



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA3334

**Objector:** North East Law Centre

**Admission Authority:** The Governing Body of Gosforth East Middle School, Newcastle

**Date of decision:** 7 December 2017

### **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 2018 determined by the governing body for Gosforth East Middle School, Newcastle.**

**By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. As the determined arrangements have been amended to comply with the Code, no further action is required by the admission authority.**

### **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 North East Law Centre, (the objector), about the admission arrangements for September 2018, (the arrangements), for Gosforth East Middle School, (the school), a middle deemed secondary school for boys and girls aged 9 to 13 years in Newcastle upon Tyne. The objection relates to the naming and fairness of feeder schools, how the distance between an applicant's home and school will be measured, and the school's definition of sibling.
2. The local authority for the area in which the school is located is Newcastle City Council. The local authority, the school's governing body, and the objector are the parties to this objection.

### **Jurisdiction**

3. The arrangements were determined by the governing body, the admission authority for the school, on 9 May 2017 which is well after the deadline specified in paragraph 1.46 of the Code. The objector submitted its objections to the arrangements on 15 May 2017.

4. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that the concerns regarding the naming and fairness of feeder schools, how the distance between an applicant's home and school will be measured, and the definition of sibling are within my jurisdiction.
5. The objector also expressed concern about the alleged failure of the admission authority to give proper reasons when an application for a place has been turned down. The role of an adjudicator is to consider whether or not determined admission arrangements comply with the School Admissions Code (the Code) and the law relating to admissions. It does not, however, extend to the application of those admission arrangements to individual children in the process of applying for school places. I do not have jurisdiction, therefore, to consider the alleged failure of the admission authority to give proper reasons when an application for a place has been turned down, nor any aspect of the appeal process.

### Procedure

6. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
7. The documents I have considered in reaching my decision include:
  - i. the form of objection sent by the objector on 15 May 2017 and subsequent correspondence;
  - ii. comments on the objection from the local authority on 8 June 2017, a map showing the location of local schools, and subsequent correspondence;
  - iii. a copy of the minutes of the meeting of 9 May 2017 at which the governing body of the school determined the arrangements;
  - iv. a copy of the arrangements determined on 9 May 2017 which were downloaded from the school's website at the time of the objection;
  - v. the response to the objection from the school on 11 July 2017 enclosing a copy of the amended arrangements, other documentation and subsequent correspondence;
  - vi. the previous determination for the school, ADA3259; and
  - vii. the determination AD3255 which relates to Gosforth Central Middle School.

### Objection

8. At the time the objection was made, the objector was concerned that the arrangements at oversubscription criterion 3 prioritise "*children attending any other Gosforth first school that is not a designated feeder school*". The objector observed that oversubscription criterion 3 did not meet the requirements of paragraph 1.9(b) of the Code which states that admission authorities "**must not take into account any previous schools attended unless it is a named feeder school**".

9. The objector also questioned the fairness of the third oversubscription criterion which, after the priority for children attending one of the three named designated feeder schools, gives priority to children attending *“any other Gosforth first school.”* The objector said that the school’s published admission number (PAN) *“is 120 whereas the total number of children leaving the three designated feeder schools is around 116 and the nine Gosforth first schools is around 400.”* The objector was concerned that the arrangements are unfair, and in breach of paragraphs 14 and 1.15 of the Code *“because local children who did attend any of the three designated feeder schools are extremely unlikely to get a place; and those children not attending any of the nine Gosforth first schools will find it all but impossible to get a place.”*
10. The objector said that the method by which the distance between an applicant’s home and school will be measured does not comply with paragraph 1.13 of the Code. In addition, the objector considers that the arrangements do not meet the requirements of paragraph 14 of the Code because the wording of the statement about how distance will be measured is *“ambiguous and not sufficiently clear”*.
11. The definition of sibling contained within the fourth oversubscription criterion concludes with the sentence *“Sixth form students are not eligible as sibling links”*. As the school does not have a sixth form, the objector said that the definition is confusing and unclear and does not meet the requirements of paragraph 14 of the Code.

