



Office of
the Schools
Adjudicator

Determination

Case reference: REF3627

Referrer: A parent

Admission authority: Warwickshire County Council for community and voluntary controlled schools in Warwickshire

Date of decision: 28 January 2020

Determination

I have considered the admission arrangements for September 2020 for community and voluntary controlled schools in the area of Warwickshire County Council in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that the provisions in the arrangements relating to the education of children outside their chronological year group, deferred entry to, and part-time attendance in, Reception do not conform with the requirements in the School Admissions Code. I have also found that there are other matters which do not conform with the requirements relating to admission arrangements in the ways 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 or by 28 February following the determination whichever is sooner unless an alternative timescale is specified by the adjudicator. In this case, I determine that the arrangements are to be revised by 28 February 2020.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), an objection has been referred to the Office of Schools Adjudicator by a parent, carer or other person with parental responsibility, (the referrer), about the admission arrangements (the arrangements) for all community and voluntary controlled schools for which Warwickshire

County Council is the admission authority (the schools), for September 2020. The date of the objection was 5 November 2019.

2. The referral relates specifically to a document published by the local authority entitled "*Guidance Notes relating to the education of children outside of their chronological year group*" which the referrer considers does not comply with paragraphs 2.16 and 2.17 of the School Admissions Code; seeks to mislead parents; and contradicts the Department for Education's published guidance entitled "*Advice on the admission of summer born children*".

3. When the arrangements were brought to my attention, I considered that the following additional matters did not, or might not, conform with the requirements for admission arrangements.

- The definition of 'Looked After' and 'Previously Looked After' children.

The sections on the arrangements entitled:

- Changing address.
- Further applications from the same household.
- Multiple applications made by separated parents.
- Children who are "*in receipt of*" either the Early Years Pupil Premium or the Service Premium.

4. The parties to the case are the local authority and the referrer.

Jurisdiction

5. These arrangements were determined under section 88C of the Act by Warwickshire County Council, (the local authority), which is the admission authority for the schools on 14 February 2019. The referrer submitted an objection to these determined arrangements on 5 November 2019. The School Admissions Code (the Code) requires objections to admission arrangements for 2020 to be made to the Office of the Schools Adjudicator by 15 May 2019. As this deadline was missed, the case cannot be treated as an objection. However, as the arrangements have been brought to my attention, I have decided to use the power conferred under section 88I(5) of the Act to consider whether the arrangements conform with the requirements relating to admission arrangements and I am treating the objection as a referral. I will say more in relation to jurisdiction in the later section headed 'Consideration of the Case'.

Procedure

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

7. The documents I have considered in reaching my decision include:
- a) the referrer's form of objection dated 5 November 2019;
 - b) copies of the minutes of the meeting of the local authority at which the arrangements were determined;
 - c) a copy of the determined arrangements;
 - d) comments from the local authority on the matters raised;
 - e) the local authority's composite prospectus for parents seeking admission to schools in the area in September 2019/2020; and
 - f) information about the most recent consultation on the arrangements.

Background

8. The local authority is the admission authority for all of the community and voluntary controlled schools in its area. I have set out a list of these schools in the table below along with the Published Admission Numbers (PANs) for the schools. It can be seen from the table that potentially a large number of children and their parents/carers could be affected adversely where the local authority's arrangements do not conform with the requirements in the Code.

Name of School	PAN(s)
Abbey C of E Infant School (VC)	60
Abbots Farm Infant and Junior Schools (community)	60 and 66
All Saints C of E Junior School Warwick (VC)	60
All Saints C of E Primary School Nuneaton (VC)	30
Alverston C of E Primary School (VC)	30
Arden Forest Infant School (Community)	60
Arley Primary School (Community)	45
Bawnmore Community Infant School (Community)	60
Bidford on Avon C of E Primary School (VC)	45
Bilton C of E Junior School (VC) (105)	105
Bilton Infant School (Community)	60

Name of School	PAN(s)
Binley Woods Primary School (Community)	30
Bishops Itchington Primary School (Community)	30
Bishops Tachbrook C of E Primary School (VC)	30
Bishopton Primary (VC)	30
Boughton Leigh Infant and Junior Schools (Community)	90 and 120
Bournebrook C of E Primary School (VC)	20
Brailes C of E Primary School (VC)	15
Briar Hill Infant School (Community)	90
Bridgetown Primary School (Community)	60
Brookhurst Primary School (Community)	60
Brownsover Community Infant School (Community)	60
Burton Green C of E Primary School (VC)	15
Camp Hill Primary School (Community)	60
Chetwynd Junior School (Community)	90
Chilvers Coton Community Infant School (Community)	60
Clapham Terrace Community Primary School and Nursery (Community)	30
Claverdon Primary School (Community)	30
Clifton Upon Dunsmore C of E Primary School (VC)	30
Clinton Primary School (Community)	30
Coten End Primary School (Community)	90
Coughton C of E Primary School (VC)	25
Croft Junior School (Community)	90
Cubbington C of E Primary School (VC)	30

