



Office of  
the Schools  
Adjudicator

## Determination

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| <b>Case reference:</b>      | <b>ADA4088</b>   |
| <b>Objector:</b>            | <b>An individual</b>                                   |
| <b>Admission authority:</b> | <b>The Governing Board of Roselands Primary School</b> |
| <b>Date of decision:</b>    | <b>23 September 2022</b>                               |

## Determination

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2023 determined by the governing board of Roselands Primary School for Roselands Primary School, Hertfordshire.**

## The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by an individual, (the objector), about the admission arrangements (the arrangements) for Roselands Primary School (the school, Roselands), a co-educational academy primary school for pupils aged 4 to 11. The objection is to the fact that there is no oversubscription criterion which gives priority to applicants based upon social and medical need.

2. The local authority (LA) for the area in which the school is located is Hertfordshire County Council. The LA is a party to this objection. Other parties to the objection are the Hoddesdon School Trust (the trust), the school's governing board, 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 on that basis by the school's governing board on behalf of the admission authority for the school under delegated authority. The

objector submitted his/her objection to these determined arrangements on 22 June 2022. This was after the statutory deadline for making objections to admission arrangements for September 2023, which was 15 May 2022.

4. The objector has asked to have his/her 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/her name and address to me. I am satisfied that the objection has been referred to me under section 88H of the Act and that it is within my jurisdiction to consider the points raised by the objector and the arrangements as a whole under section 88I of the Act.

## Procedure

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

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

- a. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 22 June 2022 and subsequent correspondence;
- d. the trust's response to the objection and subsequent comments;
- e. comments upon the objection and additional information provided by the LA;
- f. a map of the area identifying relevant schools;
- g. information available on the website of the school, LA, Equality and Human Rights Commission and the Department for Education;
- h. confirmation of when consultation on the arrangements last took place and details of the nature of the consultation.

## The Objection

7. The objection concerns the absence of an oversubscription criterion which affords priority based upon social and medical need.

## Other Matters

8. The arrangements having been brought to my attention, I was concerned that there were two other matters which do not appear to comply with the Code. First, the oversubscription criterion which gives priority to Looked After and Previously Looked After Children does not comply with paragraph 1.7, which states:

“All schools must have oversubscription criteria for each ‘relevant age group’ and the highest priority must be given, unless otherwise provided in this Code, to looked after children and all previously looked after children, including those children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted. Previously looked after children are children who were looked after but ceased to be so because they were adopted (or became subject to child arrangements order or special guardianship order). All references to previously looked after children in this Code mean such children who were adopted (or subject to child arrangements orders or special guardianship orders) immediately following having been looked after and those children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted”.

The arrangements do not give priority to children previously in state care outside of England, and will therefore need to be revised.

9. The arrangements do not contain the link to the “Find Your Nearest School” toolkit, available on the LA’s admissions webpages (see below), therefore it is not possible for a parent to look at them and understand which school is the applicant’s nearest school. Neither do they explain that the distance between home and school is measured using the LA’s measuring system. Paragraph 14 of the Code requires that admission arrangements must describe the criteria used to allocate places with sufficient clarity that parents are able to understand easily how places for the school in question will be allocated. This aspect of the arrangements does not comply with paragraph 14 and will need to be revised.

10. Paragraph 3.6 of the Code provides that “Once admission arrangements have been determined for a particular school year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Schools Adjudicator or any misprint in the admission arrangements”. The revisions I have referred to are necessary to give effect to mandatory requirements of the Code, therefore the arrangements may (and must) be varied under this paragraph.

11. As of 16 September 2023, the admission arrangements for September 2023 did not appear to have been published on the school’s website, which is a legal requirement. The deadline for this was 15 March 2022. The necessary revisions must be made, and the arrangements published on the school’s website without further delay.

## **Background**

12. The school is a coeducational academy primary school for pupils aged 4 to 11 years in the Hoddesdon area of Hertfordshire. It is part of the Hoddesdon Schools Trust, which comprises two other schools namely John Warner School, which is a secondary school, and The Cranbourne Primary School.

