



Office of
the Schools
Adjudicator

Determination

Case reference: ADA4071

Objector: An individual

Admission authority: Connect Schools Academy Trust

Date of decision: 22 August 2022

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 2023 determined by Connect Schools Academy Trust for Raglan Primary School, Bromley.

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 within three months of this 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 person, (the objector), about the admission arrangements (the arrangements) for Raglan Primary School (the school), a non-selective academy primary school for boys and girls aged 2 – 11 years for September 2023. The objection is to the fact that, although the arrangements afford priority to the siblings of children attending the school, no such priority is afforded to the siblings of pupils who attend a specialist language and communication unit (SLCU) attached to the school.
2. The local authority (LA) for the area in which the school is located is the London Borough of Bromley. The LA is a party to this objection. Other parties to the objection are Connect School Trust (the trust), the governing board of the school and the objector.

Jurisdiction

3. The terms of the Academy agreement between the multi-academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust, which is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 5 May 2022. 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. a copy of the minutes of the meeting of the trust at which the arrangements were determined;
- b. a copy of the determined arrangements, which include a Supplementary Information Form;
- c. the objector's form of objection dated 5 May 2022 and supporting documents;
- d. the school's response to the objection; and
- e. information provided by the LA at my request.

The Objection

6. The objector has submitted a long and detailed objection. Rather than simply summarise the points made, I have also taken the unusual step of appending the objection to this determination. All of the substantive alleged breaches are linked to one single point, namely that the arrangements for admission to the school give priority to the siblings of children who attend the school but not to the siblings of children who are based in the SLCU. Some of the alleged breaches of the Code relate to the requirement which stipulates that admission arrangements must comply with all relevant legislation, including equalities legislation. The objector cites the Equality Act 2010 and the Data Protection Act 2018 and the General Data Protection Regulation (GDPR) as relevant legislation. The objector claims that:

- a. The oversubscription criterion in question (namely sibling priority) is unreasonable, unclear and is neither procedurally fair nor objective. It operates to discriminate on the basis of disability. Requesting sibling details and processing those details is said to be in breach of the GDPR and the confidentiality requirements of an EHCP set out

in The Special Educational Needs and Disability Regulations 2014. (Paragraphs 1.8, 1.9 and 14 of the Code).

- b. The oversubscription criterion disadvantages unfairly, either directly or indirectly, a child with a disability or special educational needs. It creates two classes of sibling (those who are and those who are not based in the SCLU) which has the effect of treating some disabled children and their families in a less favourable manner. The siblings of applicants with EHCPs naming the school as appropriate educational provision but who are not admitted for the purposes of a specialist placement to the SCLU are 'counted' for the purposes of the school's Published Admission Number (PAN) and their siblings are given priority for admission as siblings. According to the objector, this means that some children who are disabled and/or members of their families are disadvantaged unfairly when compared to those who are not disabled (Paragraph 14 of the Code).
- c. The meaning of the term 'sibling' is not defined with sufficient clarity (Paragraph 1.11 of the Code). The objector also states that the Code does not include permission to have different classes of sibling defined within a set of admission arrangements, and that the purposes for which a sibling's details are required to be submitted is not made clear. He says that different and inconsistent terminology is used. In his view, the term 'sibling' should be defined alongside the definition of 'parent'.
- d. The arrangements seek and/or use of information about parents' or a child's disabilities, special educational needs, or medical condition (Paragraph 2.4 of the Code).
- e. Additional points. The objector has raised multiple additional points. These include, for example, a claim that the admission authority's assertions regarding inclusion and equality are "hollow"; that the admission authority has not taken the opportunity to draw attention to the fact that they treat some children with EHCPs differently to other children with EHCPs; has not drawn attention to a hidden adverse consequence of having a child in the SLCU; is attempting to circumvent its obligations and uses inconsistent terminology.

This is not a comprehensive list. The objector also raises points of clarity. I do not propose to address every point raised by the objector. It is not for me to comment upon whether statements in the arrangements are 'hollow'. In my view, the highlighting of such an extensive number of points serves to detract from the central and important issues which the objector has raised. Arguably any text may be improved with oversight, and the school may wish to consider the clarity and consistency of arrangements in light of the objector's observations and take this opportunity to make revisions. Ironically, these admission arrangements are one of the clearer versions I have read over the years, therefore I will not impose this as a general requirement. There are specific aspects of the arrangements which I have found to be unclear.

