



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** ADA4200

**Objector:** a parent

**Admission authority:** Warwickshire County Council for all community and voluntary controlled primary schools in its area

**Date of decision:** 26 July 2023

## 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 2024 determined by Warwickshire County Council for the community and voluntary controlled schools.**

## The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a parent (the objector), about the admission arrangements (the arrangements) for all community and voluntary controlled primary schools in Warwickshire for whom Warwickshire County Council (the local authority)(the council) is the admission authority for September 2024. The first part of the objection is to the priority given in the determined admission arrangements to siblings who live outside a school's catchment area. The second part of the objection is that the catchment areas for schools are not published.

## Jurisdiction

2. These arrangements were determined under section 88C of the Act by Warwickshire County Council, the local authority, which is the admission authority for the community and voluntary aided schools in its area. The objector submitted her objection to these determined arrangements on 14 May 2023. 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

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
  - a. a copy of the minutes of the meeting of Warwickshire County Council at which the arrangements were determined;
  - b. a copy of the determined arrangements;
  - c. the objector's objection dated 14 May 2023 together with further comments and supporting documents;
  - d. the local authority's response to the objection and supporting documents; and
  - e. maps showing school priority areas on the local authority website.

## The Objection

5. The first part of the objection is that children who live outside the school's priority area and who have an older sibling in a school receive lower priority than children living in the priority area who do not have a sibling in the same school. The objector asserts that the lack of equal priority for siblings inside and outside the priority area breaches both the Code and the United Nation Convention on the Rights of the Child 1989 as reflected in United Kingdom domestic legislation via the Human Rights Act 1998. The objector cites articles 2, 3, 23 and 28 of the convention on rights of the child as being relevant in this case. The objector argues that "both (the Code and the Human Rights Act) state that authorities should deal with children fairly and with their wellbeing at the centre of decisions, but the Warwickshire Council policy of separating out children with siblings in the priority area (as priority 4) and children with siblings outside of the priority area (as priority 6), and below ANY child in the priority area with no ties to the school means that the wellbeing of children with siblings outside area is ranked below that of any other child on the list."

6. The second part of the objection is that the catchment areas for schools in the area are not defined. The objector states that "we were not made aware that we live outside of the priority area as I am still to this date unaware of exactly where the boundaries stand despite this being a clear requirement of the Schools [sic] Code (1.13 and 1.14)."

## Background

7. The oversubscription criteria for the Warwickshire primary schools are:
- a) 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.
  - b) Children who receive the Early Years Pupil Premium for their early years provider at the time of the making of the application, with no more than 14% of the places available to be allocated under this category.
  - c) Children who are currently, or have been at any point since birth, subject to a Child in Need Plan or a Child Protection Plan, with no more than 9% of the places available to be allocated under this category.
  - d) Children living in the Priority Area for the school, who will have a sibling attending the same school in Years 1 to 6 at the time of admission in September 2024.
  - e) Other children living in the Priority Area for the school.
  - f) Children living outside the Priority Area for the school, who will have a sibling attending the same school in Years 1 to 6 at the time of admission in September 2024.
  - g) Other children living outside the Priority Area for the school.

## Consideration of Case

8. The first part of the objection concerns the oversubscription criteria that refer to siblings. I begin by listing the relevant paragraphs of the Code. Paragraph 1.10 states that “this Code does not give a definitive list of acceptable oversubscription criteria. It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances. The most common are set out below.” There follows in the Code details of a number of criteria commonly used with relevant requirements highlighted.

9. At paragraphs 1.11 and 1.12 of the Code are specific references to sibling links. Paragraph 1.11 states “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).” Paragraph 1.12 says “some schools give priority to siblings of pupils attending another state funded school with which they have close links (for example, schools on the same site, or close links between two single sex schools). Where this is the case, this priority **must** be set out clearly in the arrangements.”

10. Paragraph 1.14 of the Code refers to catchment areas and says “Catchment areas **must** be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school.”

11. The objector also refers to paragraph 1.8 of the Code which says “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, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child.....”

12. The objector refers to articles 2, 3, 28 and 29 of the Convention on the Rights of the Child 1989. I reproduce these below:

#### Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990, in accordance with article 49

#### Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

#### Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

#### Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

#### Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

13. In its response to the objection the council confirmed that it had chosen to use priority areas as part of its oversubscription criteria. I need to clarify at this point that the council refers to priority areas and the Code refers to catchment areas. These are the same thing and I shall refer to the priority areas as catchment areas in the remainder of this determination in order to be consistent with the Code. The council says that the areas are clearly defined and available to view on its website; a point that I shall return to when I deal with the second part of the objection. However, it goes on to say that it is often the case that a school cannot always offer a place to every child in the catchment area who is seeking one in any given year. Therefore, in the oversubscription criteria within the admission arrangements, children who live within the school's catchment area with a sibling attending the school, are given priority over those living in the catchment but with no sibling connection to the school. Priority is also given to children of siblings who live outside the school's catchment area over those living out of the catchment area with no sibling connection to the school.