13. The school has a Published Admission Number (PAN) of 45. The oversubscription criteria can be summarised as:

- (a) Looked After and Previously Looked After Children;
- (b) Children of staff;
- (c) Siblings;
- (d) Children for whom the school is their nearest school;
- (e) Proximity of home address.

14. The LA has provided a list of the primary schools in the local planning area; their PANs; the number of allocations to each school; a map of the locations of these schools, and their addresses.

**PAN and Allocations ( National Allocation Day)**

| <b>Hoddesdon Primary Planning Area</b>        | <b>PAN</b> | <b>2020</b> | <b>2021</b> | <b>2022</b> |
|---|------------|-------------|-------------|-------------|
| Broxbourne CE Primary                         | 30         | 30          | 30          | 30          |
| Forres Primary School                         | 60         | 60          | 37          | 36          |
| Roselands Primary School                      | 45         | 45          | 45          | 45          |
| Sheredes Primary School & Nursery             | 60         | 60          | 60          | 60          |
| St Augustine's Catholic Primary School        | 30         | 30          | 27          | 31          |
| St Catherine's Hoddesdon VC CE Primary School | 60         | 60          | 38          | 60          |
| St Cross Catholic Primary School              | 30         | 30          | 28          | 30          |
| The Cranbourne Primary (Hoddesdon)            | 60         | 60          | 61          | 60          |
| Westfield Community Primary School            | 30         | 30          | 22          | 30          |
| Wormley C of E Primary School (VC)            | 60         | 60          | 60          | 60          |

15. The LA has adopted an oversubscription criterion which gives priority of the basis of social and medical need in respect of the schools for which it is the admission authority. The school formerly did have such an oversubscription criterion but consulted to remove it for admissions in 2019/20. This was because it was said to be problematic due to its subjectivity. The other local schools which are part of the same trust have all removed the oversubscription criterion in question, but I understand that most, or all, of the other primary

schools in the area have retained it. The LA advises all own admission authorities which have adopted admission arrangements based upon the LA's arrangements, in whole or part, to replicate the wording and definitions in the LA's arrangements. This is said to ensure consistency throughout the allocation process. Beyond that, and providing specific advice on the legal and technical aspects of admissions, the LA does not make recommendations to own admission authority schools about oversubscription criteria. The LA's view is that the school is not required to adopt an oversubscription criterion which gives priority based upon social or medical need.

16. For the sake of completeness, I have set out below the LA's arrangements in respect of priority for social and medical need. My reasons for so doing will later become apparent.

### **“Rule 2 – medical or social needs**

Children for whom it can be demonstrated that they have a particular medical or social need to go to the school.

All Hertfordshire schools can support children with a wide range of additional needs and are expected to accommodate severe medical needs.

An application made under Rule 2 should clearly demonstrate why the school applied for is the **only one** that can meet your child's need in a way that no other school can.

### **Evidence needed (Rule 2)**

Recent independent objective evidence, for example from a doctor, psychologist, social worker or other professional involved with your child.

Professional evidence that outlines exceptional family circumstances making clear why only one school can meet your child's needs.

If the requested school is not the nearest school to your child's home address, give specific reasons why closer schools will not meet your child's needs.

Evidence must relate specifically to the school being applied for under Rule 2.

A panel of officers will decide whether the evidence provided is enough to meet the requirements for this rule.

Examples of cases that **have been accepted** under Rule 2 include:

- children with an exceptional illness or disability (for example, restricted mobility) who can only reasonably attend one school
- where only one school is suitable due to child protection issues. We'll give priority to children whose education would be seriously affected if they did not go to a particular school

- exceptional cases relating to disability, where more than 1 school in the county can meet the child's specific needs, but a clear case has been made for the 'nearest school' with the relevant facilities, environment or location.

Examples of cases that **have not been accepted** under Rule 2 include:

- cases made around childminding arrangements, such as using a childminder that children are already familiar with who caters for children attending certain schools. Or childminding by family members who live close to a specific school. These cases weren't upheld because they're not exceptional. Many families rely on complex childminding arrangements
- cases made for children with specific learning or behavioural needs where the professional evidence submitted is not school specific.