Background

7. The school is a primary school for boys and girls aged 2 – 11. It became an academy in September 2013. The admission authority is Connect Schools Academy Trust, which is a multi-academy trust comprising six schools all located in Kent. The school's PAN is 60. In addition – and central to this case – it provides for up to an additional 30 children in total across all year groups in a Specialist Resource Unit who have EHCPs relating to speech and language disorders. I have set out below the sections in the admission arrangements which are relevant to the objection.

3 Inclusivity and Equality

3.1 The School is fully inclusive and welcome applications for the admission of children with special educational needs (SEN), physical, mental or behavioural disabilities and other protected characteristics defined by the Equality Act 2010. The School's admission arrangements are determined and implemented with its equality duties in mind, including the public sector equality duty (PSED).

4 Children with an Education Health and Care Plan (EHC plan)

4.1 Children with an EHC plan are admitted to school under separate statutory procedures managed by their home Local Authority, not under this policy.

4.2 Parents of children with an EHC plan who would like their child to have a place at the School must therefore discuss this with their home Local Authority so that they can propose to name the School in the child's EHC plan and consult the School on suitability.

4.3 Where a Local Authority names the School in a child's EHC plan, the child must be admitted. Where this happens in the normal admission round (i.e. entry to Reception Year in September), these children will be allocated places within the published admission number (PAN) first, reducing the number available for other children. At all other times, children with an EHC plan naming the School will be admitted even where this means the PAN will be exceeded.

4.4 The School has a Specialist Resource Provision (SRP) for up to 30 pupils with speech and language disorders who have EHC plans naming the School¹. All of these places are commissioned by London Borough of Bromley, and their Special Educational Needs Placement Panel manages the statutory process for allocation of places at the SRP. These places are in addition to the PAN.

5 Published Admission Number (PAN)

¹ I have referred to this as the SCLU as opposed to SRP.

5.1 The PAN for Reception Year is 60 pupils.

6 Oversubscription Criteria for Reception Year

6.1 Where there are more applications than places available, the order in which places will be allocated will be as follows:

6.1.1 Looked after and previously looked after children ...

6.1.2 Children with an exceptional social and/or medical need, or who have a close family member with an exceptional social and/or medical need

6.1.3 Children with a sibling at Raglan Primary School

For inclusion in this category, the sibling must attend Raglan Primary School at the time of application/the application deadline and when the applicant child is admitted.

For the purpose of this category, a 'sibling' is a full sibling (sharing both parents), a half sibling (sharing one parent), an adopted sibling, a long-term foster sibling (i.e. not a temporary placement), a step sibling (one child's parent married to the other child's parent), or a child of their parent's cohabiting partner. In all cases, the sibling must live at the child's home address (as defined by this policy) as part of the same core family unit. For the avoidance of doubt, a child of a friend or extended family member (e.g. cousin) will not be a 'sibling' for this purpose, even if they live at the same address as the applicant child.

The siblings of children attending the Raglan speech and language provision are not treated as siblings when applying for places in the mainstream school. The School welcomes applications from parents with siblings of children in these classes but advises them to apply to their closest school. For inclusion in this category, parents must state the sibling's details in the application form.

6.14 Children of staff members employed at Raglan Primary School ...

6.1.5 All other children This category will include all children who do not fall into any of the oversubscription categories above.

10.3 Parents should carefully consider the oversubscription criteria stated above to determine whether other documentation must be submitted in support of the application. This documentation must be submitted to Bromley Council by the application deadline. If not, the child will be placed in the next oversubscription category that applies”.

Consideration of Case

8. Having read and considered the admission arrangements, my understanding is that, in effect, there are two separate procedures in operation. The procedure relating to applicants who do not have EHCPs is the procedure described in the published

arrangements. Admission to the school is by way of an application made on the Common Application Form (CAF) to the LA in what is generally referred to as the normal round or by way of an in-year application to the school. Where there are more applications than there are places available, the oversubscription criteria set out in the school's admission arrangements are applied in order to determine priority.