14. The council went on to say that in the past it has considered whether to give priority to all siblings over those who live within the priority area with no sibling connection to the school. However, it explained that the consequence would have been that a school may have given available places to siblings who lived outside the catchment area and some children who lived in the catchment area might not have been able to gain a place at their local school. These children would also have found that they had the lowest priority in their next nearest school because they would necessarily live outside the catchment area for that school. The council reports that it has to deal with some difficulties every year where schools within its area but for which it is not the admission authority determine admission arrangements that give priority to all siblings over children who live in the area, with the result that some children living fairly close to the school are refused places.

15. The council said that where at all possible, it would like to keep siblings together. However, where parents have previously made a preference for a school that is not the catchment area school for their home, this is not always practicable.

16. The objector argues that “being schooled with a sibling is key to both children’s mental wellbeing alongside the wellbeing of the family unit (we would have to effectively abandon one child at pick up/drop off times and certain school events as it would all clash). Siblings can have extremely strong ties, and being torn away from one at a time of great change could have potentially massive negative effects on the younger child’s introduction to school and school trajectory.”

17. The objector goes on to say “Deprioritising sibling bonds below that of children with no ties to the school is in breach of point 1.8 in the schools code “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 (rural community dwellers) or racial group” and articles 2,3, 28 and 29 of the Human Rights Convention on the rights of the child (most notably “the best interests of the child shall be the primary consideration” and “such protection and care as is necessary for his or her well-being” -article 2”).

18. The objector has added her own emphasis to her quotation from the Code above and suggests that “rural community dwellers” are a particular social or racial group. I shall discuss this point below. I note the reference to the Human Rights Convention and I shall discuss this further below.

19. The council concluded its comments by saying that it “believes that the over subscription criteria are reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. By the use of priority (catchment) areas and then further prioritising by whether there is a sibling already attending the school, this does not unfairly disadvantage single child families or young families where the oldest sibling is starting school.”

20. In considering these arguments there are some key points that inform my thinking. The first is that the Code is clear that an admission authority may give priority to siblings within its oversubscription criteria and that an admission authority may also give priority to children living within a catchment area as long as the catchment area is a reasonable one and is clearly defined. The council has explained that there are times when there are more children living in a catchment area than there are places available at a particular school. We know that a school has a fixed capacity defined by its published admission limit (PAN), but that the number of children of the age seeking a place at a school can fluctuate up and down from year to year as a result of changes in the birth rate a few years before and also as a result of inward or outward migration of families into the catchment area. If there are fewer applicants than there are places available then all those children will be admitted, if there are more applicants than there are places available then the oversubscription criteria are applied.

21. In this case, the council as the admissions authority has determined that all the schools for which it is the admissions authority have a catchment area. With a catchment area, parents can see which is their local school and can understand that their child will have some priority in gaining a place at that school if they wish to apply for it. The Code is explicit in saying that “catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school.”

22. The council has decided that it will give priority to children who live in the catchment area over those who live outside the catchment area. It has also decided that it wishes to give priority to children who live in the catchment area priority over children who do not live in the catchment area irrespective of whether a child has a sibling in the school or not. If there are more places at a school than there are applications for places from children living inside the area then places can be offered to out of area children as well.

23. The objector disagrees with this priority and is of the opinion that all children with a sibling at the school should have priority over other children whether they live inside or outside the catchment area. The objector argues that the published priority is unfair and will have an effect on the wellbeing of a child with a sibling in the school and by extension the child’s family if he or she cannot attend the same school.

24. I can see the added complication for a family having children at different schools. I observe , as the older sibling moves on to secondary school this will inevitably become the case for any family with more than one child at school unless and unusually the secondary school shares a site with the primary school. The objector also states that “siblings can have extremely strong ties, and being torn away from one at a time of great change could have potentially massive negative effects on the younger child’s introduction to school and school trajectory.” I can see that for some siblings this may be the case and indeed the council has stated it has a preference to keep siblings together where it can and has decided to give siblings priority when they live in a school’s catchment area.

