



DETERMINATION

Case reference:	ADA3359
Referrer:	Two members of the public
Admission Authority:	Tameside Metropolitan Borough Council for community secondary schools
Date of decision:	18 July 2018

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 2019 determined by Tameside Metropolitan Borough Council for community secondary schools in the borough.

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 two members of the public, (the objectors), about the admission arrangements (the arrangements) for the community secondary schools in Tameside. The objection is to the fairness of the oversubscription criteria to certain groups of children and, in particular, to the effects of the use of feeder schools in those criteria.

Jurisdiction

2. These arrangements were determined under section 88C of the Act by Tameside Metropolitan Borough Council, the local authority, which is the admission authority for the schools. The objectors submitted their objection to these determined arrangements on 12 March 2018. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act.
3. I should emphasise that my jurisdiction is limited to the admission arrangements for September 2019. I do not have jurisdiction for changes made to the admission arrangements in earlier years or for consultation undertaken in relation to admission arrangements for years before 2019; I do have jurisdiction in relation to the consultation for the 2019 arrangements. Similarly, some of the objectors' concerns about the arrangements for 2019 are not within my jurisdiction: the

attendance of representatives from the local authority's admissions team at secondary school open meetings and communications between the local authority and the schools

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. the referrers' form of objection, attached letter and document submitted 12 March 2018 and subsequent communication;
 - b. the local authority's response to the referral and supporting documents and the local authority's response to my questions;
 - c. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2018;
 - d. a map of the area identifying relevant schools;
 - e. the report to Tameside's Executive Cabinet about the consultation on the arrangements;
 - f. the minutes of the meeting of the Executive Cabinet at which the arrangements were determined; and
 - g. a copy of the determined arrangements.

The Objection

6. The objectors argue that the oversubscription criteria are unfair to children who fall into one or more of the following categories: have attended independent primary schools, have been home-schooled, do not have older siblings, attended schools outside Tameside, or recently moved into the borough. In large part, this is, the objectors maintain, because of the high degree of priority given in the oversubscription criteria to children who have attended what the arrangements refer to as "partner primary schools" for each community school. Consequently, the objectors consider that the selection of feeder schools does not conform to paragraph 1.15 of the Code which provides that, "*The selection of a feeder school or schools as an oversubscription criterion must be transparent and made on reasonable grounds.*"

"*Admission authorities may wish to name a primary or middle school as a feeder school.*"
7. I note that I am satisfied that what the local authority refers to as a "partner primary school" falls within the meaning of a feeder school within the terms of the Code. This means that the use of partner primary schools must meet the requirements as to feeder schools. In this determination, I have used the Code's term – feeder school – other

than where I am quoting from the arrangements.

8. The objectors also argue that the admission arrangements are contrary to the Greenwich Judgement, which requires that pupils must not be discriminated against simply because they reside outside the local authority area in which the school is located.

Background

9. There are sixteen secondary schools in the local authority: four are community schools; nine are academies, including one free school and three are Roman Catholic voluntary aided schools. Tameside MBC is the admission authority for the community schools. The admission arrangements for the other twelve schools are determined by either the academy trust or the governing board. A total of 13 out of the 16 secondary schools in the borough do give priority in their arrangements to children who have attended feeder primary schools.
10. Between 12 October 2017 and 23 November 2017, the local authority consulted on the admission arrangements for community secondary schools for September 2019. The consultation proposed a change to the wording of the oversubscription criterion in relation to feeder schools, changes to published admission numbers (PAN) at three schools and additional feeder schools for two community secondary schools. In the event, no change was made to the feeder primary schools, but changes were made to the PANs of three schools and, most central to the objection, to the wording of the feeder school criterion.
11. The oversubscription criteria for each community secondary school in the local authority area for September 2019 can be summarised as follows:
 1. Looked after and previously looked after children
 2. Children and families with exceptional medical and social needs
 3. Siblings
 4. Children attending the named partner primary school on the closing date for applications. Preference will be given to pupils living nearest to the school.
 5. All other applications on distance.
12. The change made to the fourth criterion, the criterion relating to feeder schools, was to remove the following paragraph (which I refer to in this determination as the qualifying statement):