9. The SLCU is a separate resource to which applicants are not able to be admitted to under the published admission arrangements. Admission to the SCLU can only be by means of the SCLU being named in an EHCP. The number of available places in the SCLU is additional to the PAN for the school. It is also possible for a child's EHCP to name the school but not for the purpose of the child joining the SCLU. Such children who are admitted to the school by virtue of the fact of the school (as opposed to the SCLU) being named in their EHCP are not admitted under the provisions of the published arrangements, but 'count' for the purposes of the PAN because they will be educated within what I will call the mainstream part of the school (with additional support). Rightly or wrongly, had the school's arrangements not stated explicitly that children in the SCLU were not included as siblings for the purposes of determining priority to the mainstream part of the school, it would not have occurred to me that they would be so included. I too would have regarded the procedure for the admission of children with EHCPs to the SCLU as separate from, and different to admissions under the school's published admission arrangements, as indeed is the case for the admissions of children with EHCPs to the main part of the school.

10. On a first consideration of the objector's arguments, my initial question was whether the limitation in the siblings oversubscription disadvantaged anybody and, if so, who it disadvantages, and why. I also considered whether discrimination on the basis of a protected characteristic arose. The sibling of a child who is placed in the SCLU would not necessarily be a disabled child. Indeed, there is no reason to make this as an assumption. There are two legal requirements in play here, namely disability discrimination and unfairness. Relevant questions are: first, whether, although the disabled child in the SCLU is not the person being disadvantaged in terms of not being offered a place, he/she is nevertheless being discriminated against as a result of not having the benefit of being educated in the same school as his/her sibling; second, whether the applicant child is being discriminated against by virtue of association with his he/disabled sibling; and third, whether there is any unfair disadvantage to the applicant.

11. If the SCLU is considered to be part of the school, the question is whether an applicant with a non-disabled sibling attending (either part of) the school is treated differently to an applicant with a disabled sibling in the SCLU. The answer to this question is undoubtedly that there is a difference in treatment. If the SCLU is a different and separate entity, there would be no difference in treatment. An applicant who has a sibling with an EHCP in the main part of the school is given priority.

12. In terms of considering whether there is any less favourable treatment in the case of the child attending the SCLU in not having his/her sibling at the same school, the purpose of sibling priority is usually about the convenience for families and the interests of the children in question. If the SCLU is co-located with the 'main school' (which it is) and

children move between the SCLU and the school (which is the case), it is more difficult to establish a reasonable rationale for restricting sibling priority to the main part of the school.

13. The school has told me that the SCLU is intended to provide children with intensive speech and language intervention to enable them to return to mainstream. It is not intended that children will stay for their entire primary schooling. I looked on the school's website and found a helpful document entitled "Provision of SEND at Raglan Primary School". This describes the strategies employed by the school for helping children who have learning difficulties. It also describes the provision available to children in the SCLU. It says "The Speech and Language Provision at Raglan School has 30 places available for children across Bromley who have an EHCP recognising a severe or complex Developmental Language Disorder. The waiting list is held by Bromley Local Authority and placement is recommended by a Speech and Language Therapist in Bromley Healthcare."

14. In terms of the inter-relationship between the SCLU and the main part of the school, it is clear that children in the Unit are taught differently. However, the document also says:

"Children in the Language Provision join their mainstream peers for lunch times, playtimes and assemblies. In addition, some children join mainstream classes for other subjects, according to their personal strengths. The children are invited to attend school visits and residential school journeys with mainstream classes and they attend any appropriate workshops in school. Raglan Primary School Part of Connect Schools Academy Trust Children in the Language Provision have equal access to extra-curricular activities, with some children attending both Breakfast Club and After School Club. They are welcome to attend extra-curricular activities run by school staff and outside providers...

Enabling pupils with SEN to engage in activities available to those in the school who do not have SEND:

- All of our extra-curricular activities and school visits are available to all our pupils, including our breakfast and after-school clubs.
- All pupils are encouraged to go on the residential trips in Year 4 and in Year 6. Additional support is available as necessary for pupils with high level needs.
- All pupils are encouraged to take part in sports day/school plays/trips etc.
- Risk assessments consider the needs of all pupils and ensure any reasonable adjustments are made for pupils with SEND to allow for inclusion in all areas of school life".

15. The document also sets out the process for children moving on from the Unit:

"When assessment shows that a child has made significant progress with their language and is able to access a mainstream classroom with support, plans are made to work with the Local Authority to secure a mainstream placement and agree

an appropriate level of additional support on transition to the receiving school. A careful transition programme is arranged with an increased level of inclusion within a mainstream class at Raglan, sharing of information with the receiving school and induction visits to allow the transition to be successful for the family.”