25. The objector’s concern is that five years ago her older child was offered a place at a school that was not the catchment area school for the family’s address. Now, five years later the objector wants her younger daughter to attend the same school but recognises that it is not the catchment school for her home address and the consequences of this. My jurisdiction does not extend to what happened at the time of the admission of the older sibling or indeed any specific details about the recent application for a place of the younger child. My jurisdiction concerns the 2024 arrangements that have been determined by the council and whether or not they comply with the requirements of the Code and associated legislation. I have already said that the council is required by the Code to set oversubscription criteria. It has done this. The criteria are set out above and in respect of containing criteria that involve living in or out of the catchment area comply with the requirements of the Code. The Code also permits criteria that give priority to children with siblings. In all this I am satisfied that the arrangements comply with the Code.

26. This brings me to the concern expressed by the objector that it is not the fact that these criteria are in place but it is the relative priority that has been given to out of



catchment area siblings (below that of catchment children with no siblings at the school) that is unfair and therefore not compliant with the Code. I shall discuss the reference to the UN Convention on the Rights of the Child below, but first I discuss the concept of fairness. When considering the fairness of admission arrangements, which is a general requirement in paragraph 14 of the Code and a specific requirement relating to oversubscription criteria in paragraph 1.8, it is necessary to focus on the effect of the arrangements on any relevant groups. In this case it is balancing the benefit of offering a place to a child who lives in the catchment area against the benefit of offering the place to a child with a sibling in the school but who lives outside the catchment area.

27. The objector characterises the balance by saying “a fundamental right is not understood nor prioritised. (The council) has recognised that siblings are prioritised as higher than those with a geographical connection (siblings thus of higher importance), but not acknowledged that **some** siblings have then been deprioritised below those of children within a geographical space (**these** children however, are a lower importance and therefore discriminated against). Neither geographical location nor having a sibling are discriminatory criteria when applied separately but once they are **applied together** they become so. Either having a sibling is a high importance (as per the criteria) and the wellbeing aspect is recognised (alongside the council's duty of care to the town by not unduly adding to traffic around schools and practical considerations to the family unit) or it is not and geography would be the highest importance.” The objector continues “(the council) is correct that there is no requirement that siblings be prioritised in the code however, once the council has specifically mentioned them in their policy then it **must** be fair. ....Siblings have been highlighted and then a section of them discriminated against based on location. I am in agreeance that it should be a deciding factor in identical applications as per the council's policy (to take a straight line from the school). But not to randomly remove the sibling factor and allow all children in the area jump in front at this point.....The relevance of single child families and the oldest child starting school should be irrelevant to my child's rights. Their rights are not being removed by allowing village children to retain their own rights to be with their siblings. They are not being refused a place at school in general, and do not have a tie to a specific school. The possibility of a child having to travel should not prevail over sibling wellbeing.”

28. The council has balanced the needs of the two different groups of potential applicants for a school place. Arguments in favour of giving priority to all siblings are straightforward and well articulated by the objector. Arguments against are that children living relatively close to a school and in its catchment area may not be offered a place if it is a year where applicant numbers exceed the school's published admission limit. These children would not receive priority in a neighbouring school because they live outside the catchment area and so it is possible that they may not be offered a place at any nearby school. It could also be argued that children living in the catchment area could have an expectation that they will be able to gain a place at their catchment area school, that after all is one of the purposes of publishing catchment areas. The last point that can be argued is that parents gaining a place in an out of catchment school for an older child do so in the knowledge of the oversubscription criteria and take a chance that the cohort of children

starting with a younger sibling will be sufficiently small to allow out of catchment admissions.

29. There is no simple answer to balancing the needs of these two groups. However, in my view, three points are important. The first is that it seems it should be a realistic expectation that children living in the catchment area should be able to have a place at their local school and this is jeopardised if out of area children are admitted with any priority over them. There are exceptions to this: for example where addresses fall in two or more catchment areas or where large catchment areas exist for schools with a religious character or to give all children in a larger area some chance of a place at, say, a single sex school. However, none of those apply here. The second point is that parents accepting an out of catchment area place for a child need to understand that it is not the child's catchment school and that there could be consequences from this decision when it comes to find a school place for a younger sibling. The third point is that although the objector asserts that the wellbeing of her younger child is not being considered, it could be argued that the wellbeing of a child who is unable to attend their catchment school should be given equal consideration. While the objector has referred to catchment children as not having a tie to the school; it is equally arguable that they do have a tie by the very fact of its being their catchment school.

