



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** ADA4124

**Objector:** a member of the public

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

**Date of decision:** 14 November 2023

### 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 2024 determined by London Borough of Waltham Forest for the community and voluntary controlled schools in its area.

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.

### 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 member of the public (the objector), about the admission arrangements for September 2024 (the arrangements) for community and voluntary controlled infant and primary schools in its area (the primary schools). The objection is to the effect and scope of the priority for siblings of existing pupils.
2. The local authority for the area in which the school is located is the London Borough of Waltham Forest (the local authority). The local authority and the objector are parties to this objection.

## Jurisdiction

3. The arrangements were determined under section 88C of the Act by the local authority, which is the admission authority for the primary schools. The objector submitted his objection to these determined arrangements on 14 April 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

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

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

- a. a copy of the minutes of the meeting at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection and supporting documents;
- d. the local authority's response to the objection and information provided in response to my enquiries; and
- e. information on the websites for the Department for Education and the local authority.

## The Objection

6. The oversubscription criteria in the arrangements include a priority for siblings of children who will still be on the roll of the school when the sibling would be admitted. The scope of the priority is qualified or limited so that "... if the family have moved since the last child was offered a place and now live further than 0.5 miles, the child's application will not be considered under sibling criteria." The objector says that limiting the sibling priority in this way is discriminatory and unfair in its impact on single parent families and families living in private rented accommodation and that it does not comply with paragraph 1.8 of the Code.

## Background

7. The local authority's area is an urban one in the north east of London, with other mainly urban areas around it. The admission arrangements for all the primary schools for which it is the admission authority were determined on 12 January 2023. The arrangements are in all material respects the same as the arrangements determined for 2023 and therefore no consultation was required before they were adopted.

8. The oversubscription criteria for the primary schools are (in summary):

- a) looked after and previously looked after children
- b) medical or social reasons or children “at risk”
- c) siblings
- d) children of school staff
- e) distance.

9. “Sibling” is defined in the following way:

“Sibling means:

A full brother or sister

A half brother or sister

An adopted brother or sister

A step brother or sister

A foster brother or sister

The child of a parent or carer’s partner living at the same address

For primary applications, children with a brother or sister on roll in Reception to Year 6 at the time of the proposed admission up to a distance of 0.5 miles from the school if the family has moved since the last sibling was offered a place. This means that if there is a sibling already attending the preferred school, but the family have moved since the last child was offered a place and now live further than 0.5 miles, the child’s application will not be considered under sibling criteria.”

10. The arrangements also include reference to the admission of siblings under the criterion of “medical or social reasons”. This states that applications for places at primary schools will be considered under this criterion from “families who have a sibling on roll in reception to year 6 but have been forced to move due to no fault of their own and are now living at a distance further than 0.5 miles, since their last child was offered a place”. To be considered, the application must be supported by “a written statement from a doctor, social worker, psychologist or other relevant independent professional” confirming the child’s exceptional social need and demonstrating that the school “is the only school that can meet the defined needs of the child”.

11. The objection arises in the context of the objector’s application on behalf of his youngest child for a place at Chingford CofE Primary School (the school) in the local authority’s area. The school is a mixed, voluntary controlled school for children aged 4-11 years. It was Ofsted rated “Good” at the last inspection in 2019. It has a Church of England

religious character and is situated in the Diocese of Chelmsford. The diocesan authority and the school's governing body have been informed of the objection but have not commented on it. The objector currently lives in the area of Essex County Council, just over two miles from the school.

## Consideration of Case

12. The Code provides considerable information on what must not be included and what can be included in oversubscription criteria but, as paragraph 1.10 of the Code explains,

“This Code does not give a definitive list of acceptable oversubscription criteria. It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances.”

13. The Code describes the most commonly used oversubscription criteria and sets some requirements as to their use. Paragraph 1.11 refers to siblings and the most relevant part of this 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).”

14. The Code does not require admission authorities to adopt a particular definition of ‘sibling’, but admission arrangements must include a definition of the term if an authority chooses to provide a priority for siblings. The Code is silent on whether a sibling priority can be limited or qualified as has been done here.

15. The local authority has chosen to include in the arrangements a priority for siblings of existing pupils and has explained that this means “[f]or primary applications, children with a brother or sister on roll in Reception to Year 6 at the time of the proposed admission...”. I note in passing that the use of the phrase “brother or sister” in this part of the definition, rather than ‘sibling’, is unhelpful but it is clear from the context that what is meant is ‘sibling’ as defined in the preceding paragraph. The definition is clear and in this respect the arrangements comply with the Code.