16. The school has told me that most children in the SCLU are not placed there at Reception age. They attend their local mainstream school and then are transferred from there to the SCLU with the idea that they will transfer back to the same mainstream school when they are considered able to manage in a mainstream class environment. The rationale for not giving priority to the siblings of children in the SCLU under the admissions procedure for entry to the main school is that children in the SCLU are able to transfer back to their mainstream school without impacting on any siblings in the family who do not require the SCLU provision. The benefit for the siblings of children attending the SCLU is said to be that, when their brother/sister leaves the SCLU provision to return to their mainstream school, their own education will not be affected or impacted by this move.

17. I am told that the SCLU takes children from across the London Borough of Bromley and most of the children who attend the provision are provided with school transport. Siblings of children placed in the SCLU would not be entitled to this transport, which is said to add another complication for parents as it means that siblings could be travelling large distances across the Bromley Borough, without transport provision, to attend the same school as their sibling in the SCLU.

“The Trust understands that it is not easy for parents if they have a child in the provision and also children that attend other schools. However, the Raglan provision is intended to provide children with intensive speech and language intervention so that they are able to return to mainstream. It is not intended that children will stay for their entire primary schooling. The provision rarely has children start in Reception. Instead, most children attend their local mainstream school and then are transferred from there, with the idea that they will transfer back. Given the above, there would be complexities in allowing siblings of provision children to attend. There could be siblings joining at different times when a pupil has transferred to the provision. If the provision pupil returned to their local mainstream school, their sibling would need to decide whether to leave too, or remain. The Raglan provision takes children from across the borough and most of the children who attend the provision are provided with transport. Siblings would not be entitled to this transport”.

18. The school does not consider that the sibling oversubscription criteria discriminates by association. “Rather, the intention behind not allowing siblings of children attending the SCLU priority for admission to the mainstream school is to minimise travel disruption to siblings who may need to travel long distances to a school which their sibling may only attend for a short (or defined) period of time”.

19. I asked the LA for its views on the objection and for an explanation of the procedure for admissions to the SCLU. The LA’s view is that, from an admissions perspective, the SCLU is not a part of the mainstream school and children admitted to the provision are not

included in the PAN for the school. The LA says that the admission arrangements specify (under point 4.4) that the places at the specialist provision are in addition to the PAN of the mainstream school.

“The Council feels that the application of a sibling link for children in the specialist provision could create a disadvantage for local children in accessing the school. The council holds the view that schools should act as a hub for the local communities they serve. The same can be said for special schools in so far as local schools that can meet need will always be favoured above a school further away, but the primary focus must be on need, and it is the nature of special schools, and the specialist units co-located with mainstream schools that the levels of need determine the intake above all other factors. As placements at the provision in question are secured based purely on the child’s need, and the provision has been identified as the most appropriate provision to meet those needs, it can mean that a child allocated a place could live a considerable distance from the provision and have no connection to the area. With such a popular oversubscribed school, the application of a sibling link into the co-located mainstream school for younger siblings of children attending the specialist provision will displace a local child to the school who would ordinarily gain a place on their home to school distance”.

20. Displacement of a local child is an additional relevant factor in considering whether the sibling oversubscription criterion, as it stands, operates unfairly. In considering the question of fairness, it is necessary to balance any disadvantage arising to applicants from applying the criterion against any disadvantage to other applicants which would arise should an applicant who lives a substantial distance from the school be given a place instead of them. The LA recognises that one of the key rationales for applying a sibling link, is the challenge families face if young siblings are required to be in two different schools at the same time in addition to the emotional and familial aspects of joining the same school. However, the LA also makes the point that, as children attending the SCLU who do not live locally to the SCLU are provided with transport by the LA if eligible, the parent will not have to face the difficulties of needing to get children to different schools in different places.

21. The LA has explained that admission to the SCLU is only available to children with an EHCP, for whom it has been identified (in consultation with the Unit) that the provision is the most appropriate placement to meet the individual child’s needs. Children attending the SCLU will often attend for periods of support before returning to their original mainstream provision. The need to be in the SCLU is reviewed annually. The LA’s view is that it would be entirely inappropriate to give priority access to the mainstream provision through a sibling link that may not exist the following year. “Local children displaced from the mainstream provision to accommodate siblings of those attending the Unit will likely be displaced for the duration of their primary education”.

