undertaking those journeys consistently. Following this explanation I am satisfied that the measurement of distance is fair and objective and complies with the Code. The Council is aware that the Ordnance Survey is discontinuing the integrated transport network at the end of March 2019.

Other Matters

25. Paragraph 2.17 of the Code says *"Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group."* The arrangements do not meet this requirement as they only refer to the deferment of admission to the reception year group and do not explain the process for requesting admission out of year group for either that or any other year group. When I drew this matter to its attention, the Council proposed alternative wording, however, this continued to omit the process for requesting admission outside of the age group.
26. The requirements for waiting lists are found in paragraph 2.14 of the Code *"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."*
27. There was no reference to waiting lists in the arrangements. When I drew this matter to the attention of the Council it proposed to add a suitable paragraph to the arrangements.
28. Paragraph 1.13 of the Code says *"Admission authorities **must** clearly set out how distance from home to the school will be measured, making clear how the 'home' address will be determined and the point in the school from which all distances are measured. This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child*

lives for part of the week with each parent." I have discussed the measure of distance above, however the arrangements did not make provision for cases where the child lives with part of the week with different parents.

29. When I raised this matter with the Council it proposed defining the home address to be the one to which child benefit is paid. This approach could, however, lead to potential unfairness as the address to which child benefit is paid is not necessarily the address at which the child lives.
30. Paragraph 1.51 of the Code requires local authorities to publish online a composite prospectus for parents by 12 September each year containing the admission arrangements for each state-funded school in the authority. I was unable to find such a prospectus, indeed for voluntary aided, foundation and academy primary schools the website says "*each governing body has its own admissions policy so you'll need to check with the individual schools.*" When I drew this matter to the attention of the Council on 26 September 2018 it undertook to publish the composite prospectus. The composite prospectus did not appear on the Council's website until 27 November 2018.

Summary of Findings

31. I find that the oversubscription criterion which gives priority to children on the basis of "*Relative proximity and ease of access*" is unclear. This is because parents cannot easily know which school is their nearest or next nearest. This is made more difficult for parents because the method of measuring distance, although fair and objective, is not transparent. The way in which measurements are used to establish a ranked order of priority is also unclear.
32. I also find that the criterion is unreasonable because it excludes voluntary aided schools from being considered as nearest or next nearest schools whether or not they allocated places on the basis of faith or not. In contrast, all academies are considered as possible nearest or next nearest schools even though some of them use faith-based oversubscription criteria as do the voluntary controlled schools covered by these arrangements.
33. There is a risk that because not all schools can physically accommodate all children for whom they are the closest a child could find they have low priority for all schools due to their proximity to a school without the capacity to accommodate them. I have no evidence that this has occurred and make no finding on it. This is a matter for the Council to monitor.
34. I find that the arrangements do not meet requirements in respect of the four other matters set out above.
35. I wish to record the helpful and constructive approach taken by the Council in correspondence and at the meeting.

Determination

36. I have considered the admission arrangements for September 2019 for all community and voluntary controlled schools in the Borough of Rochdale in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the clarity of the final oversubscription criterion, the arrangements do not conform with the requirements. I have also found that there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.
37. 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 this determination unless an alternative timescale is specified by the adjudicator. In this case I set a deadline of 28 February 2019.

Dated: 18 December 2018

Signed:

Schools Adjudicator: Phil Whiffing