



Office of
the Schools
Adjudicator

Determination

Case reference: REF3884

Admission authority: The governing board for Elsworth Church of England Voluntary Aided Primary School, Elsworth, Cambridgeshire

Date of decision: 25 October 2021

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I do not approve the proposed variation to the admission arrangements determined by the governing board for Elsworth Church of England Voluntary Aided Primary School for September 2022.

I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the way set out in this determination.

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 88E of the School Standards and Framework Act 1998 (the Act), a request for a variation to the determined admission arrangements for September 2022 has been referred to the adjudicator by the governing board for Elsworth Church of England Voluntary Aided Primary School (the school). The school is a primary school for children aged four to eleven in Elsworth, Cambridgeshire and has a Church of England religious character and its religious authority is the Diocese of Ely (the faith body).

2. The variation requested was to remove an oversubscription criterion with the intention of better aligning the arrangements with the governing board's vision for the school. When the arrangements were brought to my attention, I considered that there were

matters that did not, or might not, conform with the requirements for admission arrangements. I therefore decided to use my power under section 88I(5) of the Act to consider the arrangements as a whole.

3. The parties to the case are:
 - 3.1. the governing board for the school;
 - 3.2. the faith body; and
 - 3.3. Cambridgeshire County Council (the local authority).

Jurisdiction and procedure

4. Paragraph 3.6 of the School Admissions Code (the Code) says, in as far as is relevant here, “Once admission arrangements have been determined for a particular school year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Schools Adjudicator or any misprint in the admission arrangements. 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.”

5. The governing board originally proposed three changes in its requested variation. Two fell within the scope of revisions in order to give effect to a mandatory provision of the Code or admissions law. Admission authorities are able to make such variations without reference to the adjudicator and such variations are not within the adjudicator’s jurisdiction. I am satisfied that one proposed change is within my jurisdiction. I am satisfied also that correct procedures have been followed. I am further satisfied that it is within my jurisdiction to consider the determined arrangements in accordance with my power under section 88I of the Act as they have come to my attention and determine whether or not they conform with the requirements relating to admissions and if not in what ways they do not so conform. In considering these matters I have had regard to all relevant legislation and the Code.

6. The information I have considered in reaching my decision includes:
 - a. the referral from the governing board received 13 August 2021, supporting documents and further information provided at my request;
 - b. the determined arrangements for 2022 and the proposed variations to those arrangements;
 - c. comments provided by the governing board, the faith body and the local authority;
 - d. guidance on admissions provided by the faith body to schools with a Church of England character: and

e. information available on the websites of the local authority, the school and the Department for Education.

7. I have also taken account of the information I received during a meeting I convened on 17 September 2021 and held via the medium of Microsoft Teams which was attended by representatives of the governing board, the local authority and the faith body.

8. The arrangements for the school were determined on 22 March 2021. At that date the 2014 Code, which was then in force, provided that children previously looked after in England and then adopted or made subject to a child arrangements or special guardianship order should have equal highest priority with looked after children in school admission arrangements (subject to certain exemptions in schools with a religious character). The new Code, which came into force on 1 September 2021, extended the same level of priority for looked after and previously looked after children to children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted. All admission authorities were required to vary their admission arrangements accordingly by 1 September 2021. There was no requirement for this variation to be approved by the adjudicator and no reason for the governing board to send me its varied arrangements.

9. The proposed variation was framed in terms of the 2014 Code but as the 2021 Code is now in force, all references made are to the 2021 Code.

Background

10. The governing board explained in its request for a variation that there had been various difficulties for the school, at least partly stemming from the Covid-19 pandemic. There had been significant changes in the leadership of the school which included the resignations of the headteacher, the chair of the governing board and many members of the governing board. The school's new headteacher took up post on 1 September 2021 and a number of others are also new in post including the clerk to the governing board.

11. The governing board has told me that changes to the school's leadership meant that the governing board was not in a position to consult to change its arrangements for 2022 in accordance with the timetable for this (which would have involved consultation last autumn/winter). Following discussion with the local authority and the faith body, the governing board decided to request a variation proposing the removal of three oversubscription criteria. The governing board said that the school had not been oversubscribed for ten years and so it was unlikely that the oversubscription criteria would need to be applied for applications in 2022.

12. The oversubscription criteria for the school as originally determined for 2022 are, in summary:

- 1) Children in care and children previously in care

- 2) Children living in the catchment area with a sibling attending the school
- 3) Children living in the catchment area
- 4) Children living outside the catchment area with a sibling at the school
- 5) Children living outside the catchment area with a parent who is a regularly worshipping member of the Church of England
- 6) Children living outside the catchment area who wish their child to attend a Church of England school because of its ethos
- 7) Children living outside the catchment area unable to gain a place at their catchment area school
- 8) Children living outside the catchment area with those closest to the school given priority.