22. The LA says that it is currently transporting eight pupils to Raglan (I assume this means to the SCLU) on contracted transport and one family is receiving parental mileage. The home to school distances range from 3.2 miles to 7.7 miles. The furthest distance offered for reception 2022 was 0.288 miles (under the any other children criterion). The

furthest distance of a sibling was 1.676 miles. The LA says, therefore, that all children in the SCLU receiving transport live at least twice the distance of the furthest sibling offered this year and at least 3 miles further than the furthest distance under the final criterion. What the LA has not said is that, if there are 30 children in the SCLU, presumably 21 of them live sufficiently close to the school not to qualify for transport assistance. It has not supplied details of the distances from home to school of these children, who must live within three miles of the school and possibly considerably closer.

23. The LA suggests that parents of siblings of children attending the SCLU can appeal a decision of the admission authority not to offer a place, and the Independent Panel will take into account the individual circumstances of the family. It is the LA's view that creating a sibling priority link between the mainstream part of the school and the SCLU, which have entirely separate admission arrangements governed by different legislation is likely to undermine the fairness associated by each setting separately.

24. Additional comments made by the objector are that the SCLU "is most definitely part of the mainstream school". A single admissions policy applies to the school. The prospectus says:

"Raglan is a two-form entry co-educational academy primary with a specialist provision for children with speech and language disorders... The Speech and Language provision which is attached to the mainstream school has places for 30 pupils with EHC plans, ages 4-11 from all over the borough. The children from this provision integrate into mainstream classes where possible, with support from the provision staff. Admission to the provision is not through the usual admissions route but is decided by the Special Needs Group."

The SEND Information Report [[Provision-of-SEND-Information-Report.pdf](http://raglanprimaryschool.co.uk/Provision-of-SEND-Information-Report.pdf) (raglanprimaryschool.co.uk)] says:

"Children in the Language Provision join their mainstream peers for lunch times, playtimes and assemblies. In addition, some children join mainstream classes for other subjects, according to their personal strengths. The children are invited to attend school visits and residential school journeys with mainstream classes and they attend any appropriate workshops in school".

25. The objector does not feel it is acceptable to hold a view that compliance with the law on equality for disabled people disadvantages those who are not disabled. "Equality advantages us all. As a matter of public policy this view should hold no merit". He says that not all children attending the SCLU are eligible for transport assistance, and no information has been provided about how many children in the SCLU do receive such assistance. The objector queries how many children in the SCLU actually do return to their original mainstream school. I have not requested data on this for reasons which will become apparent when I present my conclusions.

26. In relation to the issue of potential displacement of local children by siblings of children in the SCLU who live further away, the objector makes the point that there may be children attending the school whose parents have re-located out of the "catchment area".

Their siblings will be eligible under the sibling oversubscription criterion and will similarly come to “displace” local children. The admission authority (he says) has not sought to disqualify such children. Such displaced children will remain eligible for in-year admissions or otherwise through the waiting list. The objector notes that the LA has not provided data to evidence how real an issue this is. The SCLU has only 30 places across all year groups, therefore any displacement is likely to be minimal. Local children are always displaced by Looked After and Previously Looked After Children.

27. The objector says: “It is particularly notable that the LA has not included any material reflection of parental rights and common sense:

- Parents have a statutory right to apply to any school they wish and to express an order of preference.
- Parents will include a number of factors in their thoughts, including school reputation, their assessment of the likelihood of gaining a place and the convenience or complications of getting there.
- Parents of children with EHCPs will be likely to apply a higher level of thought, particularly as they are managing the complex dynamics of a disabled child. They are quite capable of considering the dynamics of getting their children to school and it is patronising of the LA to deny opportunities as choice based on misplaced and biased assumptions.

Overall, it appears that the LA's justification of a discriminatory policy is based on one or more hypothetical positions that have not been supported by data. The LA also appear to justify the notion that a system, designed to outlaw discrimination of the disabled, can be disregarded if it somehow disadvantages those who are not disabled. That approach, I suggest is simply unjustifiable”.

28. Turning now to each of the aspects of the objection.

The oversubscription criterion in question (namely sibling priority) is unreasonable, unclear and is neither procedurally fair or objective. It operates to discriminate on the basis of disability. Requesting the information which is supposedly needed in order to administer the criterion is in breach of the GDPR, and the confidentiality requirements of an EHCP set out in The Special Educational Needs and Disability Regulations 2014. (Paragraphs 1.8, 1.9 and 14 of the Code).