## **Background**

12. Gosforth East Middle School is a foundation, middle deemed secondary school for boys and girls aged 9 to 13 years. It is part of a three-tier system known locally as the Gosforth pyramid of schools.
13. The Gosforth pyramid of schools is the only 3-tier system in the city of Newcastle and comprises one academy high school for 13 to 19 year olds, three middle schools for children aged 9 to 13, and nine first schools for children between the ages of 4 to 9 years. Within the area of Gosforth there are also two Catholic voluntary aided primary schools.
14. The local authority explained in its submission of 8 June 2017 that *“large scale housing development at the northern edge of the city”* over the last few years has created *“significant and growing pressure on school places”* within the Gosforth pyramid with the result that *“predicting the rate of new housing growth and the resulting demand for school places has proven very difficult”*. A number of Gosforth first schools have expanded to accommodate the growing population, and the local authority has been working to secure additional places for local children over the longer term. A bid for a new free school for older children aged 9 to 16 years has been successful but the opening of this new school has been delayed until 2020, and the proposed admission arrangements are not yet known.
15. The objection relates to the 2018 arrangements as determined by the governing body on 9 May 2017 which state that if more applications are

received than the 120 places available in Year 5, then after any children with an Education, Health and Care plan which names the school (EHC plan) have been admitted, the remaining places will be allocated according to the oversubscription criteria which I have summarised below:

- 1) Looked after and previously looked after children.
- 2) Children attending one of the designated 'feeder' schools which are Broadway East First School, Dinnington First School, and Gosforth Park First School.
- 3) Children attending any other Gosforth first school that is not a designated feeder school.
- 4) Children not attending a designated feeder school or other Gosforth first school who will have a sibling at the school in September 2018.
- 5) Children with an exceptional medical reason for attending the school.
- 6) Children living nearest the school as measured in a straight line from a single fixed central point at the school to a point in the centre of the home address of the child, using the Local Land and Property Gazetteer or a suitable alternative geographical information system. Tiebreaker: If more children apply from a particular category than there are places available, priority will be given to those with a sibling who will be attending the school when the applicant starts. Random allocation will be used to allocate any remaining places.

16. Together with its response to the objection on 11 July 2017, the school submitted an amended version of the arrangements (the amended arrangements) which included several changes made since the arrangements had been determined. Oversubscription criterion 2 now describes the original three designated feeder schools collectively as "group A". Oversubscription criterion 3 now names the six other Gosforth first schools as feeder schools and describes them collectively as "group B".

17. Paragraph 3.6 of the Code makes clear 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 Adjudicator or any misprint in the admission arrangements. ... Admission authorities may propose other variations where they consider such changes to be necessary in view of a major change in circumstances. Such proposals must be referred to the Schools Adjudicator for approval, and the appropriate bodies notified..."*

18. In a further submission of 17 July 2017, the school's headteacher explained that the arrangements had been amended as a result of guidance from the local authority regarding the changes to the arrangements that it had deemed necessary after the recent determination for another local middle school, ADA3255. The headteacher said that *"the Governors voted unanimously to adopt the changes suggested by the Local Authority. This was dealt with under Any Other Business and voted for by all Governors who were in attendance who constituted the vast majority of our Governing Body"* and

provided a copy of the minutes of the governing body's Staffing Committee of 20 June 2017 as confirmation.

19. The school's arrangements were also the subject of a determination, ADA 3259, which was decided on 4 July 2017. In the circumstances, I accept that the governing body has varied the determined arrangements in order to comply with a mandatory provision, in accordance with paragraph 3.6 of the Code.
20. In addition, the amended arrangements include a change to the PAN, which has been increased from 120 to 128. This is a variation permitted by paragraph 3.6 of the Code which states that "*a variation to increase a school's PAN is not required to be referred to the Schools Adjudicator.*"

### **Consideration of case**

21. The objector has raised four concerns about the determined arrangements which were available on the school's website at the time the objection was made. I have decided to consider in the following order:

- a) priority for attendance at "*any other Gosforth first school*";
- b) the method by which distance will be measured;
- c) the definition of sibling; and
- d) the fairness of the third oversubscription criteria.