“When a parent has moved from further than ½ mile to an address within ½ mile of a Tameside Primary school whilst their child is in Year 5 or 6 and they have chosen to keep their child at their current primary school, or where the child is educated at home and the address is

within half a mile of a Tameside primary school, this will be considered as an exceptional circumstance under criterion 4, provided details are given on the special circumstances form together with satisfactory evidence of the house move,”

13. It is fair to say that the history to the oversubscription criteria for the community schools is relatively complicated. Over the past decade, the fourth criterion has changed a number of times. At one point, priority was given to *“Children attending primary schools in Tameside including independent schools and pupils educated at home at the time of application, as identified by Tameside MBC. Preference will be given to pupils living nearest to the school.”*

14. Following a report by the Local Government Ombudsman in 2009, this was amended to read:

“Children attending primary schools in Tameside including independent schools and pupils educated at home at the time of application, as identified by Tameside MBC.

When a parent has moved from further than ½ mile to an address within ½ mile of a Tameside Primary school whilst their child is in Year 5 or 6 and they have chosen to keep their child at their current primary school, or where the child is educated at home and the address is within half a mile of a Tameside primary school, this will be considered as an exceptional circumstance under criterion 4, provided details are given on the special circumstances form together with satisfactory evidence of the house move,”

15. The arrangements were amended again for September 2016 following an adjudicator determination in June 2015 (ADA2843) which found that the arrangements did not conform to paragraph 1.9b of the Code, as they took account of previous schools attended without naming them. Paragraphs 1.9b and 1.15 require that feeder schools **must** be named. The oversubscription criterion remained broadly the same until the change made for 2019 by removing the second paragraph set out above and in paragraph 12.

Consideration of Case

16. I deal first with a point made by the objectors about the dates of publication of two documents: the admission arrangements and Moving On, the composite prospectus published by the local authority. The objectors noted that these documents are published at different times and that Moving On is published on or around 11 September whereas the local authority's online application system opens on 1 September. The two documents serve different purposes. The arrangements have to be determined by 28 February in the determination year and published by 15 March in the determination year. This allows for scrutiny of the arrangements and for any objections to be made by the deadline of 15 May. The composite prospectus brings together the arrangements for all the schools in the area determined by all the admission authorities. Its purpose is to support

parents in making informed decisions as to the schools they would like their children to attend. The dates of publication are set out in paragraphs 1.47 and 1.51 of the Code. The local authority has complied with these dates and I do not uphold this aspect of the objection. The date of opening the application system is not a matter for me.

17. I consider now whether the selection of feeder schools was “transparent and made on reasonable grounds” as required by paragraph 1.15 of the Code. The local authority has explained that following the adjudicator determination in 2015, ten secondary school headteachers each drew up a list of proposed feeder schools, reflecting ongoing curriculum links and historical admission patterns. The lists were duly incorporated into admission arrangements and have remained relatively stable since then. The local authority has consulted four times on the lists of partner primary schools, most recently for 2019.
18. The objectors have drawn attention to an extract from a letter from a local authority officer as part of the consultation process for the 2019 arrangements. It says, “*Following consideration of the report, the Executive Cabinet agreed the following: ‘There will be no change to partner primary schools for any community high schools. The Cabinet made this decision on the basis that there are currently no active links between the proposed partner and secondary schools.’*”
19. As far as I can discern, the context of this letter was the decision by the local authority not to add to the list of partner primary schools for two community schools, a possible change on which it had consulted as noted above. The grounds for the decision was that the primary schools concerned did not have active links with the secondary schools. This is consistent with the explanation for the selection of the feeder schools in the first place – that there were links between the respective primary and secondary schools. The feeder schools are named in the arrangements and I find that they have been selected on transparent grounds. The objectors have, however, commented that the headteacher of one community secondary school said he thought the local authority make the decision about which feeder schools were attached to a secondary school. The objectors have also questioned the degree of the links between the feeder schools and secondary schools. For the schools for which the local authority is the admission authority, it is the case that it decides the admission arrangements. It would also be reasonable for the local authority to consult the headteachers as to links with local primary schools. The local authority has said that the “*list of partner primary schools was originally drawn up in 2015 by the ten Headteachers of all the secondary schools*”. This is consistent with the local authority then determining the arrangements for the schools for which it is the admission authority taking account of such a list. The objectors have stated that “*when the feeder/partner primary schools were introduced as an oversubscription criteria [sic] for the 2016/2017 intake the “active links between primary schools and secondary schools was not not [sic] enforced.*” They have added that parents were not informed by primary headteachers of such links and