29. Paragraph 1.8 of the Code states: “Oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities must ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs...”.

Paragraph 1.9 of the Code says that: “It is for admission authorities to formulate their arrangements but they must not... discriminate against or disadvantage disabled children, those with special educational needs, or those applying for admission outside their normal age group where an admission authority has agreed to this under paragraphs 2.18 to 2.20”.

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”.

30. I uphold this aspect of the objection. My view is that by not affording siblings of children attending the SCLU the same level of priority as that afforded to siblings who attend the mainstream facility, the admission authority is discriminating against both the child in the SCLU on the basis of his/her disability and the applicant sibling due to his/her association with a disabled person. The trust does not dispute that children attending the SCLU fall within the definition of disabled in the Equality Act 2010, and that their applicant siblings are treated differently insofar as they are not afforded a priority they would otherwise have as a sibling if their sibling were not disabled. A disability means a physical or a mental condition which has a substantial and long-term impact upon a person’s ability to do normal day to day activities. Attending the SCLU is synonymous with being disabled because children are not admitted to the Unit who do not meet the definition.

31. Not only are the applicant siblings in question disadvantaged as compared to applicants whose siblings are not disabled, they may well also be disadvantaged as compared to applicants whose siblings have EHCPs and fall within the definition of disabled but who attend the mainstream part of the school. These applicants are afforded priority as siblings. My view is that failure to give sibling priority to applicants whose sibling attends the SCLU amounts to direct discrimination to an applicant sibling because this is worse treatment which arises directly as a result of association with a disabled person. The treatment cannot be justified. It also my view that the disabled child attending the SCLU is also disadvantaged by this treatment in not being unable to attend the same educational setting as his/her sibling.

32. The trust and the LA have argued that there is no benefit in giving priority to siblings of children in the SCLU (and they are therefore not disadvantaged) because, effectively, all this would provide is potentially a disrupted education and a long journey to school. The disruption is said to arise because there is a prospect of the sibling in the SCLU being moved back to his/her original mainstream primary school. The trust argues that placements in the SCLU are always intended to be temporary. The objector suggests that, given the way that the system operates and the need for review of the EHCP in order to change a placement, a return to the original mainstream school is unlikely to happen quickly.

33. Whilst I fully understand the arguments made by the trust and the LA, I do not agree with those arguments. A parent whose child is placed in the SCLU and who has another child of primary school age faces the prospect of having two children at two different schools. The parent is not obliged to take steps to try to secure a place for the non-disabled sibling at Raglan. He/she will make a judgment about what is best for the family. The parent may decide that it is best for both children to attend different schools. There will be many factors involved in making the decision – the distance between the schools, the transport

logistics and the parent's own circumstances, but also the relationship between the two children and whether they provide mutual support.

34. I am in sympathy with the argument that the SCLU and the mainstream school are separate in terms of their admission arrangements, but I find it difficult to accept that they operate effectively as two separate schools, particularly since the objective of the SCLU is reintegration into mainstream. Above all, children in the mainstream school have a realistic prospect of being educated on the same site as their siblings, whereas children in the SCLU and their siblings may not have such a realistic prospect because the applicant sibling is not given priority as a sibling. If the school admitted up to the PAN on the basis of the first three oversubscription criteria, local children would also not be offered places because all siblings of children in the SCLU 'lose' sibling priority regardless of where they live. At least two thirds of children do not qualify for transport assistance and may live in close proximity to the school. It cannot be right that these children 'lose' sibling priority. Some may live closer to the school than children who have qualified for sibling priority. Being educated on the same site may well be of benefit to both children, and depriving both the disabled child and the non-disabled child of this benefit amounts to treating each of them less favourably. This is discrimination against the disabled child and disability discrimination by association against the non-disabled child. I find that the sibling oversubscription criterion, as it stands, is unlawful and will need to be revised.

35. In light of this finding, I do not need to proceed to make a finding upon whether the oversubscription criterion in question is also unfair or unreasonable.

