Office of the Schools Adjudicator

Determination

Case reference: **REF3883**

Admission authority: **Trafford Council**

Date of decision: **13 October 2021**

Determination

I have considered the admission arrangements for the schools for which Trafford Council (the LA) is the admission authority in accordance with section 88I(5) of the School Standards and Framework Act 1998 (the Act) and find there are 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 by 31 October 2021.

Jurisdiction

1. These arrangements were determined under section 88C of the Act by the LA, which is the admission authority for each of the maintained community and voluntary controlled primary schools in its area and for Lostock High School which is a secondary school (the schools). I have considered the admission arrangements for the schools in accordance with my jurisdiction under section 88I(5) of the School Standards and Framework Act 1998 (the Act) and find there are matters which do not conform with the requirements relating to admission arrangements.

Procedure

2. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

3. The documents I have considered in reaching my decision include:

a. a copy of the determined arrangements for the schools

b. the LA's response to my Jurisdiction and Further Information paper dated 2 August 2021.

Background

4. The LA area has nineteen secondary schools, of these thirteen are academies, three are foundation schools, one is a Free School (a kind of academy), and one is a voluntary aided school. Lostock High School is a community school and the only secondary school where Trafford is the admission authority. The other maintained schools are all primary schools. The LA adopts the same oversubscription criteria for all its community and voluntary controlled schools, that is, all the schools for which it is the admission authority.

Consideration of Case

5. In the course of dealing with an objection to the admission arrangements determined by a different admission authority, for Tyntesfield Primary School, an academy (case number ADA3724, published in 2020) I raised some concerns regarding the LA's provisions (as they stood then) relating to the home address of applicants. These provisions, as they appear in the LA's determined admission arrangements for 2022, have again come to my attention in dealing with an objection relating to another academy within the Trafford area.

6. The relevant provisions of the admission arrangements for the schools read:

> **"Home address**
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> The criteria used by Trafford in determining admissions to community and voluntary controlled schools refer, in every instance, to the child's home address. This means the address where the child normally and permanently lives, not the address of any child carer, grandparent or other relative. It is always assumed that the correct factual information will be provided when an application for a school place is submitted. However, proof of the child's residency may be requested so that the application can be considered correctly alongside other applicants.
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> In the case of parents who are separated, the application will also be considered from the address where the child normally and permanently lives, even though the child may regularly spend some time at another address. Where it is claimed that the residency is shared equally between two addresses, the applicant will be required to submit documentary evidence to support the claim.
>
> If it is determined that the child does live at both residences equally, the following criteria will be applied:

1. Where the child lives equally at two residences in the catchment area, the child will be considered as living in the catchment area.

2. Where the child lives equally at two residences and one is outside the catchment area, the child will be considered as living outside the catchment area.

3. In the event that there are more applications than places available, within either category, the average of the distances of the two residences will be used for the purposes of determining the level of priority within each category."

8. I was concerned that these provisions do not comply with paragraphs 14 of the School Admissions Code (the Code) in that they may be unclear and/or unfair as follows:

1. "the address where the child normally and permanently lives". There is no definition of what is meant by "where the child normally and permanently lives". As further detail is only given for cases where the child lives equally at two residences, it seems to be assumed that "where the child normally and permanently lives" will, in all other cases, be readily ascertained.

2. With regard to the provisions which apply when "it is determined that the child does live at both residences equally":

2.1. the second bullet point: "where the child lives equally at two residences and one is outside the catchment area, the child will be considered as living outside the catchment area". I am not clear why this should be the case in every instance.

2.2. The third bullet point: "In the event that there are more applications than places available, within either category, the average of the distances of the two residences will be used for the purposes of determining the level of priority within each category". This would produce a point on a map which does not correspond to any address at which the child actually lives.

9. The LA responded by email dated 23 August 2021. The paper referred to "each of the maintained community and voluntary controlled primary schools in its area and for Lostock High School" not solely to Lostock High School as the LA say in their response.

10. The LA did not address my point regarding "the address where the child normally and permanently lives". I find that this requires further clarification. For example, what is the position if a child lives at two addresses but is at one for more nights during the week? I find that the wording is not clear, and so does not comply with the provisions of paragraph 14 of the Code.

11. Much of the response is concerned with fraudulent or misleading applications where the address given may not be the address "where the child normally and permanently lives". I accept that this is a national issue and that it may be a particular problem in Trafford. I also

accept that the LA operates a robust process to check addresses where it has reason to consider that the address given may not be accurate. The LA has every right to do this and the admission arrangements state that enquiries may be made in such circumstances. That is sufficient and the admission arrangements do not need to set out the detail of this process or what evidence may be required. As the LA says this may vary from one individual case to another.