Name of School	PAN(s)
Curdworth Primary School (Community)	17
Eastlands Primary School (Community)	30
Emscote Infant School (Community)	60
Ettington C of E Primary School (VC)	30
Exhall Cedars Infant School (Community)	60
Galley Common Infant School (Community)	50 (under review)
Glendale Infant School (Community)	90
Goodyers End Primary School (Community)	60
Great Alne Primary School (Community)	16
Hampton Lucy C of E Primary School (VC)	15
Harbury C of E Primary School (VC)	30
High Meadow Infant School	30
Hillmorton Primary School (Community)	60
Hurley Primary School (Community)	30
Kingsbury Primary School (Community)	15
Kingsway Community Primary School (Community)	30
Lapworth C of E Primary School (VC)	30
Lighthorne Heath Primary School (Community)	13
Lillington Nursery and Primary School (Community)	60
Long Itchington C of E Primary School (VC)	30
Long Lawford Primary School (Community)	90
Loxley C of E Primary School (VC)	6
Mappleborough Green C of E Primary School (VC)	17

Name of School	PAN(s)
Michael Drayton Junior School (Community)	150
Milby Primary School (Community)	60
Milverton Primary School (Community)	45
Nathaniel Newton Infant School (Community)	90
Newbold and Tredington C of E Primary School (VC)	15
Newburgh Primary School (Community)	60
Newdigate Primary School (Community)	60
Northlands Primary School (Community)	30
Nursery Hill Primary School (Community)	25
Outwoods Primary School (Community)	60
Paddox Primary School (Community)	90
Park Hill Junior School (Community)	66
Priors Field Primary School (Community)	30
Provost Williams C of E Primary School (VC)	30
Quinton Primary School (Community)	30
Race Leys Infant School (Community)	60
Radford Semele C of E Primary School (VC)	30
Rokeby Primary School (Community)	30
Salford Priors C of E Primary School (VC)	15
Shottery St Andrews C of E Primary School (VC)	15
Shrubland Street Community Primary School (Community)	28
Shustoke C of E Primary School (VC)	30
Snitterfield Primary School (Community)	15
Southam Primary School (Community)	42

Name of School	PAN(s)
St Giles Junior School (Community)	60
St John's Primary School and Nursery (Community)	30
St Margaret's C of E Junior School (VC)	90
St Matthew's Bloxham C of E Primary School (VC)	30
St Nicholas C of E Primary School (VC)	60
St Paul's C of E Primary School Nuneaton (VC)	60
Stockingford Primary School (Community)	120
Stockton Primary School (Community)	18
Studley Common Infant School (Community)	60
Sydenham Primary School (Community)	60
Telford Infant and Junior Schools (Community)	90 + 90
Temple Grafton C of E Primary School (VC)	15
Temple Herdewyke Primary School (Community)	15
The Dasset C of E Primary School (VC)	30
The Ferncumbe C of E Primary School (VC)	30
The Willows C of E Primary School (VC)	60
Thomas Jolyffe Primary School (Community)	60
Thorns Community Infant School (Community)	60
Tysos C of E Primary School (VC)	30
Water Orton Primary School (Community)	45
Weddington Primary School (Community)	60
Welford on Avon Primary School (Community)	30
Wembrook Primary School (Community)	90
Westgate Primary School (Community)	30

Name of School	PAN(s)
Wheelwright Lane Primary School (Community)	30
Whitestone Infant School (Community)	90
Whitnash Primary School (Community)	45
Wolston St Margaret's C of E Primary School (VC)	30
Wolvey C of E Primary School (VC),	30
Wootton Wawen C of E Primary School (VC)	25
Kineton High School (Community)	180

9. All but one of the schools listed in the table (Kineton High School) admit children of primary school age. The provisions in the Code relating to the education of children outside their chronological year group apply to all mainstream schools at the point of admission. The provisions relating to deferred and part-time entry of children below compulsory school age only apply to Infant Schools and to those Primary schools which admit to Reception, so not to Kineton or to the Junior Schools listed above.

10. Ordinarily, in this part of the determination I would set out the oversubscription criteria for the schools for which the local authority is the admission authority. I have not done so here because they are not all relevant to this determination. However, I have set out the provisions in the arrangements relating to the education of pupils outside their normal year group, deferred entry and part-time attendance in Reception in the section below entitled 'Consideration of the Case'. The provisions relating to the definition of Looked After and Previously Looked After Children, changing address, further applications from the same household, multiple applications made by separated parents' and children who are "*in receipt of*" either the Early Years Pupil Premium or the Service Premium are set out and considered in the section entitled 'Other Matters'.