that one particular headteacher of a named primary school was unaware of such links. Details about the decision to include feeder primary schools as an oversubscription criterion are set out in the report by Tameside's Executive Cabinet on 26 August 2015. The report gives details about the consultation to list named feeder schools for the then six community schools. The consultation ran from 25 June to 6 August 2015. The report states, as referenced above, "*The proposed list of partner primary schools was drawn up in consultation with secondary headteachers and was based on current curriculum links.*" The list of feeder schools was amended for Mossley Hollins to include Millbrook Primary School on the basis of comments by one respondent who said there were links between the teaching staff at both schools, regular visits between the schools and at least one governor served on both governing boards. The paper states that the headteachers of all Tameside high schools and primary schools were sent an email informing them about the consultation. I find that the feeder schools have been selected on reasonable grounds and I do not uphold this element of the objection.

20. Even where feeder schools have been selected on reasonable and transparent grounds, however, it may be the case that they have an unfair or unreasonable effect on particular groups of children. The issue here is whether the arrangements are unfair in contravention of paragraph 14 of the Code or whether their use as oversubscription criteria are unreasonable in their effect in contravention of paragraph 1.8. I accordingly go on now to consider whether the selection of the feeder schools is reasonable and fair in its effect. The objectors comment on the number of feeder schools listed for each community secondary school. They draw attention to the fact that one school, Alder Community High School, has 17 feeder primary schools while Mossley Hollins High School has eight feeder primary schools. The objectors comment, "*it is deceiving for parents as they are under the impression if their child attends a feeder school they will get in.*" It is the case that the combined number of children attending the feeder schools in Year 6 is higher than the number of places available in Year 7 at any one of the community secondary schools to which that primary is linked. That, however, is not the end of the story. Some schools are listed as partner primary schools for one community secondary school while others are listed for more than one.
21. As noted above, nine of the twelve secondary schools in Tameside that are not community schools use feeder schools in their oversubscription criteria. Again, there is a significant amount of overlap so that some of the schools named as feeders for one or more of the community schools are also on the feeder school lists of some academies and voluntary aided schools. A reasonably well informed parent who read the Moving On booklet before deciding which schools to apply for would quickly discern this pattern. Some examples may be useful. Arundale Primary and Discovery Primary Academy are both listed as partner primary schools for two community schools (Alder and Hyde) and Longendale High School, an academy, Bradley Green, is also listed for those three secondary schools and for Rayner Stephens and

Fairfield Academies. I have not been able to identify a single feeder school for Alder that is not also a feeder for at least one other secondary school. The objectors refer to Manor Green and Greswell and state these primary schools are only listed as feeders for one secondary school - Denton Community. In fact, both are also listed as feeders for Fairfield, although this is a girls' only school.

22. Tameside is a densely populated and compact local authority area. It covers just under 40 square miles. In a great number of cases, children who have attended the same primary school will easily be able to reach more than one secondary school. The local authority also has three schools with a Roman Catholic religious character and it has single sex secondary schools for boys and girls. In short, it has a wide diversity of secondary schools. Given all that, it is not surprising that children from any one primary school should transfer to a number of different secondary schools or that any one primary school should have links with a number of secondary schools. In addition, as the information set out in the tables below show, not all of the community high schools reach and exceed their Published Admission Number (PAN) on the basis of applications from children attending partner primary schools.
23. The local authority has given details on how offers to the four schools have been allocated over the last three years:

2018 allocations as at national offer day

Community school	Published admission number	Last place allocated	Distance	Tameside resident	Non Tameside resident
Alder	180	Criterion 4	1.22	180	0
Denton Community College	270	Criterion 4	2.247	246	24
Hyde Community College	240	Not full	n/a	219	1
Mossley Hollins	180	Criterion 5	2.227	172	8

2017 allocations as at national offer day

Community school	Published admission number	Last place allocated	Distance Miles	Tameside resident	Non Tameside resident
Alder	155	Criterion 4	1.13	155	0
Denton Community College	270	Criterion 5	1.191	259	11
Hyde Community College	210	Criterion 5	1.102	210	0
Mossley Hollins	156	Criterion 4	1.491	155	1