All schools are able to support children with a wide variety of individual needs. If a child's individual needs warrant an Education, Health and Care (EHC) plan, the EHC plan will name the appropriate school

- medical cases where even though there is a severe illness, more than one school could accommodate the child's needs".

17. The LA has confirmed that the school's admission arrangements were consulted upon more recently in relation to the methodology for determining which school is the applicant's nearest school. Parents/carers can now access "nearest" school information via the online "Find Your Nearest School" toolkit, available on the HCC admissions webpages: [Find your nearest school | Hertfordshire County Council](#). The school has also adopted the LA's home-school measurement system. The LA considers that it would be helpful to parents if the school clarified this in their admission arrangements. I agree. This needs to be done without further delay and the arrangements published on the school's website as required by paragraph 1.50 of the Code.

18. I used the nearest school finder on the LA's website to find out the nearest primary school to the objector's home address. Although Roselands is only 1280.7 meters from the objector's home, it is the sixth nearest school. Other nearer schools are St Catherine's VC CE Primary (261.3m), Westfield Community (674.6m), St Augustine's Catholic Primary, Forres Primary and St Cross Catholic Primary.

19. The objection has been prompted by the objector's personal circumstances. I do not wish to disclose these in detail because I am concerned to protect the objector's privacy, although I have found it necessary to describe the effect of the symptoms, which I do later, because they have a bearing upon the objector's ability to take his/her child to and from school. Suffice to say, the objector has a disability, as does his/her child. The objector has a particular reason for wanting his/her child to attend this particular school, which is related to his/her disability and medical needs. The objector made an application to the school for admission in September 2022. The application was not successful.

20. The objector appealed the decision, however the Independent Appeal Panel (IAP) explained that they were unable to consider the objector's disability or the family circumstances as appeals for places in an infant class are limited in their consideration to the decisions taken by the school admissions authority. The Panel is not able to consider the individual circumstances of the appellant. The objector was informed that the appeal panel is there to rule on whether the school admission arrangements complied with the admissions code and had been applied properly, not to deal with cases which would fall under that the social/medical rule. The objector is hoping that her objection will be upheld, and that the admission authority will re-instate the social and medical need oversubscription criterion. If this were to be the case, the objector would re-apply for a place in Reception.

## Consideration of Case

21. The objector argues that the school's arrangements should be revised to include an oversubscription criterion which gives priority based upon social and medical need. He/she says that it is not simply for him/herself that the arrangements must be changed, it is for all cases where there is a need for such priority. "It might not be a statutory part of the school code but there's a legal obligation to the equality act and disability discrimination act". The objector considers that the trust gave no formal regard to its obligations under the EA before removing the oversubscription criterion in question. His/her view is that the trust is "paying lip service" to the EA. "The school's policy says: 'We cannot achieve equality for all by treating everyone the same' but that's what they have in prior correspondence admit they do".

22. The trust's reason for the removal of the oversubscription criterion is that it is said to be too subjective. The objector argues that this is effectively a self-confession that everyone is treated the same, and therefore disabled persons are not being treated equally. The objector argues that it would be a reasonable adjustment in light of the reason given for the removal of the oversubscription criterion and lack of consideration to its impact for the trust to reinstate the oversubscription criterion for all, as its removal has created barriers to pupils from certain backgrounds and characteristics. The objector says that he/she has provided evidence of his/her disability and the barrier which this has created for his/her child's education. "The trust's approach of treating everyone the same has left us with no ability to make a case so I cannot see how they can claim that their decision is not one that discriminates. I can say as disabled person that is exactly what it has done".

23. The function of the Schools Adjudicator is to determine whether admission arrangements comply with the Code and other relevant legislation. This objection raises questions of unfairness and disability discrimination, both of which are unlawful. I will consider each in turn, however I must first say something about subjectivity.