Consideration of the Case

11. The key issues in the referral relate to specific sections in a document published by the local authority entitled "*Guidance Notes relating to the education of children outside of their chronological year group*" (the Guidance Notes). The local authority has argued that this guidance does not form part of its published admission arrangements. It is instead, the local authority says, a supplementary document which provides advice to applicants about how the process works, as opposed to setting out the arrangements themselves. In my view, there is a fine line to be drawn between what constitutes part of a set of admission arrangements and what is additional information designed to be helpful to parents. However, I am prepared to accept the local authority's argument that the Guidance Notes

are not re-determined each year, and so are not part of the determined admission arrangements albeit that the Guidance Notes are clearly linked to the arrangements giving the impression that they are intrinsic to the arrangements. The difficulty which the position taken by the local authority is that it then leads to different problem. If the Notes are not part of the arrangements, then the arrangements do not contain all of the information required in order to conform with paragraphs 2.16 2.17, 2.17A and 2.17B. Also, paragraph 14 of the Code requires that, 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 clear. The arrangements themselves (as identified to me by the local authority) are unclear about the practices and criteria used to allocate places to pupils whose parents wish their child to be educated outside their chronological year group; who wish to delay or defer their child's admission to primary school; or who wish their child to attend Reception on a part-time basis.

12. However, although the Guidance Notes provide more detail, they appeared to be incorrect in a number of aspects. I have been informed that the Local Government Ombudsman has recommended amendments to the Guidance Notes, and I am reassured that the local authority plans to amend them.

13. On 6 December 2019, my office wrote to the parties advising them that I do not have jurisdiction to consider the Guidance Notes, but that I do have jurisdiction to consider the aspects of the admission arrangements relating the education of children outside their chronological age group, deferred entry to Reception and part-time attendance in Reception. Importantly, I do have jurisdiction to consider not just what the arrangements say but also whether or not they cover all matters which they are required to cover. Many of the issues in the Guidance Notes which were highlighted by the referrer as failing to conform with the Code also can be said to apply to the admission arrangements themselves. I will list them below, but I will first set out the relevant paragraphs in the Code which the arrangements appear not to conform with.

14. In addition, the letter confirmed that I also have jurisdiction to consider any other matters in the arrangements (not drawn to my attention by the referrer) which do not, or may not, conform with the Code. The parties were therefore informed that I had decided to also exercise powers under section 88I of the Act to consider the arrangements as a whole and whether they conform with the requirements relating to admissions. These other matters were set out in the letter, and the local authority was given the opportunity to comment upon them. As explained above, I have set out my conclusions in relation to these other matters in the next section, and focus here upon the aspects of the arrangements relating to the issues identified by the referrer.

15. Relevant paragraphs of the Code relating to the education of children outside their chronological age group, deferred entry to, and part-time attendance in, Reception are paragraphs 2.16 2.17, 2.17A, 2.17B and 14 (which I have referred to above).

16. Paragraph 2.16 states: *“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 the 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”.*

17. Paragraph 2.17 of the Code states: *“Parents may seek a place for their child outside of their normal year group... In addition, the parents of a summer born child may choose not to send that child to school until the September following their fifth birthday and may request that they are admitted out of their normal year group – to Reception rather than year 1. Admission authorities must make clear in their admission arrangements the process for requesting admission out of the normal age group.”* A “summer born child” is a child born from 1 April to 31 August. The Code points out that these children reach compulsory school age on 31 August following their fifth birthday.

18. Paragraph 2.17A then sets out the circumstances which admission authorities must take into account in deciding whether to agree to a request to educate a child outside their normal year group. This states: *“Admission authorities **must** make decisions on the basis of the circumstances of each case and in the best interests of the child concerned. This will include taking into account the parent’s views; information about the child’s academic, social and emotional development; where relevant their medical history and the views of a medical professional; whether they have previously been educated out of their normal age group; and whether they may naturally have fallen into a lower age group if it were not for being born prematurely. They **must** also take into account the views of the head teacher of the school concerned. When informing a parent of their decision on the year group the child should be admitted to, the admission authority **must** set out clearly the reasons for their decision”.*

19. Paragraph 2.17B describes how admission authorities must process applications where a child is admitted out of their normal year group to the relevant year group. This process must be made clear in the arrangements. *“Where an admission authority agrees to a parent’s request for their child to be admitted out of their normal age group and, as a consequence of that decision, the child will be admitted to the relevant age group (i.e. the age group to which pupils are normally admitted to the school) the local authority and admission authority **must** process the application as part of the main admissions round, unless the parental request is made too late for this to be possible, and on the basis of their determined arrangements only, including the application of oversubscription criteria where applicable. They **must not** give the application lower priority on the basis that the child is*

being admitted outside of their normal age group. Parents have a statutory right to appeal against the refusal of a place at a school for which they have applied. This right does not apply if they are offered a place at the school but it is not to their preferred age group.”

20. In summary then, parents of summer born children have a number of choices. They can apply for a place for their child to start in the school year commencing in the September after the child’s fourth birthday and there is a legal right to a full time place from this point. The child can therefore start in September on a full-time or part-time basis, or the parents can defer the place until the spring term or until the start of the summer term but “*not beyond the beginning of the final term of the school year for which it was made*”. The parents have a right to defer the place and a right to insist that their child attends school part-time, however the place cannot be “*deferred*” until the following September, namely the September after the child’s fifth birthday.

21. A summer born child will not be of compulsory school age until the September following his or her fifth birthday. At that point the child will fall chronologically into the cohort starting in Year 1. It follows that most of the other children in Year 1 will have already been at school for up to a year. If parents want their child to start in Year 1 in this way they will need to make an in-year application to the admission authority, preferably well in advance of their child’s fifth birthday.