12. The LA also states that shared residency usually only arises when a parent or carer has difficulty in furnishing proof that a child is resident at the address (usually within the catchment area of the desired school) stated in the application form. I also accept that that may be the case.

13. The LA states that "our checks and processes are robust", which is to be applauded. Presumably in the majority of cases the LA makes a finding of fact, on the balance of probabilities, as to whether a claimed address is or is not the address "where the child normally and permanently lives" and then processes the application on that basis. I also presume, although this should be set out clearly in the admission arrangements, that where a child lives for a greater part of the week at one address, then that address is used to process the application.

14. If parents claim that a child resides equally at two addresses, then I also presume that the LA's robust process will allow it to make a finding as to whether that is or is not the case. If it finds that the child in fact "normally and permanently lives" at one address and not the other, then it will process the application from that address. Of course, in any of the above scenarios where a place at a desired school is refused the parent or carer can challenge the findings in relation to address on appeal. That process, however, is outside my remit.

15. As the arrangements state, the provision identified above will only apply "If it is determined that the child does live at both residences equally". That is where, in what may be a small number of cases, the LA has decided that the child does, genuinely, "live at both residences equally". In other cases it will have determined a single address as "the address where the child normally and permanently lives" and can proceed on that basis.

16. Where "it is determined that the child does live at both residences equally". the question simply of whether the child "normally and permanently lives" within catchment is straightforward if both addresses are within catchment. Clearly, as the arrangements state, the child is to be treated as resident within catchment.

17. The difficulty arises where one address is within catchment and the other is outside. The LA states in its response "To give a child that sometimes lives in a catchment area, priority over a child that always lives in the catchment area, is fundamentally unfair". There may be some merit in that view, but I note that if all admission authorities applied that test then such a child would never live in the catchment area of any school. I also note that where a child lives at two addresses, but not equally, say four nights per week at one and three nights at the other, and the greater number is at an in-catchment address, then I

presume the child would be treated as resident within the catchment area although she or he only lives there “sometimes”. The way that the admission arrangements are set out means that it is only where a child lives at two addresses equally that this perceived unfairness is addressed.

18. The LA also state “It is likely the case that the criterion is so rarely used because parents have usually agreed, between themselves, where the application should be made from and if it is the case that residency is genuinely shared then each parent will likely also be able to provide any evidence that the child is resident at either one of the addresses” and “the solution lies with the separated parents who can choose where the application is made from, so long as they can demonstrate that the child actually lives there”.

19. I take this to mean that where a child resides at more than one address, usually because the parents are separated, then provided the parents only list one address in their application and can prove residence at that address then that address will be accepted.

20. It is only where the parents or carer tell the LA that residence is shared equally (or this comes to light in some other way), and only when the LA, following its robust checks and processes, has “determined that the child does live at both residences equally” that the provision I have queried will be applied. I wish to emphasise that where the LA find that the claimed equally shared residence is fraudulent or misleading, it may conclude that one or other address is correct and to process the application on the basis of whichever address it finds to be genuine.

21. The wording creates a position which disadvantages families where the LA has “determined that the child does live at both residences equally” but not families where in fact the child does live at two addresses equally, but the LA has accepted the address given and has not so determined. I find that the provision for deciding on which address to use where it has been “determined that the child does live at both residences equally” is not fair because the address is then deemed to be out of catchment when one address is in catchment. I also find it unfair that a point between the two addresses is taken to be the correct address for measuring distance from home to school when it is a point on the map which the child does not live at all. Consequently, I find that this provision does not comply with the provisions of paragraph 14 of the Code.

22. It is outside my remit to advise on what wording would be appropriate in the LA’s admission arrangements. However, I will give an illustration of what seems to me would be a fair way to deal with this issue. Where the LA considers that a child primarily lives at one address, perhaps because the proof of residence at that address is robust but the proof in relation to another claimed address is not, then it can make a finding of fact that the child lives at that address and proceed accordingly. Where, in rare cases, the LA has “determined that the child does live at both residences equally” then it could allow the parents or carers to decide which address they wish to have used for the application. This would only reflect the actual position described by the LA in its response “parents have usually agreed, between themselves, where the application should be made from and if it is the case that residency is genuinely shared then each parent will likely also be able to

provide any evidence that the child is resident at either one of the addresses". As stated above this suggestion is made only in the hope that it may assist the LA, it is for the LA to decide how to address my findings.

Determination

23. I have considered the admission arrangements for the schools for which Trafford Council (the LA) is the admission authority in accordance with section 88I(5) of the School Standards and Framework Act 1998 (the Act) and find there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

24. 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 by 31 October 2021.

Dated: 13 October 2021

Signed:

Schools Adjudicator: Tom Brooke