



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** ADA3648

**Objector:** a parent

**Admission authority:** London Borough of Redbridge for the community and voluntary controlled primary schools in its area

**Date of decision:** 3 July 2020

### 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 2021 determined by the London Borough of Redbridge for the community and voluntary controlled primary schools in its area.

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.

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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised with regards to the matters raised under section 88I within two months of the date of this determination and the matters relating to the objection by 28 February 2021.

### 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 (the objector), about the admission arrangements for September 2021 (the arrangements) for the community and voluntary controlled primary schools in its area (the primary schools). The objection is to the definition and scope of the priority for siblings of existing pupils.

2. The local authority for the area in which the school is located is the London Borough of Redbridge (the local authority). The local authority and the objector are the parties to this objection.

## Jurisdiction

3. These arrangements were determined under section 88C of the Act by the local authority, which is the admission authority for the primary schools. The objector submitted his objection to these determined arrangements on 28 February 2020. He objected to the arrangements for 2020 and 2021 but objections to the arrangements for 2020 had to be made by 15 May 2019 and so I consider the objection as it applies to 2021. The objector has asked to have his identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of his name and address to me. 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 power under section 88I of the Act to consider the arrangements as a whole.

## 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. a copy of the minutes of the meeting at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection; supporting documents including an adjudicator determination (ref: ADA3202, ADA3245, ADA3246, ADA3248) dated 31 January 2018: an ombudsman investigation dated 20 July 2018 into complaints against Nottinghamshire County Council; and further correspondence;
- d. the local authority's response to the objection and information provided in response to my enquiries including information on the allocations for primary school places in the primary schools for admission in September 2020; and
- e. information on the websites for the Department for Education and the local authority including the local authority's composite prospectus for admissions to primary schools in September 2020.

## The Objection

6. The oversubscription criteria in the arrangements include a priority for siblings of children who will still be expected to be on the roll of the school when a younger sibling would be admitted. The scope of this priority is qualified or limited so that *"if the address [of*

*the child] has changed after the date the child on roll was offered their place, and the distance is now greater than one mile from the school, this priority criterion will not apply.”* The objector says that limiting the sibling priority in this way is illegal, unreasonable and unfair and does not comply with paragraph 1.8 of the Code.

## Other Matters

7. When I considered the arrangements, I found other matters that do not meet the requirements of the Code. These are listed below (with the most relevant paragraphs of the Code in brackets):

- a. It is not clear that children with education, health and care plans will be admitted to the primary school that is named on their plan (14 and 1.6) as this is not stated in the arrangements.
- b. The second criterion in the oversubscription criteria is for children who appear to have previously been in state care outside of England and Wales. It is not clear if this refers to *“children who have previously been in state care outside of England, and have ceased to be in state care as a result of being adopted.”* I have added the emphasis to the quote from the Department of Education guidance, *The admission into school of children previously in state care outside of England*. The local authority confirmed that the criterion did refer to those children who had been adopted having been in state care outside of England but this is not stated and therefore the arrangements are not clear.
- c. The arrangements say, *“the authority will make every effort to offer a child below the age of eight a place within a reasonable distance of 2 miles based on the shortest walking route if there are places available.”* It is not clear what this means given the application of the admission arrangements take precedence over any such statement of intent (14).

8. The local authority has told me that it will address these matters, as permitted by paragraph 3.6 of the Code, which is welcomed. I will therefore not discuss them further other than to make clear that the Code requires that the arrangements be amended to address the points set out here.

## Background

9. The local authority asked for additional time to respond to the matters I raised with it because of the pressures on the local authority caused by the Covid 19 pandemic. This time was granted and delays to the issuing of this determination were created as a result.

10. The London Borough of Redbridge is a largely urban area in the north east of London with other mainly urban areas around it. The local authority has the same admission arrangements for all the primary schools for which it is the admission authority.

