

DETERMINATION

Case reference: ADA/2479

Objector: A parent

Admission Authority: The governing body of St Marks Church of England Primary School, Bournemouth

Date of decision: 16 August 2013

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of St Mark's Church of England Primary School for 2014.

Further, in accordance with section 88I I have considered the arrangements for admissions in September 2013 and I determine that these do not conform to the requirements of the legislation and the School Admission Code.

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 as quickly as possible.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by a parent, the objector, about the admission arrangements (the arrangements) for St Marks Church of England Primary School (the school), a voluntary aided school for pupils aged 4 to 11 years, for September 2014. The objection is to the school only admitting pupils to the reception year part time when schools are obligated to provide parents with a choice of a full time place for children in reception, the year after a child's fourth birthday.

Jurisdiction

2. These arrangements were determined under section 88C of the Act by the governing body, which is the admission authority for the school. The objector submitted her objection to these determined arrangements on 21 June 2013. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

3. Having reviewed the arrangements for 2014 and concluded that there

were matters that did not comply with the School Admissions Code (the Code) and given that the referral has brought the arrangements of the school to the attention of the Adjudicator, I am also using my powers under section 881 of the Act to consider the arrangements for admissions in September 2013

Procedure

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

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

- the parent's form of objection dated 21 June 2013, an edited version of an article entitled 'Equality, human rights and part time places for reception children' and further correspondence;
- the school's initial comments on the objection dated 9 July 2013, 22 supporting documents and further correspondence;
- a response from the Diocese of Salisbury (the diocese), dated 9 July 2013 with supporting documents;
- comments from Bournemouth Borough Council, the local authority (the LA) dated 10 July 2013;
- the composite LA prospectus for parents, 'Starting Primary School - Information for parents/carers 2013/2014';
- articles that appeared in two national newspapers on 15 July 2013 and a local newspaper article dated 17 July 2013 submitted by the school; and
- correspondence between the school and the DfE from April 2012 up to and including a letter dated 16 July 2013.

The Objection

6. The objection is to the practice of the school only admitting pupils to the reception year part time when schools are obligated to provide parents with a choice of a full-time place for children in reception the year after a child's fourth birthday. The objector contends the school's admission policy contravenes paragraph 2.16 of the Code and is therefore unlawful, as schools are required to provide parents with the choice of a full-time place.

7. The objector asserts that one reason schools do not make it clear to parents that they can request their child attends school full time, is that schools are unclear about their obligations under the Code which is silent on the matter of induction periods. In her opinion the Code requires that full-time places are made available to all four-year-olds from September, while leaving open the possibility that children can attend school part time, stay in a nursery setting with government funding or indeed stay at home with their families

until the term after they turn five. She says that it is not compulsory for parents to send their children to school, but it is compulsory for admissions authorities to provide parents with the opportunity for their four-year-old children to attend school full time.

Background

8. The school, a large primary school with a published admission number of 60 and 420 pupils on roll was built in 1862 as part of a project by the Talbot sisters to help the needy of Bournemouth. The site in a woodland area on the borders of Bournemouth and Poole is owned and managed by the Talbot Trust. It is oversubscribed each year and there were 186 preferences expressed by parents for the school for admission in September 2013.

9. I consider it appropriate for my consideration of the objection in this case to set out briefly a policy review and its outcome; as this underpins what the Code says about admissions to the reception class of a school. In 2008 Sir Jim Rose was commissioned to undertake a review of the primary curriculum and the remit letter included specific reference to concerns about the entry to primary school for summer-born children and the progress made by them. Parents had indicated during an earlier consultation that they would like greater flexibility over when their children can start primary school, for example, having the choice to start in September, January or a whole year later.

10. The Rose report of 30 April 2009, 'Independent Review of the Primary Curriculum: Final report' recommended that, 'The preferred pattern of entry to reception classes should be the September immediately following a child's fourth birthday. However, this should be subject to well informed discussion with parents, taking into account their views of a child's maturity and readiness to enter reception class. Arrangements should be such as to make entry to reception class an exciting and enjoyable experience for all children, with opportunities for flexible arrangements such as a period of part-time attendance if judged appropriate'.