16. The sibling criterion, however, includes a limitation: siblings will only qualify under the criterion “... up to a distance of 0.5 miles from the school if the family has moved since the last sibling was offered a place. This means that if there is a sibling already attending the preferred school, but the family have moved since the last child was offered a place and now live further than 0.5 miles, the child’s application will not be considered under sibling criteria [sic]”. This limitation, which arises when there is a change of address and where the new home is more than 0.5 miles from the school, is the subject of the objection.

17. The objector referred to paragraph 1.8 of the Code, which I set out here in full:

“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. Admission arrangements must include an effective, clear, and fair tie-breaker to decide between two applications that cannot otherwise be separated.”

18. The objection is that the arrangements “unfairly disadvantage two distinct groups of children, namely those whose families have split up and those who are privately renting”. The objector argues that disadvantaging those who are privately renting is indirect race discrimination contrary to the Equality Act 2010, on the grounds that non-white British families are likely to be disproportionately represented amongst private renters. In relation to children whose parents separate, the objector argues that the negative impacts on family life arising from siblings attending different schools is in breach of the right to private and family life under the Human Rights Act 1998 (article 8 of the European Convention on Human Rights) and discriminatory on grounds of status (article 14 of the Convention).

19. I understand that a situation where two siblings cannot attend the same school may be inconvenient and difficult for parents to manage. However, this does not mean that the arrangements are necessarily unreasonable, unfair or unlawful or that they do not comply with the Code. It is necessary, where a school is oversubscribed, to discriminate or choose between those who wish to attend the school. Indeed, that is the whole purpose of oversubscription criteria. The question in this case is whether it is fair and reasonable to limit the advantage given to siblings in oversubscription criteria or whether there is good evidence that the practice unlawfully discriminates or otherwise unfairly disadvantages children of a particular racial group or other status.

20. The local authority explained in its response to my request for further information that the limitation on the definition of ‘sibling’ had been adopted for admissions from September 2017, by which I understand it to mean that the new criteria applied for applications made in 2017 for reception places in September 2018. I have seen the consultation document, which explains the proposed change in the following terms:

“[The proposal] is in response to families who have children in a popular school, then move outside the local area, but younger siblings are given priority admission. It is not unusual for families to move house to get a better chance of securing a place at a popular oversubscribed school. This is not a new behaviour, or one that is exclusive to particular areas of the country. However, as the population grows and there is more demand for local school places in both primary and secondary sectors, consideration should be given to the fairness of giving priority to a child who does not live within the local area.

[...]

There is a benefit from pupils attending a school who have family links and are supported in travelling to and from school. There is also a benefit and a desire to provide local school places to local children. There is more pressure on local places being provided to local children at primary level, and there is benefit in considering introducing a maximum distance of say 0.5 miles for anyone applying for a primary place under the sibling priority.”

21. As I understand it, the local authority’s intention, when adopting the restriction on sibling priority, was to strike a balance between the interests of siblings in attending the same school and the interests of children without siblings at a chosen school to attend a school that is local to their home. It was also to prevent parents from gaining an unfair advantage for their children by moving house temporarily to secure a place at a preferred school and then moving away knowing that their younger children would benefit under the sibling criterion. This is not unreasonable.
22. The rationale for giving a priority to siblings is to make life simpler for children and their parents. This is because travel arrangements and communications with the school are easier if young children from the same family group are able to attend the same school. In addition, family educational and community links are supported through continuing contact of children, their families and the school concerned. Conversely, if children attend different schools then both the beginning and the end of the school day can become complicated as children have to go to (or be collected from) different locations, school terms may be different, events such as sports days may clash and so on.
23. Keeping families together, through siblings attending the same school, therefore has some importance. An element of sibling priority is for these reasons common for primary schools. However, it is important to note that it is not a legal requirement to have such a priority: to put it another way, children have a right to receive an education but this does not include a right to be educated with their siblings. There are many reasons why siblings may have to attend different schools, even if a school includes a priority for siblings in its arrangements: for example, they may be in different phases of education; the school that one attends may be a single sex school and the siblings may be of the opposite sex; a child may need special educational provision for reasons that their siblings do not share; or the parents may choose for reasons of their own to send their children to different schools.
24. A school that includes a priority for siblings in their oversubscription criteria may also fill all or most of the available places to children with a different, higher priority so that some siblings cannot be allocated place. This may be the case if, for example, the school gives a lower priority to siblings than to attendance at a feeder school or living in a particular catchment area.
25. On the other hand, if a high priority is given to all siblings without qualification (after the first priority for looked after and previously looked after children) then children without a sibling at a preferred school may not be able to gain admission, even if they live very close

to it, because those with siblings living perhaps a considerable distance further away are admitted instead. Balancing of the needs of different groups when allocating places at oversubscribed schools is a challenge that many admission authorities have to contend with and they have the right to come to different conclusions (which may include not giving any priority to siblings), provided that overall the arrangements comply with the requirements of the Code and “the practices and the criteria used to decide the allocation of school places are fair, clear and objective” (paragraph 14 of the Code).