11. The oversubscription criteria were determined for 2021 for the primary schools as (in summary):

1. Looked after and previously looked after children
2. Children who appear to have been in state care outside of England and Wales
3. Children of school staff
4. Children with siblings on the roll of the school
5. Children living nearest to the school

12. The local authority consulted on changes to its arrangements in 2019 for admissions in 2020 and introduced the change to the oversubscription criterion which is the focus of the objection. Criterion 4 for children with siblings on the roll of the school was qualified by the addition of the caveat: *“For applicants applying under sibling priority, if the address has changed after the date on roll was offered their place, and the distance is now greater than one mile from the school, this priority criterion will not apply.”*

13. In 2019 2874 children were offered places in YR across all schools in the local authority’s area on national offer day and in 2020 2824 children were offered places. Against that fall in demand, the number of places available has reduced also from 3315 in 2019 to 3255 in 2020.

## Consideration of Case

14. The Code provides considerable information on what must not be included and what can be included in oversubscription criteria but, as paragraph 1.10 of the Code explains, *“This Code does not give a definitive list of acceptable oversubscription criteria. It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances.”* The Code describes the most commonly used oversubscription criteria and sets some requirements as to their use. Paragraph 1.11 refers to siblings and the most relevant part for this case says, *“Admission authorities **must** state clearly in their arrangements what they mean by ‘sibling’ (e.g. whether this includes step siblings, foster siblings, adopted siblings and other children living permanently at the same address or siblings who are former pupils of the school).”* It is therefore the case that the Code does not mandate a specific definition of what is meant by sibling and admission authorities **must** decide a definition if they choose to provide a priority or priorities for siblings. The Code is silent on the matter of whether the sibling priority can be limited or qualified as has been done here.

15. The local authority has chosen to include a priority for siblings of existing pupils and criterion 4 in the oversubscription criteria is, *“children with siblings who are already on the roll in the main school in Reception to Year 6 (not a nursery class attached to the school) and will still be on roll when the child is admitted.”* The arrangements also include a definition for what is meant by siblings and that definition is clear. In this matter, the arrangements comply with the Code.

16. Criterion 4 continues, *“For applicants applying under sibling priority, if the address has changed after the date the child on roll was offered their place and the distance is now greater than one mile from the school, this priority criterion will not apply.”* It is this qualification to the definition of sibling that arises when there is a change of address and where the new home is more than one mile from the school which is the subject of the objection.

17. The objector referred to paragraph 1.8 of the Code and the relevant parts are, *“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.”* In his objection the objector argued that the arrangements do not comply with these requirements. He said that it is not reasonable to expect parents to have children at different schools because this is difficult and inconvenient; there is no reason given for selecting one mile as the distance; having such a qualification discriminates against some siblings; there was insufficient attention given to the opposition to the proposal in the consultation when the arrangements were changed for admissions in 2020; and other admission authorities in the area, including other neighbouring local authorities, have different criteria. This last point was expanded by the objector explaining that when a family moves to another local authority’s area a younger sibling may not get a place at a school local to the new home as a higher priority is given to siblings of those already there and the child also cannot get a place at the same school as his or her sibling if the family has moved more than a mile from the school and so lost their priority as a sibling.

18. I understand that a situation where different arrangements may mean that two siblings cannot attend the same school will be difficult and frustrating. It is my duty, however, to consider the objection against the requirements of the Code and admissions law. Some of the aspects raised by the objector are not valid in that context as I will explain. It may be, for example, inconvenient and difficult for a parent to have primary aged children at different schools but that does not mean that the arrangements are axiomatically unreasonable and do not comply with the Code.

19. I cannot consider the consultation undertaken in 2019 for my jurisdiction for the 2021 arrangements encompasses only any consultation carried out immediately prior to the determination of those arrangements. With regard to arrangements differing across areas and within the area, it is for admission authorities to determine their own admission arrangements and there is no requirement for them to be the same. Different arrangements do not make arrangements procedurally unfair as was suggested by the objector. There is no evidence presented to me that a child would be unable to secure a place at a school within reasonable distance of his or her home and the figures provided by the local authority on the supply of school places suggest strongly that all children can be accommodated at a school within a reasonable distance. It may not be the school they would most prefer, but that is a separate matter.