36. I do, however, need to make a finding upon the separate point of whether the information requested in order to administer any sibling oversubscription is compliant with the Code. The arrangements say: "For inclusion in this category, parents must state the sibling's details in the application form". The school has confirmed that the form referred to is the CAF. There is no requirement to complete a Supplementary Information Form in order to apply for sibling priority. The CAF is not part of the published school's published admission arrangements, and the adjudicator has no jurisdiction over which information is requested on the CAF. I note that the CAF does contain a statement as to how personal data are used.

37. However, the school's admission arrangements impose a requirement which is unclear contrary to the requirements of paragraph 14 of the Code. In the absence of such clarity, questions must arise as to whether the requirement imposed by the arrangements breaches the requirements of the Data Protection Act 2018 and the UKGDPR. The enforcement body for this legislation is the ICO, so the most I can do is determine whether, or not, the arrangements as they stand appear to require the lawful processing of personal data or not. Since parents provide their children's personal data by completing the CAF, there is an argument that any information is provided with their consent. However, since sibling details must be provided in order to claim priority by virtue of being a sibling, arguably parents do not have much of a choice.

38. The trust has said that the London Borough of Bromley is part of the Pan London e-admissions system. The application form requires parents to list their sibling's name in the form. Details required are the name, year group and date of birth. A list of applications claiming sibling priority which will include the sibling's name, address and date of birth are sent to the schools by the LA for checking prior to offers being issued. The schools check the authenticity of sibling applications and ensure that a sibling priority application has not been made for a Year 6 child who is due to leave the school at the point their sibling starts in Reception.

39. Admission authorities are able to process personal data lawfully without consent where such processing is necessary for the administration of statutory functions. I accept that the administration of admission arrangements is a statutory function, and that it is legitimate for the LA and the admission authority to be made aware of the sibling's name, address and date of birth in order to know whether to apply the oversubscription criterion or not. Parents complete the CAF which is sent to the local authority. The LA can then check with the school in question whether the sibling is on roll at the school and in which year group. To the extent that any personal data other than this is required and processed, this would be unnecessary and potentially unlawful. I uphold this aspect of the objection to the extent that I find the arrangements to be unclear as to which specific information must be provided and on which form. **The oversubscription criterion disadvantages unfairly, either directly or indirectly, a child with a disability or special educational needs. It creates two classes of sibling (those who are and those who are not based in the SCLU) which has the effect of treating some disabled children and their families in a less favourable manner. The siblings of applicants with EHCPs naming the school as appropriate educational provision but who are not admitted for the purposes of a specialist placement to the SCLU are 'counted' for the purposes of the school's PAN and their siblings are given priority for admission as siblings. Some children who are disabled and/or members of their families are disadvantaged when compared to those who are not disabled (Paragraph 14 of the Code).**

40. As explained above, I have found the siblings oversubscription criterion to be unlawful. Since it will need to be revised, I do not need to consider whether the criterion also operates unfairly.

The meaning of the term 'sibling' is not defined with sufficient clarity

41. Paragraph 1.11 of the Code 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). If an admission authority wishes to give some priority to siblings of former pupils, it must set out a clear and simple definition of such former pupils and how their siblings will be treated in the oversubscription criteria (bearing in mind the restrictions set out in paragraph 1.9 above)".

42. The arrangements define the term 'sibling' in the manner described in paragraph 1.11, and exclude from the definition "siblings attending Raglan speech and language

provision". The objector claims that it is unclear as to whether the term 'sibling' excludes any or all or a number of:

- Children with EHCPs who attend "the Raglan speech and language provision" on a full-time basis.
- Children with EHCPs who attend "the Raglan speech and language provision" on a part-time basis.
- Children with EHCPs who attend "the Raglan speech and language provision" simply for the purpose of receiving Speech and Language Therapy.
- Children with EHCPs who attend "the Raglan speech and language provision" and Raglan Primary School with reference to "the Raglan speech and language provision" is named in Section I of an EHCP.
- Children with EHCPs who attend "the Raglan speech and language provision" and Raglan Primary School is named in Section I but without reference to "the Raglan speech and language provision".
- Circumstances where there are more than one sibling on roll at Raglan Primary School and where one of them attends "the Raglan speech and language provision".

43. Since the arrangements do specify whether 'sibling' 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 they appear to comply to an extent with paragraph 1.11 of the Code. I had understood the definition of the siblings who are excluded from priority to mean siblings of children who have been admitted to the SCLU by virtue of the Unit having been named in their EHCP as appropriate provision (the rationale being that these children are admitted under a separate procedure), but I see that this is not what the arrangements actually say.