26. In response to my request for further information, the local authority provided some data about the allocation and supply of school places across its area. It informed me that the school is in the Chingford North planning area along with three other primary schools. The “cut-off distances” i.e. the distance between the home of the last child offered a place under the distance criterion and the school at which the place was offered on national offer day for the last five years are set out in Table 1.

**Table 1: Furthest distance between school and home**

School	PAN	2019	2020	2021	2022	2023
Chingford C/E	60	n/a	0.981	0.533	0.457	n/a
Parkside Primary School	90	0.947	0.461	1.205	1.15	1.513
St Mary’s Catholic School	30	R	R	R	0.487	R
Yardley Primary School	60	0.971	0.695	0.463	0.511	n/a*

n/a – the school was undersubscribed

n/a\* - Yardley had a bulge class and admitting 90 children

R – all children allocated were under religious criteria

27. From this, I note that the school was not oversubscribed in 2019 or in this year. This means that all children, whether or not siblings of existing pupils, who wanted a place at the school and applied in time should have been given a place. The local authority further informed me that there are currently 270 places in reception (YR) for September 2023 across these four schools as Yardley Primary School has admitted 30 children over its published admission number (PAN) i.e. it has a “bulge class” in YR this academic year. The local authority is considering whether to make this change permanent, creating an additional 30 primary school places in the planning area. It informs me that all the places in YR at Yardley Primary School for September 2023 have been allocated.

28. The local authority’s forecast is that the need for school places in YR in this planning area is likely to decline over the next five years, as set out in Table 2.

**Table 2: Forecast of YR places required in Chingford North planning area**

2023/24	<b>270</b>
2024/25	<b>269</b>
2025/26	<b>257</b>
2026/27	<b>249</b>
2027/28	<b>252</b>

29. So that I could better understand the practical impact of the sibling oversubscription criterion, I also asked the local authority to provide information about applications to the school under this criterion. This information is set out in Table 3.

**Table 3: Number of applications received and places allocated in the past five years under the sibling priority**

<b>Chingford C/E School (applications received on time)</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
No of sibling applications received	24	19	31	24	24
No of siblings places allocated	21	16	27	20	21

30. From this table it can be seen that the number of applications made under this criterion fluctuates year on year but it is a high proportion of the PAN. I note that each year some applications under the sibling priority are unsuccessful. This may be for a wide range of reasons: for example, that the school was not the first preference (the most likely reason in 2023, when the school was not fully subscribed). Other possibilities are that the child does not meet the definition of “sibling”; the older sibling will not still be on the school’s roll when the younger sibling would be admitted; or because the family has moved more than 0.5 miles from the school since the last child was admitted. Between 2020 and 2022, when the school was oversubscribed, it is likely a very small number of children who lived closer to the school (and in 2022, less than 0.5 miles from the school) would have been given priority over “unsuccessful siblings”.



31. The local authority also provided information about applications considered by their medical social panel that they identified as relating to persons applying for a place at the school under the medical or social reasons criterion on the basis that the family had been forced to move and are living more than 0.5 miles from the school, which is set out in Table 4.

**Table 4: applications considered by medical or social need panel regarding “no fault” moves**

Chingford C/E School – reception entry year	Applications received	Applications allocated
2019	1	1
2020	0	n/a
2021	0	n/a
2022	3	1
2023	0	n/a

32. The local authority gave as examples of “no fault” reasons for moving home, the landlord terminating the tenancy, medical reasons and domestic violence, but stated that it considered applications under the medical or social reasons criterion on a case by case basis, on the basis of the information provided by the independent professional and any other evidence provided by the family. This seems to me to provide a reasonable method of mitigating the impact of the limitation on sibling places on younger children in a family group where there are particularly strong reasons for educating siblings together.

33. The objector referred me to the local authority’s publicly available tables “How places were offered on national offer day” for children starting YR in September 2021 and 2022, as illustrating the small number of places allocated under the “medical or social need” criterion. More granular information on this point was provided by the local authority in Table 4, which I have discussed above. The overall picture that emerges from the tables is that a high proportion of places at most of its schools are allocated under the sibling criterion; where its schools are oversubscribed the “cut off distance” is in most cases less than 0.5 miles or only very slightly more; and the impact of adopting the criterion appears to have been to strike a reasonable balance between allocating places to children who live closest to the schools for which it is the admission authority and children who have one or more siblings at such a school.