20. It is necessary for arrangements, where a school is oversubscribed, to discriminate between those who wish to attend the school. Indeed, this is the whole purpose of

oversubscription criteria. The objector referred to paragraph 1.8 and, as above, this paragraph says that “*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair.*” I have been told nothing that leads me to believe that the arrangements are not clear, objective or procedurally fair in this matter. There is another reference in the Code to fairness which is in paragraph 14 and 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.*” I will consider below if the use of the qualified criterion is fair and reasonable.

21. In support of his objection the objector provided three documents. One was a determination by another adjudicator considering the admission arrangements for a school in Nottinghamshire (case ref: ADA3202, ADA3245, ADA3246, ADA3248). A determination by an adjudicator does not set a precedent for other cases. The case cited was about schools in a different area with different characteristics. As it happens, it was about the relative priority to be given to out of catchment siblings as against other out of catchment children. I note that in that case the adjudicator did not find it unfair that a higher priority was given to children in catchment with no sibling at the school compared to those out of catchment with a sibling at the school.

22. One outcome of the determination in the Nottinghamshire case was that some parents referred the matter to the Local Government and Social Care Ombudsman and the objector brought the relevant Ombudsman’s report to my attention. This report partly stemmed from the adjudicator’s report referred to above and considered a number of factors including school admission appeals which are not germane to my consideration. The decisions made in this report are not of direct relevance in this case.

23. Returning to the circumstances of this case, the objector received a letter in February 2020 from the school which his child was attending which alerted him to the qualification to the criterion which gave priority for siblings. This letter was received after applications for admission in 2021 had been made and it would appear that up until that point the objector had been confident that his younger child would meet the criterion for a sibling of a child already attending the preferred school. It was unfortunate if this were the first time the objector realised that the criterion had changed but it is not relevant as to my consideration of whether the arrangements were fair and reasonable.

24. On 9 June 2020 the objector provided a link to a government webpage to me. The government webpage showed that across England in the years 2016 to 2018 there were significant differences in the proportions of those from different ethnic backgrounds who owned houses. Those with Indian backgrounds were most likely to be home owners and the next most likely group was white British with smaller percentages from those of other ethnic backgrounds. From this the objector suggested that those who did not own houses were more likely to rent and posited that this would mean that families from black and minority ethnic backgrounds were more likely to move because they rented and thus more likely to be affected by the removal of the priority for siblings if the family moved more than a mile from the school. The objector said that this was relevant under paragraph 1.8 of the

Code which says, “Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group.”

25. As I was provided with no evidence that families with black and minority ethnic backgrounds were more likely to move to a new house than other ethnic groups, I was unable to consider this point further. In addition, I note that where families do move, a balance needs to be struck between meeting the needs of the family which now lives further from the school and any family or families which now live closer to the school concerned.

26. I asked the local authority for its rationale for the qualification or limitation on its sibling priority. The local authority said, “*The rationale behind priority for siblings of those already attending a school is to give priority based on proximity to a school. In our previous response we stated that families who move away and continue to send their children to the school do so through choice. The criteria for community schools has [sic] been determined to prioritise local families within the local community of that school.*” If I understand this response correctly, this means that the local authority wishes to prioritise children on the basis of proximity to schools. Where more children who live close to a school wish to attend it than can be accommodated, the local authority wishes to give priority to members of the same family. This sounds fair and reasonable.

27. In my experience the rationale for giving priority to siblings is to make life simpler for children and their parents. This is because travel arrangements and communications with the school are easier if young children from the same family are able to attend the same school. In addition, family, educational and community links are aided through the continuing contact of children, their families and the school concerned. Conversely, if children attend different schools then both the beginning and the end of the school day can become complicated as children have to go to different locations, school terms can be different, events such as sports days held on the same day and so on. Keeping families together, through siblings attending the same school, therefore has some importance. Some element of sibling priority is extremely common for primary schools.

28. However, if there is a priority for all siblings (after the first priority for looked after and previously looked after children) then children without siblings at a preferred school may not be able to gain admission to it, even if they live very close to it, because those with siblings living perhaps considerably further away are admitted instead. This balancing of the needs of different groups is one with which many admission authorities have to contend and they have the right to come to different conclusions.