22. Alternatively, the parents of a summer born child may choose not to send that child to school until the September following their fifth birthday and may request that the child is admitted out of their normal age group - to Reception rather than Year 1. The Code states (in relation to all requests for admission out of the normal age group, **(not just for summer born children)** “*Admission authorities must make clear in their admission arrangements the process for requesting admission out of the normal age group*”. The Code goes on to set out how the admission authority must approach deciding whether to allow the request for admission out of the normal age group (as per paragraph 2.17A set out above). I should pause here to note that it is not for me to consider how the admission authority does actually consider such requests; my jurisdiction is concerned with considering whether the arrangements contain the information required; that is whether they “*make clear... the process for requesting admission ...*”

23. Where a parent is requesting that a summer born child is admitted to Reception in the September following his or her fifth birthday then the admission will be to a “*a relevant age group (i.e. the age group to which pupils are normally admitted to the school)*” (paragraph 2.17B, set out above). Paragraph 2.17B also makes clear that the admission authority must process the application as part of the main admissions round, unless the parental request is made too late for this to be possible, and on the basis of their determined admission arrangements only, including the application of oversubscription criteria where applicable. That is the main admission round for starting school in Reception in the September following that child’s fifth birthday, **not** the normal admission round for the September following the child’s fourth birthday.

24. It may help to understand how the Code envisages how this is to work by looking at an imaginary example. A child, A, is born on 20 August 2016. She will be four years old on 20 August 2020 and can start school in September 2020. Her parents can apply for a school place in the main round of admissions for September 2020, the closing date being 15 January 2020. Her parents can defer her start date up to the start of the summer term 2021, but not beyond that date.

25. However, A's parents do not want her to start school until September 2021, when she will have reached compulsory school age. They want her to start school in Reception in September 2021, when she will be five years old and most of those in her chronological age group will be moving into Year 1. A's parents have a right to ask the admission authority to allow A to enter Reception aged five years.

26. No timescale is set out in the Code for a request for admission out of the A's normal age group. It is for each admission authority to specify the process for requesting admission out of the normal age group, **however the process must be specified**. The admission authority may allow A's parents to make the request in 2020, before her fourth birthday, or it may specify that the request is made in the admissions round for 2021, the year the parents want A to start school. The advantage of dealing with the request in the 2020 admissions round is that, if the request is refused, the parents will know the outcome in time to send A to school in Reception in the September (or later but no later than the beginning of the summer term) following her fourth birthday.

27. If the admission authority agrees to A's parents' request, this will not mean that she is guaranteed a place in Reception for September 2021. Her parents will have to apply for a place in the main admissions round for 2021. An admission authority cannot offer A a place for 2021 in the 2020 admissions round.

28. The admission authority may, where it is responsible for admissions in more than one school which A's parents want to apply to, require a separate request for admission outside A's chronological year group for each school. As part of the range of factors required to be considered the authority "***must take into account the views of the head teacher of the school concerned***" paragraph 2.17A). This means that the head teacher of every relevant school will have to be consulted. **However, the views of the head teacher are by no means the only factor which must be taken into account.**

29. Turning firstly to the admission arrangements for local authority mainstream infant schools and primary schools, these say:

“Summer-born children

In the case of children defined as ‘summer-born’ (ie: those with dates of birth from 1st April to 31st August), Compulsory School Age (CSA) would fall in the September when they would be due to start Year 1: a whole year later than when peers in their chronological cohort would have started school in Reception.

Whilst the decision as to when a child starts school rests with the parents/carers, and they have a legal right to delay entry until the child reaches CSA, the decision as to which year group a child is admitted into is for the admission authority of the school to decide, taking into account the view of the head teacher.

It is therefore important that parents/carers of a summer-born child appreciate that if their request for their child's entry into Reception to be deferred for a year is not supported by the local authority, but the parents decide that their child will not start school until they reach CSA, then there will be [an] expectation that the child will then start school in Year 1 and bypass the Reception year completely.

Delayed entry into Reception

Parents may consider it appropriate for a child to start school in Reception later in the academic year, perhaps due to medical issues or because they are a summer-born child and are not felt to be ready to start school in the September.

An application for a school place must be made in line with the coordinated admissions process, and all relevant deadlines adhered to, so that a school offer can be made prior to the request for delayed entry being made by the parent.

This request must then be made (after school offers have been released on 16th April 2020), in writing, directly to the head teacher of the school at which an offer has been made and accepted. If delayed entry is agreed, then the school place will be held until the date it is agreed between the parent and the school that the child will start at the school.

This may be a preferable alternative than deferring entry completely until a whole year later as it will give the child the opportunity to settle into Reception, make friends and become familiar with the educational setting, and then be prepared to start in Year 1 the following September.

The parent is responsible for sourcing any childcare provision which is required prior to the child starting at school later in the academic year, and the child will still receive their free entitlement until they start school.

Parents are reminded that children must be in receipt of a full-time education from the beginning of the first academic term to start after the child's fifth birthday.