13. The catchment area, used on seven of the above criteria, is described in the arrangements as, “the villages of Boxworth, Conington, Elsworth and Knapwell.” No further information is provided on the catchment area.

14. As referred to above, the governing board originally proposed the removal of two oversubscription criteria, 6 and 7, as they did not comply with the Code. I note the following regarding criteria 6 and 7:

- 14.1. Criterion 6 is “Children living outside of catchment whose parents have chosen for their children to attend a Church of England school because of the school ethos”. The governing board explained its view that this criterion was not objective as it could not be evidenced and, as such, was unfair. Therefore the governing board believed that the criterion did not meet the requirements of paragraphs 14 and 1.8 of the Code. There is no fair or objective way to show that parents have chosen to attend a Church of England school because of its ethos.
- 14.2. Criterion 7 is “Children living outside of the catchment area unable to gain a place at their catchment area school.” The governing board explained that it had discussed this matter with the local authority and the local authority agreed that this would be impossible to ascertain whether this was the case at the point of oversubscription and therefore impossible to apply as an oversubscription criterion. At the meeting the local authority further explained that if it were not possible to admit a child to any of its stated preferences then there was a process to find a school place by taking into consideration where the child lived and what places were available. The criterion is therefore both impossible to apply and redundant.

15. I have not considered these criteria and repeat only that the Code provides for variations to be made without reference to the adjudicator in certain circumstances, including where this is necessary to comply with the Code.

The proposed variation and matters in the arrangements which may not comply with the Code

16. In its referral the governing board proposed that criterion 5 be deleted from the arrangements. Criterion 5 is “Children living outside of the catchment area but are children of regular worshipping members of the Church of England.” The governing board said that it sought the variation because criterion 5 was not in line with its vision for the school.

17. In addition, I brought to the attention of the governing board that the following matters may not meet the requirements of the Code (most relevant paragraphs of the Code in brackets) and I will consider these matters using my power under 88I of the Code.

- 17.1. The definitions for looked after and previously looked after children do not appear to reflect the Code’s requirements (14 and 1.7).
- 17.2. The catchment area for the school may not be clear and clearly defined (14, 1.8 and 1.14).
- 17.3. There does not appear to be a means of deciding priority when there is over-subscription within a criterion (14, 1.7, 1.8).
- 17.4. There is no tie-breaker to decide between two applications that cannot otherwise be separated (1.8).
- 17.5. It may not be clear how distance is measured and how the home address is defined (14 and 1.13).
- 17.6. It may not be clear how the home address is defined where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent (14 and 1.13).
- 17.7. It may not be clear that the waiting list will be maintained until at least 31 December of each school year of admission and that each added child will require the list to be ranked again in line with the published oversubscription criteria (14 and 2.15).
- 17.8. There is no information on a parent’s right to defer the admission of their child until the child is of compulsory school age or for their child to attend part-time until of compulsory school age (14 and 2.17).
- 17.9. There is no information regarding applying outside the child’s normal age group (2.18).
- 17.10. The published arrangements are titled, “Elsworth CE (VA) Primary School Admissions Policy 2021-2022” but have been provided to me as the arrangements determined for 2022. This may make the arrangements unclear (14).

Consideration of proposed variation and arrangements

18. I will consider the matters referred to above in the same order. I will refer to two key paragraphs of the Code at several points, paragraphs 14 and 1.8 and so provide them here.

Paragraph 14 of the Code says, “In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear, and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”

Paragraph 1.8, in as far as is relevant here, says, “Oversubscription criteria **must** be reasonable, clear [and] objective.”

19. Once arrangements have been determined, they may only be varied in limited circumstances as set out in paragraph 3.6 of the Code (above). An admission authority may seek a variation where they consider it necessary in view of a major change of circumstances. The adjudicator must then consider whether the variation is justified and should be approved. The variation process does not include the wider consultation process. In normal circumstances, where an admission authority wishes to change its arrangements, it must consult. Paragraphs 1.45 to 1.48 describe the circumstances in which an admission authority must consult, who it must consult, the timescales for doing so and other related matters. It is the requirements of the Code in these paragraphs that I mean when I refer to consultation below.

20. The governing board said that criterion 5, “Children living outside of the catchment area but are children of regular worshipping members of the Church of England”, “does not sit with the [governing board’s] desire to welcome ‘all faiths and none’.” The governing board therefore wished to remove this criterion for admissions in 2022. Furthermore the governing board said, “School has not been oversubscribed for over 10 years – likelihood of this criterion being used is slim, but the governing board would like to remove as a clear indication of vision.”

21. The major change of circumstances is that the leadership of the school has been changed in various ways. It does not appear to me, however, that resetting the vision for the school is sufficient justification for changing the determined arrangements. Indeed, it would seem to me that consulting on the vision for the school, including the admission arrangements, would be beneficial in establishing that vision and that there is no imperative to justify acting without consultation. Consequently, I do not approve the proposal that criterion 5 is removed for admissions in 2022. Following the meeting I called, the governing board has expressed its intention to consult on the arrangements for 2023 and this seems appropriate.