### Subjectivity

24. Paragraph 14 of the Code provides that "In drawing up their admission arrangements, admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear, and objective". Clearly there is a

tension between exercising discretion to give priority based upon individual circumstances (which by definition are subjective) and the requirement for oversubscription criteria to be objective. The LA has sensibly set parameters around the decision-making process it has adopted in its arrangements and ensured that decisions are not made by an individual. It is foreseeable, however, that the adoption of an oversubscription criterion which involved the exercise of discretion might create a perception of unfairness on the part of applicants who are judged not to fall within it in a way that simply will not arise under most other oversubscription criteria. I can, therefore, understand why, if the operation of such a criterion had caused problems in this way, an admission authority might decide to dispense with it.

25. The objector has explained that his/her child has had the same childminder since he/she was 11 months old and has been with the same group of children who move on to Roselands Primary School. The childminder is also the objector's carer. The objector says that it is because the childminder/carer is tied to the school that the objector is "restricted in school choice". Her child has no siblings but has formed social bonds with this group of children, including one who has been admitted to the school this September.

26. The trust, in response to the objection, says that, even if it had retained the oversubscription criterion which was formerly in use giving priority on the basis of social and medical need, the objector's child would not have qualified for priority on this basis because the need for the child to attend Roselands arises from the objector's childminding arrangements. The school's oversubscription criterion was operated along the lines of the LA's oversubscription criterion, which makes clear explicitly that childminding arrangements do not qualify as a social or medical need.

### Unfair disadvantage

27. I can deal with this point shortly. Paragraph 1.9 of the Code provides that (subject to some specified limitations), it is for admission authorities to formulate their admission arrangements. Paragraph 1.6 requires that: "The admission authority for the school must set out in their arrangements the criteria against which places will be allocated at the school when there are more applications than places and the order in which the criteria will be applied". Whilst this paragraph requires the adoption of oversubscription criteria, what it does not do is prescribe that admission authorities must adopt particular oversubscription criteria. The Code sets out a number of examples of permissible oversubscription criteria, and requirements relating to such criteria which must be adopted to ensure that the criteria operate lawfully.

28. Paragraph 1.16 of the Code refers to the situation where an admission authority has determined to give priority based upon social and medical need. This says: "If admission authorities decide to use social and medical need as an oversubscription criterion, they must set out in their arrangements how they will define this need and give clear details about what supporting evidence will be required (e.g. a letter from a doctor or social worker) and then make consistent decisions based on the evidence provided". Paragraph 1.16 does not require an admission authority to adopt an oversubscription criterion based upon social



and medical need. It would have been open to the legislature to impose this as a requirement. Indeed there is a mandatory requirement in the Code in relation to looked after and previously looked after children who must be given highest priority. However an admission authority may choose whether to give priority on the basis of social and medical need and many admission authorities choose not to adopt this as an oversubscription criterion.

29. Paragraph 1.8 of the Code requires that 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. Appendix 1 of the Code provides a list of “relevant legislation” and includes the Equality Act 2010 (EA). The objection raises the question as to whether **not** adopting a particular oversubscription criterion causes an unfair disadvantage.

30. The first sentence in paragraph 1.8 refers to oversubscription criteria, which are required to be procedurally fair. The second sentence requires that admission arrangements must not disadvantage unfairly a child with a disability. An oversubscription criterion which is not in existence at the school cannot be procedurally unfair. Whilst I accept that there is an argument that the objector and their child may have been disadvantaged by not being offered a place at this particular school in view of the particular family circumstances, any such disadvantage is caused by the absence of an oversubscription criterion, as opposed to the operation of an oversubscription criterion. In light of the fact that there is no obligation upon an admission authority to adopt social and medical need as an oversubscription criterion, I cannot see how it would be possible for me to make a finding that the school’s arrangements do not conform to the requirements of paragraph 1.8 by not having such a criterion.