2016 allocations as at national offer day

Community school	Published admission number	Last place allocated	Distance	Tameside resident	Non Tameside resident
Alder	155	Criterion 4	1.122	154	1
Denton Community College	270	Not full	n/a	228	31
Hyde Community College	210	Not full	n/a	174	1
Mossley Hollins	156	Criterion 4	2.933	155	1

24. It is a fact that some children will have a high priority for more schools than will others. That in itself does not make arrangements unreasonable or unfair. In urban areas, that is very often the case and is likely to be so whatever the arrangements. However, I have been presented with no evidence that any group of children in Tameside faces an unreasonably difficult or long journey to school or suffers an unfairness as a result of the use of the partner school provisions in the arrangements. I do not uphold this aspect of the objection.

25. The second part of the objection concerns the removal of the qualifying statement from criterion 4. The objectors argue in their original objection that it discriminates against children who move into Tameside but attend primary school outside the borough, attend independent schools, are home-schooled, attend primary schools outside the borough or live outside the borough. In a subsequent letter, the objectors also argue that the change discriminates against children who do not have siblings. Paragraph 1.8 of the Code requires that “*oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.*” Paragraph 14 requires that arrangements be fair.
26. It is, of course, for the admission authority to determine its arrangements, including its oversubscription criteria. This is made clear in paragraphs 1.9, which states, “*It is for admission authorities to formulate their admission arrangements..*” and 1.10, which states, “*It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances.*” My jurisdiction is to consider whether the arrangements that have been determined conform with the requirements relating to admissions. I emphasise this because for most schools there will be more than one possible set of Code compliant arrangements. It is not for me to consider whether one set of Code compliant arrangements would be better than another set of Code compliant arrangements. It is in that context that I have to consider the removal of the qualifying statement. I am not judging whether the arrangements would or would not be better with the statement; I am judging whether they comply with the requirements relating to admissions without it.
27. The local authority has explained its reasons for removing the statement. It has explained that following its introduction, for a number of years few parents sought priority based on the “exceptional circumstances”. This changed more recently. The objectors surmise that the increased interest in seeking priority based on these circumstances may have flowed from their promotion of its availability. That may well be the case. The local authority formed the view that the qualifying statement was being “*used by parents to gain an advantage when applying for a secondary school place that was never intended.*” This seems to be based on families who already lived in Tameside but whose children did not attend a feeder school moving within Tameside so that the child was qualified under the “exceptional circumstances” and was thus treated as if he or she did attend a feeder primary school.
28. It was unquestionably open to the local authority to change its arrangements provided that it followed the process of consultation laid out in the Code and provided the arrangements subsequently determined were Code compliant. The local authority has confirmed that it consulted as required. It has told me that it received only one response to this change and that was from the Assistant Director of Education at the Manchester Diocese who was supportive.

29. I shall address the issue of children living outside the borough later in this determination and deal here with the position of children living in the borough who attend independent fee-paying schools or are home-schooled or who do not have siblings. As the admission authority, it is for the local authority, following consultation, to determine admission arrangements including oversubscription criteria. The Code allows feeder schools but it does not permit – at paragraph 1.9I – admission authorities to name independent fee-paying schools as feeder schools. Children at independent schools and those who are home-schooled can apply for places at the community secondary schools but do not have as high a priority as those at feeder schools.
30. The purpose of the oversubscription criteria is to set out the priority for children to be offered places at the school. By definition, a priority list will always give applicants a greater chance of securing a place than others. In the case of these schools, children who do not attend feeder schools will be assessed under criterion 5. The tables above show that some places are allocated under that criterion. That means that where the school is oversubscribed and the oversubscription criteria are used, those children who do not qualify under priorities 1- 4 will be considered for places based on measuring the distance from their home to the school. Children who live nearest the school will be offered a place until the PAN has been reached. The tables also show that there are enough places available in the schools taken together for all those who sought a place at one or more of them. An example may be helpful. Alder reaches capacity from those children who have attended a feeder primary school. It is less than two miles from Hyde which was able to accommodate all who sought a place there. The objectors told me that they would both have preferred their children to go to Alder. Neither child attended a feeder school for Alder and both were allocated places at Hyde under the distance criterion. Both objectors emphasise that Alder is close to where they live. However, both also live close to Hyde and both schools are well within two miles by walking route of the objectors' homes.
31. It is open to all parents to express a preference for the school they wish their child to attend. Parents will look carefully at the information available, not only about the school but also information about how places have been allocated if the school is oversubscribed. Moving On, the composite prospectus, sets out for each school the furthest distance from school at the initial allocation stage, which provides useful information. It is not always possible for every child to be given a place at the school his or her parent would most prefer. In this case, there are places within a reasonable distance for all children and I have been provided with no evidence that these arrangements cause unfairness to any group of children.
32. Finally, in this section I consider the question of children without siblings. In correspondence during the course of my consideration of this case, one of the objectors said that they have one child and therefore sibling criteria discriminates against the child. It is extremely common for admission arrangements to give priority to siblings. The