34. This is not a case in which there appears to be any shortage of suitable school places. The objector does not allege that his child is without a school place or facing the prospect of an unreasonably long journey time or length to school because of the limitation

on sibling places at the school. I note that there are 13 primary schools that are closer to the objector's current home than the school.

35. The objector makes a number of assertions about the characteristics of people who live in private rented accommodation in the local authority's area in support of his case that the sibling criterion is discriminatory. As evidence substantiating his assertions, he provided a link to a government webpage relating to data provided by the Office for National Statistics (ONS) in 2020 regarding housing tenure in the London Borough of Haringey which neighbours the local authority's area and, separately, housing tenure in the UK broken down by region. This included a table covering the south-east. Though the precise extent of the UK covered by this region was not stated, I have assumed that it included London and the county of Essex.

36. The ONS data is based on the 2011 census. The data is over 12 years old and in the intervening period there have been a number of national events that may have had a significant impact on the demographics of Waltham Forest and its neighbouring boroughs, including the economic downturn, Brexit and the covid pandemic. No specific data is included in either table relating either to Essex, the area in which the objector lives or the local authority's area. I have no evidence regarding the extent to which the demographics of either of those areas is similar to, or different from, Haringey. The data does not include any information at all about the incidence of moves among any demographic so that it is not possible to make any comparison between home owners and those living in other types of accommodation or to draw any conclusion about the incidence of "no fault" or voluntary moves in the private rented sector. I do not therefore consider the data to provide any assistance in resolving the question of whether the limitation placed by the local authority on the allocation of places at its primary schools under the sibling criterion is unfair or discriminatory. As I was provided with no evidence that families of any particular racial or ethnic characteristic were more likely to move to a new home than other ethnic groups, I was unable to consider this point further. In addition, I note that where families do move, a balance needs to be struck between meeting the needs of the family which has moved further from the school and any family which now lives closer to the school concerned.

37. There is however one aspect of the sibling criterion that does cause me concern. As drafted, I understand the criterion to mean that whenever a family moves from one home to another and the new home is more than 0.5 miles from the school, even if the new home is in fact nearer to the school than the old home (as may happen if the older sibling was admitted in a year in which the school was not oversubscribed or when there were fewer siblings, for example), a younger sibling is not entitled to be considered under this priority. I queried this interpretation with the local authority, which responded:

"If a family of an existing pupil at the school lives more than 0.5 miles from the school when the last child was admitted, and the family have now moved closer (but still more than 0.5); the child will be given sibling criteria [sic]. This is because they have moved closer to the school since the last child was admitted and it would be unfair

and unjust to penalise them when they have moved closer to the school not further away.”

38. I am pleased that the local authority accepts that my reading of the criterion would be unfair and that this is not how the criterion is applied in practice. The approach taken by the local authority is consistent with the reasons given for adopting the criterion. However, it is not what the arrangements say. My jurisdiction is for the arrangements as they are determined and published. I find that the arrangements do not conform with the requirements of the Code as they are not fair to children whose families have moved closer to a school but still live more than 0.5 miles from that school. To the extent that the arrangements do not reflect what the local authority does, they are not clear and therefore do not comply with the overall principles that apply to setting arrangements set out in paragraph 14 of the Code:

“Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”

## Summary of Findings

39. The local authority wishes to prioritise places for local children over those who live some distance from the school and this is fair and reasonable. The arrangements provide a priority for siblings of those already attending a school but this does not apply if the family moves more than 0.5 miles from the school. This is justifiable as otherwise children living close to the school may not be admitted as children with siblings at the school would have priority however far they lived from the school in question. I have seen no evidence that this limitation on the allocation of places to siblings has a discriminatory effect or is otherwise unfair to single parents or families who live in the private rented sector.

40. However, I find that the way the sibling criterion is drafted is open to misinterpretation and it should be made clear that families who move nearer to the school, even if that is more than 0.5 miles away, should be eligible for places under the sibling criterion for younger children of the family if an older sibling is still on roll.

## Determination

41. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the London Borough of Waltham Forest for the community and voluntary controlled schools in its area.

42. By virtue of section 88K(2) of the Act, the adjudicator's decision is binding on the admission authority. The Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

Dated: 14 November 2023

Signed:

Schools Adjudicator: Helen Jeffrey