11. It went on to recommend that parents and local authorities should be advised about the optimum conditions, flexibilities and benefits to children of entering reception class in the September immediately after their fourth birthday. A subsequent letter to all local authority directors of children's services in March 2010 provided clarification about the new requirement to provide parents with a choice. Subject to parents' wishes and taking into account their child's maturity and readiness to enter the reception class, summer-born children should be entitled to start school in the September after their fourth birthday, but this could be on a part-time basis if parents preferred. It noted that the majority of local authority areas already operated a single entry point in September following a child's fourth birthday, but that summer born children did not have the same educational opportunities across the country. Implementing this proposal would therefore provide a fair system for parents and also support the needs of summer-born children.

12. The letter referred local authorities to the School Admission Code 2010 (Code 2010) which had been amended to reflect the policy change, to come into force in September 2011. It confirmed the need for a flexible approach to give parents the choice, where they have a strong preference for their child's early years experience to take place outside a school setting. It concluded by stating that local authorities should work with schools and parents to manage the transition from nursery to full-time school and support parents to make the best decision about the right provision for their child.

13. Paragraph 4.1 of the Explanatory Memorandum to the Code 2010 that was laid before Parliament, confirmed that an amendment required all admission authorities to provide for the admission of all children in the September following their fourth birthday and to make it clear to parents that they may request part or full-time classes for such children, until they reached compulsory school age.

14. Looking back at the arrangements for the school for 2012-13 that are available on the LA's website, the admission policy for the school stated, "A full time school place in the Reception class is available for children from the September following their 4th birthday. Parents may opt for their children to attend part time until the term following their fifth birthday as shown in the table below:" However, the school says that the LA website unfortunately appears to have a link to an incorrect version of the admissions policy and it has provided a copy of its determined arrangements for 2012-13. These arrangements are consistent with the 2013-14 arrangements and the 2014-15 arrangements in offering a part-time place from September and a full-time place from January.

15. The school says that it presumes that a draft policy had been uploaded from a period when the school was considering a change to its policy; a change which it says it did not pursue due to a belief that no change was required under Code 2010. In my view paragraph 2.65 the Code 2010 provided absolute clarity for admission authorities, it stated "For admission to the 2011-12 school year, and subsequent years, admission authorities for primary schools **must** provide for the admission of all children in the September following their fourth birthday.the admission authority **must** make it clear that:e) parents can request that their child attends part time until the child reaches compulsory school age."

16. The objector commented that had the school changed its admission policy when it was legally required to do so under the Code 2010, then there would be no issue of interpreting the current Code. She contends that the school operates such an extended and part-time induction period, that older children will be denied the opportunity to attend school full time, which the law requires.

17. Before moving on to consider the relevant factors in this case, it should be noted that the school's initial response to the objection was very comprehensive and included 23 documents, and subsequent responses have been equally detailed. As the school has acknowledged, some of the

information that was provided did not relate directly to the particular matter of the adjudication and had no relevance to the objection. I have therefore concluded the particular information was not pertinent to my consideration of this case.

Consideration of Factors

18. The school's admissions policy for 2014 states in the section titled, "Starting School": 'Currently, a part-time school place in the Reception class is available for children from the September following their 4th birthday. (i.e. children born between 01/09/2009 and 31/08/2010 will be admitted in September 2014). Parents can request that their child attends part-time until the child reaches compulsory school age. All children will attend full time from January 2015. Where an offer of a place is made to a child below compulsory school age, parents have the right to defer their child's entry to school until later in the school year. The place is held for that child and is not available to be offered to another child. Entry may not be deferred beyond the beginning of the term after the child's fifth birthday, or beyond the academic year for which admission is sought".

19. The Code says in the introduction, it is the responsibility of admission authorities to ensure that admission arrangements are compliant with the Code; and that the Code should be read alongside other guidance and the law that affects admissions to schools. Footnote (4) explains that admission arrangements means the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered. Paragraph 12 says that the purpose of the Code is to ensure that places are offered in an open and fair way. There is no suggestion here that the school has incorrectly applied its oversubscription criteria to inform the allocation of places; but the fact that remains for consideration is that the places offered are only part-time places until January of each school year, at which point all children are expected to attend full time.