29. The local authority explained that the purpose of the qualification to the sibling criterion was to make it more likely that those they described as local children could be admitted to their local school. Otherwise families which moved further from a school retained priority ahead of others who lived closer to the school. In addition, the local authority said that by prioritising local children there could be fewer car journeys made which would have a positive effect on reducing air pollution.

30. I will consider the point on air pollution first. The Code has no requirements on this matter but there are clear community and environmental interests. The objector said that if a family had children at two different schools, as was the case for his family because his younger child could not benefit from the sibling priority, then there was an increase in travel to school journeys, not a decrease. I asked the local authority to comment further. The local authority repeated its commitment to sustainable forms of travel and said, *“Restricting the distance for siblings that have moved to an address greater than 1 mile allows for an increased number of children living closer to a school to be considered under distance criterion. The condition aims to prevent car journeys for children and families that have no option but to travel where in the past they were unable to gain a place at a school that was local to their home address.”* The implication is that more families will be able to attend schools close to their home, and so reduce the amount of travelling, as the places have not been filled by those children with siblings at the school who have moved some distance away after the older child was admitted.

31. I have taken the potential effect on car journeys into account and I am not convinced that there would be a significant reduction in them as a result of the removal of the priority for children with siblings at the school if the family were to move more than a mile from the school. However, the effect or otherwise on car journeys does not mean that the arrangements are not compliant with the Code.

32. The core of the local authority’s explanation for this qualification to the priority for siblings of those already attending a school was to give a higher priority to those children who lived nearer to the school than those who had chosen to move over one mile away and the objector felt that this was unfair. I therefore wanted to understand the effect in order to assess any unfairness. I was able to compare admissions in 2019 (when the qualification was not used) and allocations for 2020 when it was.

33. The local authority told me, *“For the 2019 intake there were a total of 83 children living at a distance greater than a mile offered a place at an oversubscribed school under sibling criterion, at an average distance of 2.221 miles. The furthest distance offered under sibling criterion in 2019 was 15.4 miles.”* I note that these 83 children living at a distance of more than a mile from the school would only be affected by the qualification of the sibling priority if they moved more than a mile from the school. If they lived more than one mile and did not move then the family would retain the sibling priority. By contrast, in 2020 45 children whose families had moved to an address more than a mile from the school which an older sibling attended had been refused a place because of the introduction of the qualification. It is not possible to make an exact comparison but this is likely to mean that 45 other children who did not have a sibling at the school but lived closer would have been allocated a place instead.

34. The 45 children who had ‘lost’ their sibling priority included 28 Redbridge residents. The local authority told me that *“Of the 28 on-time Redbridge applicants, 25 were offered a place at a lower preference/alternative school...closer to their home address, 20 within a mile.”* Of course, the local authority would not have similar information on those who had



moved out of its area. The information on the 28 children would appear to support the local authority's intention that as a result of this qualification to the sibling criterion that more children were allocated places closer to their homes. However, five of the 28 children had to travel more than a mile and not be admitted to the same school as their sibling. Three children were not offered a place at a school closer to their home address than the school their sibling attended. These eight families seem to have been disadvantaged by the change to the criteria and the outcomes for them have not assisted the local authority in meeting its objectives.

35. That said, generally the evidence, including the distances travelled by siblings in 2019, indicates that an unqualified priority for siblings of those at the school would lead to families who had moved and now lived more than a mile away travelling, on average, over two miles to school while some children might not be able to secure a place at a preferred school close to their homes as a result. It would therefore appear on balance that the introduction of this qualification to the priority for siblings is achieving its purpose in supporting children living closer to a school to have priority over those living further away.

36. I note that there is a slightly different pattern for the three junior schools that admit children to Y3. All three junior schools have a linked infant school and the local authority told me that normally the children attending the relevant infant school are admitted to the linked junior school. For the rest of this determination I will concentrate on admissions to reception year which are the majority of the admissions affected by the arrangements.