22. For completeness, I have also considered the amended arrangements with respect to these four concerns.

- a) Priority for attendance at "*any other Gosforth first school*"

23. The local authority has confirmed that each of the middle schools in the Gosforth pyramid originally had just three designated feeder first schools. As a result of the expansion in the number of new homes in the area, the number of children in year 4 in the first schools combined exceeds the total number of year 5 places available in the middle schools combined.

24. The local authority explained that one of the middle schools, Gosforth Junior High Academy, has not increased its PAN above 120 even though, in previous years, it has admitted more children than its PAN. Despite this middle school having received extra funding from the local authority to create two additional classrooms in order to admit children over its PAN, it still has insufficient middle school places for the year 4 children in its three designated feeder schools.

25. As the other two middle schools, Gosforth East and Gosforth Central, have had more places available in year 5 than the number of year 4 children in their own designated feeder schools, these two schools changed their admission arrangements following consultation. The change introduced from September 2017 a new oversubscription criterion for children who had attended any other Gosforth first school, giving them higher priority than applicants not in the year 4 transfer group. The change was to safeguard the continuity of education in

the 3-tier system for children moving from year 4 in a first school to year 5 in a middle school.

26. The objector was concerned that the third oversubscription criterion which prioritises *“children attending any other Gosforth first school that is not a designated feeder school”* breaches paragraph 1.9(b) of the Code.
27. Paragraph 1.9(b) of the Code states that *“it is for admission authorities to formulate their admission arrangements, but they **must not** take into account any previous schools attended, unless it is a named feeder school.”* As the Code prohibits an admission authority from taking into account the previous school an applicant has attended unless it is a named feeder school, priority cannot be given on the basis of referring to *“any other Gosforth first school...”*
28. Furthermore, the other Gosforth first schools referred to in oversubscription criterion 3 are stated not to be *“designated feeder schools”*, but paragraph 1.9(b) of the Code makes clear that attendance at these other schools cannot be taken into account unless they are feeder schools. It seems to me that the lack of clarity in the third oversubscription criterion is likely to be confusing for parents, and so the arrangements breach paragraph 14 of the Code which requires that *“...admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”*
29. It is my judgment that the third oversubscription criterion of the arrangements as they stood when the objection was made does not comply with the Code at paragraph 1.9(b). This is because it prioritises children who have previously attended a Gosforth first school that is *“not a designated feeder school”*, and that, as a result, is likely to be confusing for parents as it lacks the clarity required by paragraph 14. I uphold this part of the objection.
30. I note the amended arrangements submitted by the school on 11 July 2017 includes changes to the oversubscription criteria. In oversubscription criterion 3, the *“other Gosforth first schools”* have been identified as Archibald; Brunton; Regent Farm; Archbishop Runcie; Grange and South Gosforth, and are known collectively as the *“group B”* designated feeder schools. Oversubscription criterion 2 has also been amended so that the three first schools previously stated to be the designated feeder schools, namely Broadway; Dinnington and Gosforth Park, are now termed collectively as *“group A”*.
31. The objector responded on 19 July 2017 to suggest that the amended arrangements are *“new admission arrangements”* which had been published *“without public consultation”*. However, I am of the view that the governing body has amended the determined arrangements to make clear how previous attendance at any of the Gosforth first schools will be taken into account in the allocation of places at the school. As the arrangements were amended *“to give effect to a mandatory provision”* which is a variation permitted by paragraph 3.6 of the Code, no public consultation was required.

32. As all the Gosforth first schools have been named individually, I consider that the amended arrangements now meet the requirements of paragraph 1.9(b) of the Code. I have considered whether the third oversubscription criterion 3 is fair in terms of paragraphs 14 and 1.15 in section (d) in the paragraphs below.

b) The method by which distance will be measured

33. The sixth oversubscription criterion prioritises *“children living nearest the school as measured in a straight line distance from a single fixed central point at the school to a point in the centre of the home address of the child, using the Local Land and Property Gazetteer or a suitable alternative geographical information system.”* The objector noted the reference to *“more than one system of measurement”* and said this makes the arrangements *“ambiguous and not sufficiently clear to meet the requirements of paragraphs 14 and 1.13”* of the Code.