Part-time attendance in Reception

When a child starts school in Reception, the offer of a place is made on the assumption that attendance will be on a full-time basis, from the September after their fourth birthday, as is the child's entitlement.

However, part-time attendance can be arranged in certain cases. This is where the child will still start in Reception in September but will attend for fewer hours, either for a short period or more long-term. Part-time attendance could be appropriate for a child who tires easily, possibly due to a medical condition.

An application for a school place must be made in line with the coordinated admissions process, and all relevant deadlines adhered to, so that a school offer can be made prior to the request for part-time attendance being made by the parent.

This request must be made, in writing, directly to the head teacher of the school at which an offer has been made and accepted. This may be a preferable alternative than delaying entry until later in the year as it will give the child the opportunity to settle in gradually but they will still be able to make friends and become familiar with the educational setting.

If you wish to combine a part-time school place with any other childcare provider, your child's free entitlement will be used to pay for the school provision. You will need to pay the childcare provider for the hours used at the private provision.

Parents are reminded that children must be in receipt of a full-time education from the beginning of the first academic term to start after the child's fifth birthday”.

30. The arrangements do not conform with the Code in a number of aspects. I have followed the headings of the different sections in the arrangements.

a) Summer born children

This section appears to conflate the concepts of delayed entry and deferred entry. Delayed entry is where the parents of a summer born child decide that they wish their child to attend school at the point at which the child reaches compulsory school age (where this is a whole school year after the child becomes entitled to a school place). Deferred entry is where the parents of a child accept a school place in Reception but defer entry until later in that school year. The decision to permit a child to be admitted outside the normal age group is a further separate concept. The section in the arrangements on summer born children appears to relate, in practice, to the education of children outside their chronological year group, and would be clearer if it were headed as such because the sections in the arrangements entitled 'Delayed entry to Reception' and 'Part-time attendance' also apply to summer born children – indeed these sections apply exclusively to summer born children, whereas education outside a child's chronological year group does not. Again, this is not explained clearly.

Paragraph 2.17A of the Code sets out the range of factors which must be taken into account when considering whether an admission authority should admit a child outside the child's chronological year group. This includes the parent's views; information about the child's academic, social and emotional development; where relevant their medical history and the views of a medical professional; whether they have previously been educated out of their normal age group; and whether they may naturally have fallen into a lower age group if it were not for being born prematurely. The wording in the arrangements gives the impression that, if the head teacher of the relevant school does not agree to a summer born child who has reached compulsory school age being admitted to Reception as opposed to Year 1, this will not be permitted. The Code does not imply such an expectation as stated in the arrangements, rather it confers a discretion upon admission authorities to allow a summer born child to be admitted outside their normal age group where this would be reasonable.

Parents have a right to defer entry to Reception under the Code until their child reaches compulsory school age or until the beginning of the summer term in a case where this is reached before the child reaches compulsory school age. This right does not apply exclusively to children who are summer born or who have medical issues. For example, the parents of a child born in February could defer entry to Reception until the beginning of the summer term. This is a right; it is not something which an admission authority can lawfully refuse.

b) Delayed entry to Reception

The Code refers to this as deferred entry, as opposed to delayed entry. It is unclear why the request for deferred entry is to be made to the head teacher. The local authority is the admissions authority, and so any decision to defer entry must be made by the local authority. Also, the admission authority has no discretion to refuse a request for deferred entry to Reception unless the child has already reached compulsory school age. The suggestion that such a request must be agreed is misleading for parents.

The statement in the arrangements that *“This may be a preferable alternative than deferring entry completely until a whole year later as it will give the child the opportunity to settle into Reception, make friends and become familiar with the educational setting, and then be prepared to start in Year 1 the following September.”* appears to be an attempt to persuade parents that their child will be disadvantaged by not starting school until they reach compulsory school age, which may not necessarily be the case at all. In any event, parents are not required to ensure their child attends full-time school until he/she reaches compulsory school age. The Code states clearly that a place cannot be deferred beyond the beginning of the final term of the school year for which the offer was made. Therefore, parents cannot defer entry for a whole year as stated in the arrangements. However, parents of summer born children need not apply for a school place in Reception, they can simply apply for a place in Year 1 when their child reaches compulsory school age.

c) Part-time attendance

The provisions relating to part-time attendance state that, when a child starts school in Reception, the offer of a place is made on the assumption that attendance will be on a full-time basis, from the September after their fourth birthday. The Code contains no such assumption. Indeed, it makes clear that parents have an entitlement for their child to attend on a part-time basis until he or she reaches compulsory school age. It is therefore also incorrect for the arrangements to say that part-time attendance can be arranged in certain cases. The statement that *Part-time attendance could be appropriate for a child who tires easily, possibly due to a*

medical condition is misleading for parents as it suggests that part-time attendance may not be appropriate, or permitted, in other cases.