31. The effect of my doing so would be tantamount to my saying that every admission authority must adopt an oversubscription criterion based upon social and medical need. I say this because it is likely that in every admissions round there will be at least one family whose child arguably may need to attend a particular school for a social or medical reason. Possibly in contemplation of this, the legislature introduced a right of appeal to an IAP who are able to consider the applicant’s personal circumstances and balance the effect upon the child of not being offered a place at the school against the effect upon the school of the child’s admission. A right of appeal was considered to be the appropriate form of redress for any unfairness which might arise as a result of personal or family circumstances.

32. As the objector says, IAPs considering appeals for admission to an infant class do not consider the appellant’s personal circumstances. This is because the legislature considered it more important to avoid having more than 30 children in an infant class than to offer a child a place because his/her personal circumstances make it necessary for that child to attend the school in question. This is not something I can override. I cannot find that the absence of a particular oversubscription criteria renders a set of admission arrangements unlawful where the law does not impose a requirement to adopt that

oversubscription criterion. The requirements that an oversubscription criterion must not disadvantage unfairly a child with a disability and must comply with equalities legislation are not relevant here because there is no criterion to apply the requirements to.

33. However, that is not to say that disability discrimination has no relevance here.

#### Disability discrimination

34. The next question is whether the arrangements as a whole are discriminatory by virtue of not having an oversubscription criterion based upon social and medical need, and therefore the admission authority is discriminating on the basis of disability by having adopted the arrangements in question. I note that, in the circumstances of this case, the school had adopted (possibly inherited) an oversubscription criterion based upon social and medical need, but then decided to remove it. In these circumstances, the Public Sector Equality Duty (PSED) is relevant. This requires admission authorities to have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity, and foster good relations in relation to persons who share a relevant protected characteristic and persons who do not share it.

35. Case law has established that 'having due regard' means giving careful consideration to whether any decision/change of policy might be discriminatory. Given that the removal of priority based upon medical need may have an impact on one or more disabled applicant, I asked the trust whether an equality impact assessment had been conducted prior to the removal of the oversubscription criterion. The trust informed me that a formal written equality impact assessment was not prepared as this is not a requirement (which is true), however the trust says that it did give careful consideration to the need to eliminate discrimination in line with its own and the school's policies on equality as well as the other factors required to be considered. For the reasons I will explain below, the trust does not consider that not giving priority for admission based upon medical need amounts to unlawful discrimination on the basis of disability.

36. The trust provided no detail of when such careful consideration was given, or by whom. I was not provided with minutes of any discussion. The objector does not consider that the trust fulfilled its obligations under the PSED. This would be a matter for the administrative court to determine as my remit does not extend to imposing a requirement upon the trust to conduct a more detailed analysis. The trust's argument is circular to a degree. Because it considers that not having an oversubscription criterion based upon medical need does not amount to unlawful disability discrimination, there would be no necessity for justification in removing the criterion in question. I do not share this view. Removal of priority based upon medical need would seem likely to risk having an effect upon disabled applicants. I would have liked to have seen more on the part of the trust. As the trust has acknowledged, the PSED is an ongoing duty, so any effect will need to be kept under review.

37. First, some background about what amounts to unlawful disability discrimination. A person is disabled for the purposes of the EA if they have a physical or a mental condition which has a substantial and long-term impact on their ability to carry out normal day to day activities. Based upon the information provided by the objector, both the objector and his/her child have a disability. The objector suffers from a medical condition which causes symptoms of pain and mobility issues affecting his/her shoulder. The symptoms can fluctuate and be unpredictable. The objector is prescribed medication which causes drowsiness, meaning that he/she requires assistance in looking after the child. It is said that both the condition and treatment can impact upon the objector's ability to transport his/her child to and from school.

38. Under the provisions of the EA, an admission authority must not discriminate (either directly or indirectly) on the grounds of disability against a person in the arrangements and decisions it makes as to who is offered admission as a pupil. Direct discrimination occurs where, because of a protected characteristic, a person treats another person less favourably than he or she treats or would treat others. Discrimination arising from a disability occurs when one person (A) treats another person (B) (a disabled person) unfavourably because of something arising in consequence of B's disability and A cannot show that the treatment is a proportionate means of achieving a legitimate aim. Discrimination can also arise by association, which is relevant in this case because the person who may, or may not, be admitted to the school is the child who is the subject of the application. Initially what was said by the objector was that it is the parent who is disabled. The objector has subsequently said that his/her child is also disabled. I am prepared to accept that both the objector and their child are disabled for the purposes of the EA.