44. In addition to including the exemplars specifically mentioned in paragraph 1.11, there is a fundamental requirement that the definition of sibling be clear, and I have to agree with the objector that the words "siblings attending Raglan speech and language provision" are capable of including all of the children he lists, and that it is not possible to discern whether any or all of them are included or not. I therefore uphold this aspect of the objection to the extent that the wording is unclear.

45. Additionally, the objector claims that the Code does not include "permission" to have different classes of sibling defined within a set of admission arrangements, and that the purposes for which a sibling's details are required to be submitted is not made clear. Different and inconsistent terminology is used, he says. The term 'sibling' should be defined alongside the definition of 'parent'. My view is that admission authorities do not need permission to differentiate between different classes of sibling, provided this is lawful and operates fairly. The wording of paragraph 1.11 suggests that it would be open to an

admission authority to include, for example, step siblings or not provided this was fair and reasonable. In my view, an admission authority would struggle to justify excluding step siblings, but this does not mean that it could not be done. The starting point for any admission arrangements is that they are whatever the admission authority determines them to be provided they are lawful.

46. I agree with the objector that, because the arrangements do not specify which details must be provided and the purposes for which these details are collected and processed are not made clear, they fail to comply with the requirements of the Data Protection Act 2018 and the UKGDPR.

The arrangements seek and/or use information about parents' or a child's disabilities, special educational needs, or medical condition (Paragraph 2.4 c) of the Code).

47. Paragraph 2.4 c) of the Code states as follows: "In some cases, admission authorities will need to ask for supplementary information forms in order to process applications. If they do so, they must only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability. Places must be allocated on the basis of the oversubscription criteria only. An applicant must not be given additional priority solely on the basis of having completed a supplementary form. Admission authorities must not ask, or use supplementary forms that ask, for any of the information prohibited by paragraph 1.9 above or for: ...

- c) details about parents' or a child's disabilities, special educational needs, or medical conditions...

48. Again, since I have concluded that the requirement to provide the sibling's details will need to be revised, arguably I do not need to reach a conclusion about whether the arrangements are also in breach of paragraph 2.4 of the Code. However, it may be helpful for me to set out my views upon what may (or may not) comply with 2.4. In order to process an application based upon sibling priority, it is reasonable to ask parents to provide the name of the sibling attending the school and the year group so that the LA can check this with the admission authority. This process is also necessary to ensure that the details provided by the parent are correct and that places are allocated in accordance with the oversubscription criteria. Many schools operate verification processes because unfortunately there are examples of fraudulent applications. The school can check the roll. If the child at the school is attending the SCLU, presumably the school would advise the local authority that the applicant child is not entitled to priority because his/her sibling is in the SCLU.

49. If the school tells the LA that the applicant is not eligible for priority because his/her sibling is attending the SCLU, this would effectively tell the LA that the sibling named on the form is disabled, though not the details of the child's disabilities or special educational needs. The LA would have these details because it would have placed the child in the Unit. But the person processing the application would not be made aware of the details of the

child's disability. Currently, the details of the sibling attending the Unit are needed in order to process the application. Provided it is legitimate for the local authority and the school to be able to verify any application based upon sibling priority, it is legitimate to request the personal data necessary for this task. However, if priority is given to the siblings of children attending both the main school and the SCLU, it should be unnecessary for the school to specify whether the attending child is in one or the other.

Summary of Findings

50. I find that the admission arrangements for the school fail to comply with the Equality Act 2010 and the requirements of the Data Protection Act 1998 and the UKGDPR and will therefore need to be revised. The arrangements discriminate directly against disabled children attending the SCLU and by association their siblings. Because they are unclear about which details must be provided when claiming priority on the basis of the sibling oversubscription criteria and the definition of 'sibling' in the case of siblings attending the SCLU, they are also in breach of paragraph 14 of the Code. The arrangements fail to accurately prescribe the nature of the personal data which is to be processed or to explain the purposes for which the data are to be processed and are therefore in breach of the requirements in the Data Protection Act 1998 and the UKGDPR.

Determination

51. 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 2023 determined by Connect Schools Academy Trust for Raglan Primary School, Bromley.

52. 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 within three months of this determination.

Dated: 22 August 2022

Signed:

Schools Adjudicator: Dr Marisa Vallely