objectors also set out the proportion of places allocated to siblings at each of the schools. They show that in 2018 the number of places allocated to siblings at Hyde Community College was 25% of the total PAN, for Alder it was 26% of total PAN and for Mossley Hollins it was 21% of total PAN. The percentages were higher in previous years but the PAN for the schools had been increased for 2018. Clearly, if priority is given to siblings, then there will be fewer places for other children. That, however, is the effect of any oversubscription criteria. The oldest child in a family or an only child cannot benefit from such a criterion. That does not make the criterion unfair and again I have been presented with no evidence that such children cannot find places at a school within a reasonable distance of their home – even if it may not be the school their parents would most prefer. I do not uphold this part of the objection.

33. The third part of the objection is the objectors' view that the removal of the qualifying statement from criterion 4 discriminates against children who live outside the borough and is therefore unlawful and in breach of the 'Greenwich Judgement'. In the words of footnote 23 to the Code, "*R v Greenwich London Borough Council, ex parte John Ball Primary School (1989) 88 LGR 589 [1990] Fam Law 469 held that pupils should not be discriminated against in relation to admission to the school simply because they reside outside the local authority area in which the school is situated. Section 86(8) of the SSFA 1998 places an actual duty on local authorities to comply with parental preference in respect of parents living within and outside their boundary.*" I should first say that compliance with the Greenwich Judgement does not require that every school should admit children outside the area concerned. Indeed, in many cases this would verge on the absurd. There are many, many schools particularly in large shire counties, which are located significant distances from the boundary of their local authority. A school in the West of Cornwall can be around 80 miles from the county boundary with Devon. What the Greenwich Judgement does require is, as the Code says, that pupils should not be discriminated against simply because they reside in a different local authority area from the school.
34. The arrangements of the schools do not actually take into account which local authority area children live in. They take account of siblings, the primary school attended and distance from the school. As the tables above show, three of the four community schools did in fact allocate places to children from outside Tameside in 2018. I do not conclude that the criteria discriminates against children who live outside the local authority and I do not uphold this part of the objection.
35. I turn next to the position of children whose families have moved into Tameside but whose child has continued to attend a school outside the borough. In relation to any particular community secondary school, such children will be in the same position as a child attending a Tameside primary school, which is not a feeder school for that secondary. As the tables above show, two of the community schools in 2018 did not reach their PAN having admitted all siblings and children from feeder schools who sought a place. One had places remaining

after all children who wished to go there had been allocated a place and one was able to admit all who had attended a feeder primary school who wished to go there as well as some on the basis of distance. I do not find that there is any unfairness to any particular group of children and I do not uphold this part of the objection.

Summary of Findings

36. This objection is in relation to the four community high schools in a local authority of sixteen high schools. In a compact area with a diverse range of schools and scope for children to reach more than one secondary school as well as a number of schools close to the border of other local authorities, it is clearly important for all parents to understand the admission arrangements for all the schools they consider for their children. Whenever a school is oversubscribed, some who would like a place there will be disappointed. This will be the case whatever the admission arrangements. I have not found any unreasonableness or unfairness in the arrangements or any breach of specific Code requirements. I do not uphold the 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 2019 determined by Tameside Metropolitan Borough Council for community secondary schools.

Dated: 18 July 2018

Signed:

Schools Adjudicator: Lorraine Chapman