34. The Code at paragraph 1.13 states that *“admission authorities must clearly set out how distance from home to the school will be measured, making clear how the ‘home’ address will be determined and the point in the school from which all distances are measured.”*

35. The method by which the distance between an applicant’s home and school will be measured, as stated in the arrangements at the time the objection was made, does not comply with paragraph 1.13 of the Code because the points in the school and the home are not precisely stated, and from the wording *“the Local Land and Property Gazetteer or a suitable alternative...”* it appears that more than one system of measurement may be used. As the wording regarding the method by which distance will be measured is unclear, the arrangements lack the clarity required by paragraph 14. I uphold this part of the objection.

36. In the letter dated 8 June 2017, the local authority explained that as a result of the previous determination for another Gosforth middle school, ADA3255, it has amended its description of *“the system by which it provides distance calculations to schools ... and would propose that Gosforth East Middle School would adopt this wording in its policy.”*

37. The school has adopted the local authority’s revised wording so that the amended arrangements now make clear that distance will be measured *“in a straight line from a single fixed central point at the school to a point in the centre of the home address of the child, using the Local Land and Property Gazetteer and British National Grid Easting and Northing co-ordinates.”*

38. As the method used to measure the distance between home and school has now been defined clearly in the amended arrangements, I consider that this matter now meets the requirements of paragraph 1.13 of the Code.

c) The definition of sibling

39. The objector observed that the school’s definition of sibling with respect to oversubscription criterion 4 concludes with the sentence *“Sixth form students*

*are not eligible as sibling links*". As the school is a middle school, and does not have a sixth form, the objector said that the reference to sixth form not being eligible as sibling links makes *"the admission arrangements confusing and unclear and so they do not meet the requirements of paragraph 14 of the Admission Code."*

40. In the letter of 8 June 2017, the local authority acknowledged that the reference to sixth form students in the fourth oversubscription criterion *"is an oversight and clearly should not be included"*.
41. As the school is a middle school, it does not have a sixth form. As a result, the concluding sentence in oversubscription criterion 4 that *"Sixth form students are not eligible as sibling links"* may be confusing for parents. It seems to me that the arrangements are, therefore, unclear and do not meet the requirements of paragraph 14 of the Code. I uphold this part of the objection.
42. As the statement that *"Sixth form students are not eligible as sibling links"* has been removed from oversubscription criterion 4 of the amended arrangements, I consider that no further action is required in this matter.

d) The fairness of the third oversubscription criteria

43. The objector noted that *"the second and third oversubscription criteria give priority to, respectively, children attending one of the designated 'feeder' schools, namely Broadway East First School, Dinnington First School or Gosforth Park First School; and then children attending any other Gosforth first school"*. The objector said the *"PAN for entry into year 5 is 120 whereas the total number of children leaving the three designated feeder schools is around 116 and the nine Gosforth first schools is around 400."*
44. The objector questioned whether the third oversubscription criterion complies with the Code at paragraph 14 which requires that *"the practices and the criteria used to decide the allocation of school places are fair ..."* and paragraph 1.15 which provides that *"any feeder school included within an oversubscription criterion **must** be made transparently and on reasonable grounds."*
45. The objector said the arrangements are unfair *"because local children who did attend any of the three designated feeder schools are extremely unlikely to get a place; and those children not attending any of the nine Gosforth first schools will find it all but impossible to get a place."*
46. I looked at the PANs for the three Gosforth middle schools for the 2017 and 2018 admission rounds. For 2017, the PAN for Gosforth East Middle School was 120, and the PANs for the other two middle schools, Gosforth Central (126) and Gosforth Junior High Academy (120). I note that Gosforth Junior High Academy agreed to admit 180, but retained a PAN of 120. Adding together the PANs for all three schools, the combined PAN for the Gosforth middle schools in 2017 was 366.