37. The demand for places at a particular school will vary over time. This will be caused partly because of changes to the numbers of children living in an area. It will also be affected by the overall popularity of a school which can be affected by matters such as Ofsted reports and parents' views of a school. In addition, the number of places available at a school can rise or fall. As noted above, for example, there are 60 fewer places for admission in 2020 than there were in 2019 in the local authority area.

38. I asked the local authority what would happen if a family with a child at a school moved nearer to the school but were still more than a mile away. I was told, *"past trends indicate that if an offer was made based on the address listed on the application of the first child, any subsequent child would receive an offer at the same school under the lower distance criterion. This can fluctuate year on year, but schools that are undersubscribed (sic) generally follow a pattern. This will also depend on the total number of applications received, high birth years tend to offer to a lower distance."*

39. My understanding is that what the local authority is saying is that if a child was admitted on the distance priority, then his or her younger siblings were likely to be admitted too even without the priority for siblings if the new home were closer than the old home. This argument has some force, although the chances will be affected by fluctuations in the demand for school places. When parents state their preferences for schools for their children, the chances of being offered a place will depend, not only on the admission arrangements themselves, but also on who else is applying at that time. As discussed above, demand for places at any particular school will vary. For example, a child might be

offered a place in one year when they live a mile from the school who would not have been offered a place in another year because there were more children who lived closer who put the school as a preference. It seems to me that such variations from year to year are the main reason why sibling priority is included in admission arrangements in the first place.

40. In this case I was curious about the local authority's reasoning in choosing one mile as the distance beyond which the priority for siblings would not apply if the family were to move. The local authority told me that it had reflected on the arrangements made by two other local authorities and had decided that one mile was sufficient and appropriate to give flexibility to local families. In this context, a distance of one mile means that families know that their child's sibling or siblings will have priority if their new home is within one mile of the school. I note that no protection was given in the arrangements to those with siblings already at the primary schools before the criterion was adjusted. The Code does not require an admission authority to do so but it is not uncommon for this to occur.

41. The local authority has sought to balance the needs of siblings of existing pupils to attend the same school as the sibling in circumstances where a family has moved with the needs of other children to attend a school close to their home – perhaps first born or only children or those with much older siblings. I am not convinced that it has wholly succeeded in doing so in a way which is fair and thus Code compliant. I cannot accept that it is fair to limit the sibling priority to those whose new home is within a mile of the school even if the new home is closer to the school than the old home. I appreciate the local authority's arguments that if a child is admitted on distance then so will be the sibling, but this is undermined by its use of sibling priority in the first place. I have concluded that it is not fair to remove sibling priority from those who move closer to a school even if they are still more than one mile from the school. I realise that this may only affect a few children but the arrangements must be fair.

42. I find it fair and reasonable that the local authority determined to prioritise the needs of children who live closest to a school above those who move to live some distance away – even if they have a sibling at the school. I do not find it reasonable to remove the sibling priority for those who move closer to the school but are still more than one mile from the school. I therefore partially uphold the objection.

## Summary of Findings

43. The local authority wishes to prioritise places for local children over those who live some distance from the school and this is fair and reasonable. The arrangements provide a priority for siblings of those already attending a school but this does not apply if the family moves more than one mile from the school. To a degree this is justifiable as otherwise children living close to the school may not be admitted as children with siblings at the school would have priority however far they lived from the school in question. However, it is not reasonable that those who move closer to the school but remain over one mile from the relevant school lose the priority.

44. The necessary adjustments to the arrangements required to balance the needs of siblings against those of local children may take time and so I will allow sufficient time for this to take place by requiring the arrangements to be revised in line with this determination by 28 February 2021.

45. There are other matters as described above which do not comply with the Code. The Code requires the local authority to revise the arrangements to address these matters and this should occur within two months of the date of this determination.

## **Determination**

46. 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 2021 determined by the London Borough of Redbridge for the community and voluntary controlled primary schools in its area.

47. 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.

48. 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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised with regards to the matters raised under section 88I within two months of the date of this determination and the matters relating to the objection by 28 February 2021.

Dated: 3 July 2020

Signed:

Schools Adjudicator: Deborah Pritchard