22. I will now turn to the content of criterion 5. The criterion refers to “a parent who is a regular worshipping member of the Church of England”, but there is no definition of what is meant by regular worship. Regular worship could mean, for example, once a year for two years or once a week for three years or any other pattern of attendance. The arrangements are therefore not clear in this regard and so do not comply with paragraphs 14 and 1.8 of the Code. In addition, paragraph 1.37 of the Code says, “Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.” In this case parents would not easily understand how criterion 5 could be reasonably satisfied and so the arrangements do not comply with the Code in this regard.

23. I will consider the other aspects of the arrangements that I brought to the attention of the governing board below.

24. The arrangements refer to children in care and previously in care. The Code actually requires that a very high level of priority is given to looked after and previously looked after children who are then adopted, or made subject to a child arrangements order or special guardianship order. Children who are looked after includes not only children in care but those who are accommodated by local authorities in the exercise of their social services functions. The use of a narrower definition means that the arrangements do not meet the requirements of paragraph 1.7 of the Code and makes them unclear in contravention of paragraphs 14 and 1.8.

25. Criteria 2, 3 and 4 all give priority to children who live in the school's catchment area. As described above, the arrangements say, "Elsworth School serves a catchment area comprising the villages of Boxworth, Conington, Elsworth and Knapwell." There is no further information on the catchment area. Paragraph 1.14 of the Code says, "Catchment areas **must** be designed so that they are reasonable and clearly defined." The catchment area is not clearly defined and it is possible that a parent may not know if they live within the catchment area or not. Therefore the arrangements do not meet the requirements of paragraphs 14, 1.8 and 1.14 in this regard. At the meeting the local authority said that it had maps which showed the catchment area for the school and would provide these to the governing board so that the maps could be used in the arrangements. This is welcomed.

26. The arrangements do not include a means of deciding priority when there is over-subscription within a criterion. This makes the arrangements unclear. In addition, there is no tie-breaker to decide between two applications that cannot otherwise be separated and this is required by paragraph 1.8 of the Code.

27. Paragraph 1.13 of the Code says, "Admission authorities **must** clearly set out how distance from home to the school and/or any nodal points used in the arrangements will be measured. This **must** include making clear how the 'home' address will be determined and the point(s) in the school or nodal points from which all distances will be measured. This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent."

28. The arrangements refer to "the shortest straight line distance" in one criterion and say, "We define home address as the address of the adult with parental responsibility with whom the child normally lives." This is insufficiently clear to meet the requirements of the Code as outlined above as it does not explain what is meant by "normally live" and does not deal with circumstances in which a child spends half of their time with one parent and half with the other.

29. Paragraph 2.15 of the Code says, "Each admission authority **must** maintain a clear, fair, and objective waiting list until at least 31 December of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in

line with the published oversubscription criteria.” The arrangements say, “As a part of the co-ordinated scheme for primary admissions, the local authority Admissions Team holds the initial reserve list on behalf of the Governing Body until the end of the autumn term in the initial year of intake (Reception).” This does not meet the requirements of the Code as the end of the autumn term will invariably and inevitably fall before 31 December.

30. Paragraph 2.17 of the Code says, “Admission authorities **must** provide for the admission of all children in the September following their fourth birthday. The authority **must** make it clear in their arrangements that where they have offered a child a place at a school:

a) that child is entitled to a full-time place in the September following their fourth birthday;

b) the child’s parents can defer the date their child is admitted to the school until later in the school year but not beyond the point at which they reach compulsory school age and not beyond the beginning of the final term of the school year for which it was made; and

c) where the parents wish, children may attend part-time until later in the school year but not beyond the point at which they reach compulsory school age.”

31. There is no information on these matters in the arrangements and so the arrangements do not comply with the Code in this regard.

32. Paragraph 2.18 of the Code says, in so far as is relevant here, “admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.” There is no such information so the arrangements do not comply with the Code in this regard.

33. The arrangements provided to me as the arrangements for 2022 and the arrangements published on the school’s website for 2022 were dated 2021. This makes it unclear that these are the arrangements for 2022.

34. I am pleased that the governing board expressed its intention to address all these matters. In addition the local authority and the faith body have expressed their willingness to advise the new school leadership in these matters. This is welcomed.

Determination

35. In accordance with section 88E of the School Standards and Framework Act 1998, I do not approve the proposed variation to the admission arrangements determined by the governing board for Elsworth Church of England Voluntary Aided Primary School for September 2022.

36. I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the way set out in this determination.

37. 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.

Dated: 25 October 2021

Signed:

Schools Adjudicator: Deborah Pritchard