47. For admissions in 2018, the PANs for the middle schools Gosforth Central and Gosforth Junior High remain the same at 126 and 120 respectively. The PAN for Gosforth East in the amended arrangements is 128, which means the school will have eight extra places in year 5. The combined PAN for the middle schools in 2018 is therefore 374.

48. I looked at the most recent annual school census (taken in January 2017) to establish how many children were in years 3 and 4 in the three designated feeder schools for each of the Gosforth middle schools, and have summarised the data in the table below. The children in year 4 will have, by the date of this determination, transferred already to middle (or other) schools in September 2017, and year 3 children will have progressed to year 4 and be due to transfer in September 2018.

<b>Pupils in Gosforth First Schools (January 2017)</b>	<b>Year 3</b>	<b>Year 4</b>
Dinnington	31	29
Gosforth Park	45	45
Broadway East	46	45
<b>Total in group A feeders for Gosforth East</b>	<b>122</b>	<b>119</b>
Archbishop Runcie CE	31	30
Grange	30	30
South Gosforth	45	46
<b>Total in group A feeders for Gosforth Central</b>	<b>106</b>	<b>106</b>
Archibald	60	60
Regent Farm	60	60
Brunton	61	64
<b>Total in the feeders for Gosforth Junior High</b>	<b>181</b>	<b>184</b>
<b>Total pupils in all first schools</b>	<b>409</b>	<b>409</b>

49. The amended arrangements for Gosforth East Middle School include an increased PAN of 128 which means there will be 128 places in year 5 for admissions in September 2018. From the table, there are likely to be a total of 122 children in the transfer year of the three designated (group A) feeder schools.

50. The objector said the arrangements are unfair *“because local children who did attend any of the three designated feeder schools are extremely unlikely to get a place”*. It seems to me that after applicants with an EHC plan, and any looked after and previously looked after children have been admitted, there are likely to be sufficient places for all the children in the three designated (group A) feeder schools who would wish to transfer to the school. Therefore, I am not persuaded that the arrangements are unfair in this respect.

51. The objector also said the arrangements are unfair because *“children not attending any of the nine Gosforth first schools will find it all but impossible to get a place.”* In the submission of 19 August 2017, the objector noted the changes that had been made in the amended arrangements and said that *“simply by changing the description of the third oversubscription criterion in the way it has, the school has done nothing to address our criticism ... that naming all nine Gosforth first schools as designated feeder schools leaves an insufficient number of places for children attending schools other than those*

*nine schools ... for this September only four places out of 120 were offered to children who did not attend any of the nine schools.”*

52. All the parties to this case have seen the table above. Neither the school or the local authority made any comments about the table, but the objector said in the further response sent on 1 December 2017 that *“the figures provided ... indicate that ... most available places are taken up by pupils from the three designated feeder schools. The few remaining available places are then, almost inevitably, then taken up by pupils who attended one of the other six Gosforth first schools. This reinforces our point that ... giving priority to children who attended any of the nine Gosforth first schools creates a “Fortress Gosforth”, which means that it is almost impossible in practice for a child to obtain a place at Gosforth East Middle School if he/she attended any other school (unless he/she is in local authority care or has an EHC plan naming the school). In our view this is extremely unfair on (a) those local children who had been unable to get a place at any of the Gosforth first schools (and these schools are themselves mostly oversubscribed); and (b) families who subsequently move into the area with a child of school age”*. The objector also expressed the view that *“this may constitute (indirect) unlawful discrimination on the grounds of race (including colour, nationality or ethnic or national origin) against families in category (b).”*
53. From the table above, there may be a total of 409 transfer children in the Gosforth first schools. However, as the total PAN for the three Gosforth middle schools is 374, it seems unlikely that there will be sufficient places in the Gosforth middle schools for all the year 4 children in the Gosforth first schools should they apply to transfer to middle school in September 2018.
54. Looking at how places would be prioritised in the event of the school being oversubscribed, it is likely that after children with an EHC plan, those who have been looked after, and children who have previously attended one of the three designated feeder schools have been admitted, there may be few (if any) places remaining for any transfer children in the other Gosforth (group B) feeder schools. After siblings and any children with exceptional medical reasons have been admitted, there is very little chance of applicants who did not attend one of the nine Gosforth first schools being allocated a place in year 5 at the school.
55. I looked at how places were allocated to the Gosforth middle schools in the 2017 admission round. On its website, the local authority provides helpful information about how places were allocated to its schools in previous admissions rounds. I asked the local authority for further information about allocations to schools in the 2017 admissions round. In my consideration of the case I have considered all the information provided, some of which I have summarised in the table below. The table does not show the basis on which every place was allocated, for example, it does not include looked after children who would have a high level of priority whatever school they had attended previously.
56. The final oversubscription criterion for all three schools is based on distance from the applicant’s home to the school. I consider that the number of places