20. When the objector was advised that a place had been allocated but that the only offer was of a part-time place until January 2014 she made a formal request for a full-time place. As the request related to the school's admissions policy the matter was discussed at a full meeting of the governing body.

21. Following the meeting the headteacher wrote to the parent and advised her that had she taken up the opportunity to tour the school the policy and the reasoning for it would have been explained at the time. The letter cited paragraph 2.16 of the Code (see paragraph 25 below) and stated that the school fulfilled that 'statutorily'. It went on to quote from a website for school leaders, where 'a DfE representative' has responded to the question about whether a parent can insist his/her child attends school on a full time basis when a school operates a part time induction programme and referred the objector to the entry on the website. The school helpfully provided a copy of

the screen-save to me but when I tried to access the document on the website directly I was repeatedly referred to the home page, with information about membership and fees. It is likely that the parent in this case experienced the same issues. The question that is posed and answered on the website is specifically linked to induction periods.

22. The school says that it consulted the diocese about its arrangements and that comments were made about the issue of deferred places, but not about the provision of part-time education during the extended induction period. In a formal comment on this objection the diocese says that in its opinion the objection does not impact on admissions policy – as there are no legal requirements for induction arrangements to be included within these. The diocese sought advice from National Society lawyers and was advised that induction periods are legal and common; but this is not what is at issue in this case.

23. The objection refers directly to the admission policy and statements therein. Parents are prevented by the school's admissions policy from electing for their child to be admitted to a full-time place from September and as a result some children will be 5 years and 4 months old before they are able to access full time education at this school. I note also, that the arrangements require all children to attend full time from the beginning of the second term, which is at odds with the statement in the arrangements that where an offer of a place is made to a child below compulsory school age, parents have the right to defer their child's entry to school until later in the school year.

24. The school confirms that parents, child minders and nurseries have always accommodated the policy of part time only admission during the autumn term. It is possible however that this policy will make significant demands on parents and other institutions to be flexible, to accommodate the school's approach. Children have to make a mid term changeover from morning to afternoon attendance and vice versa and as a result, any working parents or carers will have to seek further adjustments to their working hours or different arrangements for child care.

25. The Code is clear that parents can request that their child takes up the place part-time until the child reaches compulsory school age and paragraph 2.16 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:

- a) parents can request that the date their child is admitted to school is deferred until later in the academic year or until the term in which the child reaches compulsory school age, and
- b) parents can request that their child takes up the place part-time until the child reaches compulsory school age”.

26. Since the Code requires admission authorities to clarify for parents that they can request a part-time place, it seems very clear to me the Code makes

this point because schools are required to provide a full-time place. The Code requires that admission authorities state explicitly that parents can choose part-time attendance, should they so wish.

27. The school has sought clarification from the DfE several times. In April 2012 the DfE advised, "One of the recommendations of the Rose Review was that all four years olds should be entitled to free full-time education. The recommendation was taken forward and the 2010 Admission Code provided for admission to the 2011-12 and subsequent years admission authorities must provide for the admission of all 4 years olds in the September following their 4th birthday." It then quotes from paragraph 2.16 of the Code and concludes by stating, "The new simplified Code sets out the continuing policy requirement to provide full time places at primary school for all four year olds....."

28. Seeking further guidance the school wrote again and in June 2013, the DfE reconfirmed the advice that had been given in April 2012, "In the final paragraph of that response we set out clearly the requirement that schools provide full time places for all four year olds from the September following their fourth birthday.....the response acknowledges that the Code does not specifically mention the word full-time but the implication of paragraph 2.16b.... is that the place is full time and it is at parental request that the child may take up a part-time place."

29. The school maintains that neither the Code, nor the responses from the DfE, were sufficiently explicit that places must be full time and contends that the matter is therefore open to interpretation. The LA confirms that when the school asked for clarification of where it was stated in the Code that a child must attend full time from the first day of the autumn term, it had agreed that this was not stated explicitly in the Code. It went on nonetheless to advise the school of its opinion that full-time education should be offered and that the school could be open to challenge if it chose to interpret the Code in a different way.