Again, as with deferred entry, it is unclear why the request for part-time attendance must be made to the head teacher. The local authority is the admissions authority, and so any decision that a child should attend on a part-time basis must be made by the local authority. Also, the admission authority has no discretion to refuse a request for part-time attendance unless the child has already reached compulsory school age. The suggestion that such a request must be agreed is misleading for parents.

d) Further general points

It is not clear in the arrangements what parents of summer born children need to do if they want a full-time place for their child in Year 1 in the September after the child's fifth birthday. The arrangements should state that this would be an in-year application, and explain how and when this would need to be made.

It is not clear in the arrangements what parents of summer born children need to do if they want a full-time place for their child in Reception in the September after the child's fifth birthday. This would be an application for a child to be educated out of their chronological year group which would then be processed in the normal admissions round. As above, Paragraph 2.17B of the Code requires that, where an admission authority agrees to a parent's request for their child to be admitted out of their normal age group and, as a consequence of that decision, the child will be admitted to the relevant age group (i.e. the age group to which pupils are normally admitted to the school) the local authority and admission authority must process the application as part of the main admissions round, unless the parental request is made too late for this to be possible, and on the basis of their determined arrangements only, including the application of oversubscription criteria where applicable. They must not give the application lower priority on the basis that the child is being admitted outside of their normal age group. Parents have a statutory right to appeal against the refusal of a place at a school for which they have applied. This right does not apply if they are offered a place at the school but it is not to their preferred age group. The arrangements must state clearly how an application to be admitted outside the normal age group needs to be made.

As I have stated above, the admission of pupils outside their normal year group does not apply exclusively to summer born pupils whose parents wish them to start school when they reach compulsory school age but be admitted to Reception, as opposed to Year 1. The arrangements must make this clear.

31. In the letter of 6 December 2019 which was sent to the local authority, my concerns about the above aspects of the arrangements were drawn to its attention, and the authority was given the opportunity to comment. Despite extending the deadline and my office having

chased the local authority for a response, I have never received any comments in relation to these aspects for the arrangements. The response finally received by my office on 16 January 2020 related exclusively to the other matters upon which the authority had also been asked to comment, and which I deal with in the next section. My office therefore sent an email on 17 January 2020 at my behest noting that no comments had been received in response to the concerns drawn to the attention of the local authority which related to education outside the chronological year group and deferred and part-time entry to Reception. The email also said that I intended to proceed upon the basis that the lack of response signified that the local authority accepts that the arrangements do not conform with paragraphs 2.16, 2.17, 2.17A, 2.17B and 14 of the Code, and that I would record this in the determination. The local authority has acknowledged receipt of the email of 17 January 2020, but has not sent any additional response or indicated that it intends to do so. I have therefore reflected the position here as the email said I would.

32. For the reasons outlined above, I have no hesitation in determining that the arrangements do not conform with paragraphs 2.16, 2.17, 2.17A, 2.17B and 14 of the Code, and will therefore need to be revised.

33. An additional issue raised in the letter to the local authority of 6 December 2019 was that the local authority had indicated that it intended to review and revise the Guidance Notes (and presumably the admission arrangements since these reflect identical errors and misconceptions to those identified in the Notes by the Local Government Ombudsman) in compliance with the timetable set by the Ombudsman, and intended to make any necessary revisions by a date in February 2020. I was very concerned that the deadline for making applications to primary and infant schools is 15 January each year, and that the Guidance Notes and the arrangements would be incorrect up to, and including, that date, and therefore unlawful at the point in time when thousands of parents would be making applications. As I have said, the local authority made no response on this point or any of the other points drawn to their attention relating to education outside the chronological year group, or deferred and part-time entry to Reception. Indeed that authority did not send any response at all to the letter of 6 December 2019 until 16 January 2020, which was after the deadline for applications had expired. I appreciate that the local authority will be concerned to get this right, and that it would be considering having its proposed revisions cleared by its legal advisors and others; however, the original date for responding to my letter of 6 December 2019 was 13 December 2019, extended to 3 January 2020. Had the local authority complied with either the original or extended deadline, it might have been possible for me to have finalised this determination in time to enable the arrangements to be revised before 15 January 2020. I find it difficult to understand why the authority appears to have known for some time that the Guidance Notes and therefore the arrangements contain errors but has not taken steps to make the necessary revisions before 15 January 2020. The result is that it appears the local authority has knowingly allowed large numbers of parents to make applications to its schools on the basis of Guidance Notes which the Local Government Ombudsman has found to be defective and admission arrangements which have been drawn to its attention on 6 December 2019 as not conforming with the Code. The authority will now be required by this determination to revise its admission

arrangements in addition to making the amendments to the Guidance Notes which the Local Government Ombudsman has recommended. I am surprised and concerned that the local authority has not taken the necessary steps to put this right before the closing date of 15 January 2020 and about what the potential effect of this will be.

34. It is not for me to tell an admission authority the exact nature of any revisions which must be made to its arrangements. The extent of my remit is to determine whether or not a set of arrangements conform with the Code. The admission authority must then make the revisions it considers to be necessary to ensure that the arrangements conform with the Code.

Other Matters

35. In the letter to the authority of 6 December 2019 a number of other matters were drawn to the attention of the local authority as appearing not to conform to paragraph 14 of the Code. This was either because the arrangements are incorrect and therefore misleading which then means they are unclear, or because the arrangements are unclear *per se*. I have listed these matters above. I now consider them in more detail and in light of the local authority's response.