allocated on distance may provide an indication of the number of places remaining for applicants who did not attend one of the nine Gosforth first schools. As only two places were allocated on the basis of distance, it can be seen that for the 2017 admissions round, there was indeed very little chance of applicants who did not attend one of the nine Gosforth first schools being allocated a place in year 5 at the school or at either of the other Gosforth middle schools.

Gosforth Middle Schools	2017 PAN	Total number of applications	Number of first preferences	Year 4 children in group A feeders (from census)	Total places offered on 2 March 2017	Places allocated on basis of		
						Attendance at group A (designated) feeder	Attendance at Group B feeder school	Distance
East	120	244	118	119	120	109	6	2
Central	126	284	131	106	126	101	19	2
Junior High	120	319	207	184	180	164	n/a	1

57. The local authority also confirmed that 23 children living in Gosforth who had not attended one of the nine Gosforth first schools and had no sibling at any of those first schools were not allocated a place at a Gosforth middle school for admission in September 2017.

58. The objector has argued that the third oversubscription criterion may be unfair for local children who, for whatever reason, have not attended any of the nine Gosforth first schools, and the information from the local authority on how places were allocated in the 2017 admission round does appear to support this contention. If there were to be a similar pattern of parental preferences in the 2018 admission round, the increase in the PAN from 120 to 128 means that there will be eight extra year 5 places in the school for September 2018, and at least some of these places are likely to be available for local children who did not attend one of the nine Gosforth first schools.

59. However, the school and the local authority have a different perspective, and maintain that without the priority in the third criterion for attendance at a group B feeder school, many year 4 pupils already in the three-tier system would be unable to transfer to year 5 in a middle school. Without a year 5 place in middle school, these children would be forced to move into a primary school outside the area which has places available in-year, and the continuity of their education would be disrupted.

60. In the school's response of 30 August 2017, the chair of governors explained that *"when parents obtain a place in a Gosforth first school their expectation*

*is that their child's educational journey will follow through the three tiers. The nine first schools and two of the middle schools are part of the Gosforth Schools Trust ... information is shared on a regular basis. The... Council's core strategy for housing has designated zones for several thousand new houses in our area, many have already been built. Our schools are both popular and full and are frequently used by housebuilders as a selling point. Consequently, place planning and admissions are frequently on the agendas of Governing Boards and the Board of Trustees."*