30. On 16 July 2013 after local and national press coverage of the situation the DfE wrote once again to the school to set out the department's position very clearly. It advised the school that the requirements governing the admission of pupils below compulsory school age are set out in paragraph 2.16 of the Code, which requires admission authorities to provide for the admission of children in the September after their fourth birthday. It goes on to state, "Paragraph 2.16b is also clear that a school place is full-time but that a parent can request that their child takes up the place part time. The Code places a specific obligation on admission authorities to ensure that parents are informed of their right to request a part-time place. That obligation would make no sense if the place offered were not full-time to start with. A parent can also ask to defer entry to later in the school year. In the absence of either of these requests, school's must offer a full-time place to pupils from the September after their fourth birthday.' It concludes by stating, "But that offer of an induction period cannot alter the entitlement to a full- time place. Given that position the department would expect a full-time place to be offered to any parent who did not wish to take up the induction offer, including the recent

case which gave rise to press coverage.”

31. The school responded on 24 July 2013 stating that it feels the wording of the Code is still ambiguous, but acknowledging that, “It would appear that you are now saying the DfE’s interpretation of the Code is that all induction periods are voluntary and that no school can impose one on any individual parent.”

32. The school’s arrangements have removed the choice of full-time or part-time education from the parent and the decision about the nature of the place that has been allocated has been taken instead by the school and is detailed in its admission policy. When the objector made a request for full-time admission, she was refused. Furthermore, the arrangements say, “Parents can request their child attends part time until the child reaches compulsory school age. All children will attend full time from January 2015”. The school cannot require children to attend full time from January as some will still be of an age where parents can choose part-time schooling. Paragraph 2.16 of the Code requires admission authorities to allow parents to defer the entry of their child until later in the academic year or until the term in which the child reaches compulsory school age. As written, the arrangements set a requirement to attend from January which cannot be applied unilaterally to all children. The arrangements do not make clear that it is for parents to choose, if they wish, to have part-time education or deferred entry to the school for their children. The arrangements contravene the Code in these matters.

33. In my view the law expects children to be educated in accordance with parents’ wishes; so far as that is compatible with the provision of efficient education and the avoidance of unreasonable public expenditure. While accepting then that it is for the school to make the decision about the nature of an induction period, if it offers one; the school must also be cognisant of the law pertaining to the duties of both parents to cause their children to receive efficient full time education and of admission authorities to abide by the law as it relates to the admission of children starting school.

34. It is not permissible in my view for a school to deny a child a term of full-time education. The school has a duty to provide a full time place from September and it cannot refuse to do so, nor can it require all children to attend from the January of the reception year as parents may request deferred entry to school or part time provision until the child reaches compulsory school age. For these reasons and those given above I have concluded that this objection should be upheld.

Conclusion

35. The admission arrangements and matters of organisation that involve the admission of a child to a school are covered by the Code and have therefore been considered in this determination. The Code clearly states that it applies to the admissions to all maintained and academy schools in England and should be read alongside other guidance and law that affect admissions.

36. The Code makes clear that school must provide places in the reception year from the beginning of the academic year, the September, in which a child will reach the age of five years. Parents must apply for a place for the reception year through the co-ordinated system of their home local authority. Once a place has been offered, it is then for the parent to decide whether to request part-time attendance until the child reaches compulsory school age or to defer entry until that point. The duty for the school is to provide full-time education from the beginning of the school year. The arrangements determined by the school in relation to part-time admissions in September and full-time in January do not meet these requirements. For these reasons and those given above I uphold this objection.

37. Having reviewed the arrangements for 2014 and concluded that there were matters that did not comply with the Code, and given that the referral has brought the arrangements of the school my attention, I have used my powers under section 88I of the Act to consider the arrangements for admissions in September 2013. The arrangements determined by the school for 2013 are identical to those determined for 2014 in relation to the information for parents contained in the paragraph – ‘Starting School’ and do not comply with the requirements of the Code in relation to part-time admissions in September 2013 and full-time in January 2014 .

Determination

38. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of St Mark’s Church of England Primary School for 2014.

39. Further, in accordance with section 88I I have considered the arrangements for admissions in September 2013 and I determine that these do not conform to the requirements of the legislation and the Code.

40. 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 as quickly as possible.

Dated: 16 August 2013

Signed:

Schools Adjudicator: Mrs Carol Parsons