Turning firstly to the definition of 'Looked After' and 'Previously Looked After' children, the letter said that the definition in the admission arrangements for secondary schools appeared to be incorrect and not to conform with the definition in the Code. The arrangements say that: *"'Looked After' refers to a child who is currently under the care of the Local Authority (eg: in foster care under a full or interim care order).*

***'Previously Looked After' refers to a child who was looked after (as outlined above), but ceased to be so because they were adopted straight after leaving care, or they became subject to a child arrangements order – including a residency order - or special guardianship order.*

The letter of 6 December 2019 drew to the local authority's attention the fact that the term 'Looked After' is defined in section 22 of the Children Act 1989 as follows:

"... any reference to a child who is looked after by a local authority is a reference to a child who is—

(a) in their care; or

(b) provided with accommodation by the authority in the exercise of any functions (in particular those under this Act) which [are social services functions within the meaning of] the Local Authority Social Services Act 1970], apart from functions under sections [17], 23B and 24B]".

The definition in the section 22 includes children who are provided with accommodation by the local authority in addition to those children under the care of the local authority under a

full or interim care order. The letter therefore asked why the definition in the admission arrangements does not include children who are accommodated.

The letter also said that it follows that the definition of 'Previously Looked After' children must also make clear that it includes children who were accommodated by the local authority immediately prior to being adopted or becoming subject to a Child Arrangements or Special Guardianship Order.

Residence Orders no longer exist.

The primary school arrangements, secondary school arrangements, and the in-year arrangements contain the same definition of Looked After and Previously Looked After children.

However, oversubscription criterion (1a) for primary, infant and junior schools states the definition correctly, as does oversubscription criterion 1 for secondary schools.

The local authority's response indicated that it accepted these points, and agreed to make the necessary revisions to its arrangements. I am grateful to the authority for its cooperation.

The letter noted that parents are asked for proof of adoption but not asked for proof that a child has been accommodated or for copies of any child arrangements or special guardianship order. The local authority was requested to explain this discrepancy but has not done so. In order to be consistent and therefore reasonable, the arrangements must ask for proof that a child has been accommodated or for copies of any child arrangements or special guardianship order, or cease to ask for proof of adoption. It cannot be objectively reasonable to ask for proof of one set of relevant circumstances but not others.

36. **Changing address**

The secondary schools arrangements state:

***“House move prior to 31st October 2019:** Where the home address changes before the closing date for applications, parents must notify the Admissions Service of the change of address and, if required, will be permitted to amend their school preferences. Parents will need to contact the Admissions Service to update the application”.*

The letter of 6 December 2019 asked what the words 'if required' mean in this context. Where the address has changed before the deadline for making an application, it would appear reasonable to allow parents to amend the form, particularly since the arrangements also state that applicants who have changed address after 31 October 2019 but before 31 December 2019 *“will be permitted to submit or amend an application”*.

The arrangements provide that applicants who have changed address after 31 December 2019 who have submitted an on-time application will be treated as living at an address

which is not the address where they actually live. There does need to be a cut-off point and it is inevitable that some applications will need to be treated in this way. The authority was asked whether the incorrect address continues to be used going forward, for example in relation to the position on the waiting list. The authority was asked whether the address is corrected at some point, when that would be.

The same point applies in relation to primary schools. The arrangements state that, where an application is made by the National closing date of 15 January 2020, but a house move happens after this date and no evidence could be submitted by the extended deadline of 3 February 2020, the application will be considered using the previous address which was named on the application.

The local authority's response indicated that it accepted these points. The arrangements will provide that parents who advise the Admissions Service of a change of address prior to 31 October may if they wish, amend their school preferences. The local authority considers that the following wording would be more appropriate. *"Where a parent wishes to amend their child's application after 31 December 2019, they will be unable to do so, all changes which include a change to address will be processed after offer day"*. I am grateful to the authority for its cooperation.

37. Further applications from the same household

The arrangements for both primary and secondary schools state:

"If a school place has been offered by Warwickshire Admissions Service and an applicant then chooses to submit further applications, the newest application will take priority over any previous applications. Further applications made after the deadline date will be classed as late".

Paragraph 2.12 of the Code says: *"an admission authority must not withdraw an offer unless it has been offered in error, a parent has not responded within a reasonable time, or it is established that the offer was obtained through a fraudulent or intentionally misleading application"*.

The letter of 6 December 2019 stated that, if a place has been offered, it would appear the admissions authority would have no grounds to withdraw the offer in the circumstances set out in the arrangements. The applicant would have to either accept the offer or decline it. Where the parent chooses to decline the offer and submit a further application (which by definition could only be a late application), this could only be dealt with after places had been offered to all on-time applicants. It appeared that the arrangements do not explain the position clearly, and risk being misleading.

The arrangements then go on to say that: *"If it is possible to offer a place at one of the preferences on the newest application, the offer will be made and the previous school place offered will be withdrawn"*. Again, the letter drew to the attention of the local authority the fact that the Code does not appear to allow admission authorities to withdraw the offer of a place in these circumstances. The applicant would need to decline the original offer.