39. Indirect disability discrimination would occur where a set of admission arrangements are put in place that appear to treat all applicants equally but, in practice, are less fair to those who are disabled. In order to establish indirect disability discrimination, the disabled person in question would need to show that they have been affected personally. An admission authority can justify indirect disability discrimination where the treatment is a proportionate means of achieving a legitimate aim. I pause here to say that it is not for me to judge the effect of a set of admission arrangements in an individual case. The objector understands that I cannot overturn a decision to refuse their child a place or require that a place must be offered. As explained above, my concern is whether the 2023 admission arrangements operate to cause disability discrimination.

40. The trust has said that it is aware that under s.85(1) of the EA, it must not discriminate against a person –

(a) in the arrangements it makes for deciding who is offered admission as a pupil;

(b) as to the terms on which it offers to admit the person as a pupil;

(c) by not admitting the person as a pupil.

The trust argues that it is clear from the above that the “person” referred to is the child or young person applying to be admitted to the school. Nonetheless, it also accepts that it must not discriminate against a child because of their parent’s disability.

41. However, the trust does not accept that its admission arrangements are discriminatory against disabled parents as alleged by the objector. This is because paragraph 1.16 of the Code allows admission authorities to adopt an oversubscription criterion based upon social and medical need, but does not require the adoption of such a criterion. In the same way, paragraph 1.8 of the Code imposes a requirement that an oversubscription criterion must not operate to cause discrimination or unfair disadvantage to a child with a disability. It does not require that an oversubscription criterion must be adopted in order not to discriminate.

42. The trust refers to the LA’s oversubscription criterion based upon social and medical needs (which the school used to have). It suggests (as mentioned above) that a claim for priority based upon childminding arrangements would not qualify for priority under this oversubscription criterion. Parents and children with mobility difficulties are given priority by virtue of the school being their nearest school. The LA’s arrangements say: “Cases made for children with specific learning or behavioural needs where the professional evidence submitted is not school specific. All schools are able to support children with a wide variety of individual needs. If a child’s individual needs warrant an Education, Health and Care (EHC) plan, the EHC plan will name the appropriate school... Medical cases where even though there is a severe illness, more than one school could accommodate the child’s needs.” I have taken this to mean that it would have made no difference to the objector’s application if the school had retained the social and medical need oversubscription criterion which it formerly had because the application would have not been given priority under that criterion.

43. The trust considers that the lack of inclusion of social and medical needs in the school’s oversubscription criteria cannot be said to amount to either direct or indirect discrimination to the child by association with their parent’s disability. The trust says:

“5.6.For direct discrimination, the School would have to have treated the child less favourably than it treated others because of their (or their parent’s – discrimination by association) disability. No applicants, whether with disabilities or not, have been provided with the social or medical need criterion in its oversubscription criteria, and as such the objector cannot be said to have been treated less favourably than other applicants because of their disability.

5.7.For indirect discrimination, the School would have to have applied a provision, criterion or practice (“PCP”) which is discriminatory; that is, it puts the child (because of their parent’s disabilities) at a particular disadvantage and would put other children (with disabled parents) at the same disadvantage when compared children with non-disabled parents.

5.8. The School's PCP is its oversubscription criteria, which is not, in itself, discriminatory; that is, none of the oversubscription criteria which it does have are discriminatory. Indeed, as noted above, the School has as its fourth oversubscription criterion: "Nearest School: Children for whom it is their nearest school or Academy", which would prioritise children of disabled parents should a parent's disabilities make it more onerous for them if their child were to go to a school further away from them. The Trust simply cannot see how a lack of a PCP, here a criterion relating to social and medical need, can amount to a PCP. As such, it does not consider that a child would be disadvantaged as a result of his/her parent's disability."