30. Before I come to a decision on these points there are two further points that I must deal with. The first is that the objector asserts that discrimination is taking place against a "social or racial group" as referred to in the context of paragraph 1.8 of the Code. The specific group that the objector refers to is "rural community dwellers". Although the Code does not define how to identify such a group I am not persuaded that the group the objector refers to is a homogeneous group as envisaged in the context of this paragraph. My reason for saying this is that the membership of the group potentially encapsulates a significant proportion of the population in this country and the only shared characteristic is that the members live in a rural area. However, even if this was such a group then it would necessarily include all "rural community dwellers" and not only those families with two or more children seeking sibling priority as the objector is. It could thus equally be argued that priority should be given to those in the group to be able to attend their local school by ensuring that in catchment children have priority over all out of catchment children. This is in fact what the Warwickshire County Council policy achieves and I am not persuaded that there is evidence here to say that paragraph 1.8 of the Code is being breached.

31. The second point is that the objector refers to the UN Convention on the Rights of the Child. I have quoted the relevant sections above. The objector also refers to a document on the government website entitled "United Nations Convention on the Rights of the Child (UNCRC): how legislation underpins implementation in England". This document sets out how the Convention articles have been implemented via government legislation. The references to the Convention is respect of school admissions and refer back to the School Standards and Framework Act 1998. This in turn is the legislation giving force to the School Admission Code. The objector asserts that the council has not taken the Convention on the Rights of the Child into account when it determined its schools' admission

arrangements. However, if the arrangements comply with the School Admission Code in respect of the matters discussed in this determination, then this is the legislation that the government has used to implement the Human Rights documents that the objector refers to.

32. I have carefully considered all the points made by the objector and I have come to the decision that I do not uphold this part of the objection on the following grounds. The council has complied with the requirements of the Code in determining the oversubscription criteria in the admission arrangements. The priority given to siblings who live out of the area has been balanced against the priority given to children without siblings living in the catchment area. In some years it will be possible for both groups to be admitted if the numbers in the admission cohort permit. However, if the numbers do not permit all to be admitted I am satisfied that the council as the admitting authority has balanced the needs of the different groups and is permitted by the Code to make a decision about priority. I can see that this may be perceived as unfair to the individuals in the group that do not gain a place but whichever way the priority is arranged there is potential for some children to not gain a place. I am satisfied that there is no discrimination of a particular social group taking place and I have seen no evidence that the council has failed to comply with paragraph 1.8 of the Code. It is worth saying that the legislation allows “parental preference” to be expressed about which school(s) they would like their child to attend but that nowhere in the legislation is there set out the right of a child to attend any one particular school.

33. The second part of the objection is that the catchment areas are not published. The objector claims that she did not know that she was applying for an out of catchment school for her older child and received no official communication that this was the case. However, the council says that when the older child was offered a place the parent was sent a letter and I was provided with a copy of the letter which clearly states that the place was being offered under the admission criterion “Outside Priority Area (No Sibling at the School)”.

34. The objector also asserts that she cannot see the catchment area information which shows which school catchment area she lives in. I looked on the council admissions website and was able to find the catchment area maps for all the schools and was able to see the map for the schools in the objector’s neighbourhood and to identify clearly the boundary for the schools in relation to the objector’s address. The Code in paragraph 1.14 is quoted above and requires catchment areas to be “clearly defined”. I have seen evidence that this is the case and I have been able to see this on the council’s admissions website without any special access given to me. I can see no reason why the objector, or in fact any other parent, would not be able to see the same information that I have been able to access. For these reasons I do not uphold the second part of the objection.

## Summary of Findings

35. The objector refers to her individual case history while making an objection about the 2024 admission arrangements. My jurisdiction is limited to determining whether or not these 2024 admission arrangements comply with statutory requirements in respect of the

objection made. Where I have made reference to elements of the case history, I have done so to help ensure that the objector's arguments had been expressed but I have only taken account in my decision making of those elements that are directly relevant to the 2024 arrangements. I have concluded that the priority that the oversubscription criteria give to children living in a catchment area above out of area children is compliant with the Code. Priority is given to siblings within catchment area and siblings out of catchment area have priority over other out of area children. This, too, is compliant with the Code. I have also concluded that the oversubscription criteria are fair in the context of paragraph 1.8 of the Code.

36. The objector says that she was not informed that her older child's admission to school was an out of catchment area admission but the council has shared with me a copy of the letter sent to the objector at the time that was explicit in saying that the place offered was under the criterion "out of area". I have been able to see the maps showing catchment areas on the council website and have concluded that the maps are clear and information is available to parents should they wish to see it. For these reasons I have not upheld either part of this objection.

## **Determination**

37. 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 2024 determined by Warwickshire County Council for the community and voluntary controlled schools.

Dated: 26 July 2023

Signed:

Schools Adjudicator: David Lennard Jones