61. The chair of governors also stated that *"we feel that we are actually enabling families who move into the area to have a chance at a place in a 'Gosforth pyramid school'. What we want to avoid ... is having a policy which allows children to transfer in from neighbouring two-tier schools and excluding families on our doorstep; a policy based on need rather than desire... we feel we have a duty to put Gosforth families first."*
62. The three-tier system, namely the Gosforth pyramid of schools, is a critical factor in deciding this case due to the close partnership and curriculum links between schools within each phase and between each phase, so that when children transfer from first school to middle school, or from middle school to the academy high school, the transition is as seamless as possible to facilitate curriculum continuity and progression. I consider that the inclusion of all the Gosforth first schools as feeder schools has been made transparently and on reasonable grounds, and complies with paragraph 1.15 of the Code.
63. The inclusion of criterion 3 will disadvantage local children who may be unable to access a middle school place because they have not attended a Gosforth first school, and therefore have not been in the Gosforth pyramid of schools since the Reception Year (year R). However, not including criterion 3 will disadvantage a group of local children in the transfer year at first school who have been in the Gosforth pyramid of schools since year R. It is my view that, before I am in a position to decide whether or not the inclusion of the third criterion is fair, I must also weigh up the potential adverse impact for each group children if they were not to be allocated a year 5 place in order to decide which of the two groups may suffer the greater disadvantage.
64. It appears unlikely that local children who have not attended one of the nine Gosforth first schools will secure a year 5 place in the school for September 2018, but it seems to me that most of these children will be from families who will have chosen for their child to move schools. It may be that some of these children were unsuccessful in securing a year R place in a Gosforth first school and have been in a nearby primary school in the city from year R. The first schools allocate places (after all looked after and previously looked after children, siblings and those with a medical need to attend the school) on the basis of distance. This means that children who did not secure a place at a first school are likely to live further from it than those who did. Some children may have moved into the Gosforth area after year R but they will already have a place in one of the primary schools in the city. None of these children would be in a transfer year at the primary school and, therefore, would not have to move school until they are due to transfer to a secondary school in year 7.

65. I asked the local authority for further information about the 2012 admission round to year R as these would have been the children in the 2017 admission round for year 5 places in the Gosforth middle schools. I asked for information about how many children aged four had been resident in Gosforth, the number who had secured a year R place in a Gosforth first school, and the number who had not. I asked the same questions for the 2013 admission round to year R (as this relates to the children applying for middle school places in 2018).
66. In the response of 7 November 2017, the local authority said that *“Gosforth is a very difficult area to define geographically. The planning area used for school place sufficiency ... crosses/cuts across 4 ward boundaries and the ward boundaries have changed since 2012. What a parent calls Gosforth, might not be what we call Gosforth for sufficiency planning...”* The local authority explained that *“2012 offer statistics are available but preference and historic address details of the children have not been saved as part of this process. We therefore cannot answer this question.”* The same response was given for the 2013 offer statistics.
67. There may also be families new to the area from outside the city, but the children from these families would have to move to a new school anyway.
68. I asked the local authority for more information about the 2017 admission round: how many year 4 children were resident in Gosforth, and how many of these were new to the area since 2012. I asked for the equivalent information for the 2018 round. The local authority was unable to provide the information because it was highly complex *“to extract the address history of individual children over the 5 year period.”*
69. I then researched the range of alternative schools within three miles of Gosforth. I have taken three miles because that is the statutory walking distance to school for children aged eight or more years of age, above which the local authority is required to provide home to school transport where there is no suitable school nearer to the child’s home. If the walking route to any of these alternative schools is unsafe, the local authority would be required to provide transport.
70. Using the website “Get Information about Schools”, which has been developed by the Department for Education, I found 43 primary schools (including 13 schools with a religious designation) within three miles of Gosforth, although some of these are in another local authority area.
71. I considered whether any of the 30 primary schools without a religious designation might be likely to have year 5 places available in September 2018. To estimate the number of pupils who might still be on roll in year 5 for each school I used the year 3 pupil numbers from the January 2017 census, as these children are likely to have progressed to year 5 in September 2018. Comparing the estimated number of year 5 pupils with the PAN for each of these 30 schools, I found that more than half might be likely to have some places in year 5 in September 2018. I conclude that there is a range of primary schools for families new to the area if they are unable to secure a

place in Gosforth East Middle School.