44. Although I sympathise with the objector's difficulties, I agree with the trust's legal analysis. I also agree that the objector's difficulties are not caused as a direct result of his/her disability. I understand the reasons put forward by the objector as to why he/she would like her child to attend the same school as the childminder's children and that these relate to his/her disabilities, however the reason the objector wants her daughter to attend this particular school is because it is the school attended by his/her childminder's children. If the childminder's children were attending a different school, presumably this would be the school which the objector would wish his/her child to attend. It cannot be said, therefore, that the school is the only suitable school for the objector's child by virtue of either the parent's or the child's disability.

45. Finally, the objector has argued that the trust has failed to make a reasonable adjustment for their disability. Under the EA organisations have a responsibility to make sure that disabled people can access jobs, education and services as easily as non-disabled people. This is known as the 'duty to make reasonable adjustments'. Disabled people can experience discrimination if an organisation fails to make a reasonable adjustment. What is reasonable depends on a number of factors, including the resources available to the organisation making the adjustment.

46. The duty requires admission authorities to take positive steps to ensure that disabled students can fully participate in the education and other benefits, facilities and services provided for students. The requirement is to take reasonable steps to avoid substantial disadvantage where a provision, criterion or practice puts disabled pupils at a substantial disadvantage. As explained above, the trust does not accept that the admission arrangements contain a provision, criterion or practice which puts disabled pupils at a substantial disadvantage. Neither does it accept that the objector is a pupil. The trust considers that the duty is owed to pupils and potential pupils, not to their parents. The objector's argument is not that her child must be admitted to this particular school because the child is disabled, the argument is that the child should be admitted because his/her parent is disabled.

47. As I understand the position, what is required under this duty is for the trust to take such steps as are reasonable to ensure that pupils with disabilities are able to access the curriculum and facilities at the school, not that the school must admit all applicants who have a disability, or whose parents have a disability. An example might be the provision of an auxiliary aid where, without one, a disabled student attending the school would be put at

a substantial disadvantage. If the objector's child had hearing difficulties and was attending the school, there would be an obligation upon the school to provide the child with an auxiliary aid if he/she needed one.

48. Where a provision, criterion or practice places disabled pupils at a substantial disadvantage in accessing education, the trust would be required to take such steps as it is reasonable to take in all the circumstances to ensure the provision, criterion or practice in question no longer has such an effect. This might mean waiving a criterion or abandoning a practice altogether but often will involve simply an extension of the flexibility and individual approach.

49. The duty is an anticipatory and continuing one owed to disabled pupils generally, regardless of whether the admission authority knows that a particular pupil is disabled or whether the school currently has any disabled students. An admission authority should plan ahead and anticipate the requirements of disabled pupils and the adjustments that might need to be made for them. This is not a requirement to anticipate the needs of every prospective pupil, it is a requirement to think about and take reasonable and proportionate steps to overcome barriers that may impede people with different kinds of disabilities. There is no provision, criterion or practice impeding the objector's child from being admitted to the school. The school is simply not his/her nearest school, and he/she does not fall under any of the oversubscription criteria which would give his/her a higher level of priority.

50. It is with regret that I must conclude that the trust's obligations under the EA do not extend to a requirement that the admission arrangements must contain an oversubscription criterion which gives priority based upon social and medical need. Neither is there a requirement upon the trust to admit the objector's child. The objector's difficult personal circumstances might have been such that an IAP would have overturned the decision not to offer this child a place, however as the objector has rightly acknowledged, IAPs do not have this remit for appeals against refusal of admission to an infant class. This is not something with which I can interfere. For these reasons, I do not uphold this objection.

## Summary of Findings

51. I find that the school's admission arrangements do not disadvantage unfairly applicants with a disability, and neither are they discriminatory. The obligations under the Code and the EA do not extend to the imposing of a requirement upon admission authorities to adopt an oversubscription criterion which gives priority based upon social and medical need.

## Determination

52. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2023 determined by the governing board of Roselands Primary School for Roselands Primary School, Hertfordshire.

Dated: 23 September 2022

Signed:

Schools Adjudicator: Dr Marisa Vallely