72. Oversubscription criterion 3 prioritises children who have attended any other (group B) Gosforth first school, and from the data available, it has been shown that these children are very likely to secure a place at the school. Children in the first schools have to change school at the end of year 4, and would expect to spend four years in a middle school before moving to the academy high school for year 9. Without the third criterion which affords a high priority for a place at the school, this group of children may be unable to access a place in a middle school, thereby being forced out of the three-tier system. It has been shown that there are a range of primary schools within three miles of Gosforth, but there will be significant differences in the curriculum provision within these primary schools compared to that available in the middle schools which is designed to facilitate continuity and progression in the transition from the first schools. Furthermore, two years later, the education of these children would be disrupted again, by having to change to year 7 in a secondary school. It is my view that not having the third criterion is likely to disrupt significantly the education of local children forced out of the Gosforth pyramid of schools at the end of year 4.
73. It is my judgment that, because of the range of primary schools within a reasonable distance of the school, any disadvantage to local children likely to be caused by the third criterion is less than the adverse impact on the education of local children that would be displaced from the three-tier system if the third criterion were not to be in place. I am persuaded that, on balance, the third oversubscription is not unfair. It is my judgment that the school's arrangements meet the requirements of paragraph 14 because *"the practices and the criteria used to decide the allocation of school places are fair"*.
74. The objector also suggested in the submission of 19 July 2017 that the third criterion is *"particularly unfair on parents moving into the area ... We mention in passing that, for this reason, the policy is also likely to disproportionately have an adverse impact on (non-British) EU citizens moving to the area to exercise their Treaty rights and therefore is likely to constitute indirect discrimination in breach of the Human Rights Act 1998, the Equality Act 2010 and EU Law."* In the submission of 3 September 2017, the objector cited an example of alleged indirect racial discrimination but the details were unclear and the objector was not certain that the individual was a non-British EU citizen. The objector said in the further submission sent on 1 December 2017 that *"giving priority to children who attended any of the nine Gosforth first schools... is extremely unfair on ... families who subsequently move into the area with a child of school age..."* and expressed the view that *"this may constitute (indirect) unlawful discrimination on the grounds of race (including colour, nationality or ethnic or national origin)"*.
75. Indirect discrimination arises where a policy, practice or rule is applied to all equally but has the effect of disadvantaging people with a characteristic protected under the Equality Act. The protected characteristics are age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

76. The objector has suggested that the third oversubscription criterion, which would apply to all applicants in the same way, will have a worse effect on “(non-British) EU citizens moving to the area”. Without further evidence, I am not able to evaluate whether the effect of the third criterion would be to disadvantage children from the families of non-British European Union countries moving to the Gosforth area compared to children from British families moving to the Gosforth area. Consequently, I am unable to pursue this matter any further.

77. On the basis of the evidence available to me, I conclude that the third oversubscription criterion complies with paragraphs 14 and 1.15 of the Code. I do not uphold this part of the objection.

### **Summary of Findings**

78. The objector raised four concerns about the determined arrangements which were available on the school’s website at the time the objection was made. For the reasons stated in the paragraphs above, I have upheld three of those four concerns as they did not comply with the Code as follows:

- a) The priority in oversubscription criterion 3 for attendance at “*any other Gosforth first school*” did not comply with paragraph 1.9(b).
- b) The method by which distance will be measured did not meet the requirements of paragraphs 14 and 1.13.
- c) The definition of sibling did not comply with paragraph 14.

79. All three of these concerns have been addressed in the amended arrangements submitted on 11 July 2017 and published on the school’s website. As the amended arrangements now comply with the Code, no further action is required by the admission authority.

80. The objector was also concerned that oversubscription criterion 3 in the arrangements available at the time of the objection, and in the amended arrangements, was unfair and did not meet the requirements of paragraphs 14 and 1.15 of the Code. After full consideration of the evidence available to me, I have not upheld this part of the objection for the reasons stated in the paragraphs above.

81. I have upheld three of the four parts of the objection that are within my jurisdiction for the reasons stated in the paragraphs above. Accordingly, I partially uphold the objection to the admission arrangements for Gosforth East Middle School for September 2018.

### **Determination**

82. 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 2018 determined by the governing body for Gosforth East Middle School, Newcastle.

83. By virtue of section 88K(2) the adjudicator’s decision is binding on the

admission authority. As the determined arrangements have been amended to comply with the Code, no further action is required by the admission authority.

Dated: 7 December 2017

Signed:

Schools Adjudicator: Ms Cecilia Galloway