The local authority's response was that it proposed to amend the wording as follows: *"Following offer day, WCC will accept new applications and if required further amendments to existing applications. If a child has an existing offer of a place, this will not be withdrawn until confirmation of an offer from the new/amended application can be made"*. I am grateful to the authority for its cooperation. It is not for me to dictate the particular wording of any revisions which need to be made, but it would seem to me that the arrangements need to make the following points in order to be clear: Where a school place has been offered, the applicant must choose either to accept the offer or not. Where an offer is not accepted within a reasonable time, it may be withdrawn. If an applicant chooses to make a further application after having received the offer of a place, this application can only be processed where the applicant has declined to accept the place which has been offered. Any such further application will self-evidently be a late application, and will be processed after all of the first round offers have been made to applicants who have applied on time. If it is possible to offer the applicant's child a place at the school which is the subject of the further application, a place will be offered. Parents who have received the offer of a place but who decline the offer in favour of making a further application risk not being offered a place at the school which they have applied to subsequently. In these cases, the local authority may offer a place at any maintained school which has vacancies.

38. Multiple applications made by Separated Parents

The arrangements for both primary and secondary schools say that: *"Where the child spends 50% of their time with each parent, and a decision cannot be reached between them by the relevant closing date for the submission of applications, the local authority will use a random number generator to determine the result. This will determine which application (including address details and school preferences) to consider when allocating the child a school place."*

The draw will be carried out by two officers of the Admissions Service in the presence of a local authority solicitor. The result of the draw will be recorded and countersigned at the time by all parties involved and both parents will be notified of the outcome in writing".

The letter of 6 December 2019 suggested that the arrangements were unclear about how this process is intended to work as there is reference to a "random number generator" and a "draw". The local authority was requested to explain what the process actually consists of.

The local authority's letter explained that where the child spends 50 per cent of their time with each parent, and a decision cannot be reached by the relevant closing date for the submission of applications, the local authority will *"intervene and act on their behalf"*. The local authority uses a computer 'random generator' to select either parent A or parent B's application. This process is carried out by two Admissions officers in the presence of a local authority solicitor. Parent A and B are then advised which application will be processed. This explanation was helpful. What was unclear to me was that the random generator is used to select one of the parents' addresses. This needs to be set out in the arrangements. I am grateful to the local authority for its cooperation.

39. Children who are in receipt of either the Early Years Pupil Premium or the Service Premium

Oversubscription criterion 2 refers to “*Children who are in receipt of either the Early Years Pupil Premium or the Service Premium, with no more than 14% of the places available to be allocated under this category. The child must be in receipt of the premium at the time the application is made, or have been in receipt at any point since the child turned three years old*”.

It was drawn to the local authority’s attention that, on a minor technical point, no child is ever in receipt of Early Years Pupil Premium (EYPP). If a child meets the eligibility criteria, the money is paid to the education provider. EYPP is funding to improve provision for three and four year olds. Presumably, the rationale in adopting this oversubscription criterion is to offer a higher level of priority to disadvantaged children, but it is unclear why, if a child was eligible for the EYPP when he/she was three years old but has ceased to be so eligible when he/she starts school, such a child would continue to be considered disadvantaged given that eligibility for EYPP is based upon the child’s parents being in receipt of certain benefits. The same point is relevant for children who meet the eligibility criteria for the Service Premium. The local authority was asked to comment on this point.

These points apply to the arrangements for primary, infant and junior schools

The local authority’s response was as follows: “*The authority accepts the wording should be amended to read ‘children who are eligible for either Early Years Pupil Premium or the Service Premium.’*”

The 2020 entry arrangements have taken into account the aims and challenges as outlined within the local authority’s ‘Education Strategy: 2018-2023’. In order to accommodate the strategy within the School Admissions Service, priority for places at local authority maintained infant, primary and junior schools within the county will be given to children who are classed as vulnerable and/or disadvantaged. This includes children who are in receipt of the Early Years Pupil Premium, as well as young people who are under a Child in Need Plan and/or a Child Protection Plan. The aim of introducing such criteria is to assist families who are vulnerable and/or disadvantaged and present them with the opportunity to send their child to their preferred school. This may be the closest school to the family home, or the school where a sibling already attends, so as to assist with transportation and logistics, even if the preferred school is not the family’s catchment school. The views of Children’s Services and Social Workers may also be beneficial in allocating specific school places to those children who should not attend their local school due to safeguarding issues. The allocation of places in such categories will be limited to a certain % of each school’s Published Admission Number, so as not to create a disproportionate number of disadvantaged children within any one school”.

Obviously, I understand that the purpose of the EYPP is funding to improve provision for children who are vulnerable or disadvantaged, but the explanation leaves me no clearer as to why a child who is considered to be disadvantaged by virtue of the fact that his/her

parents are in receipt of specified benefits is still considered to be disadvantaged when the parents are no longer eligible for these benefits at the time the application is made. The parents may have been in receipt of benefit at some point since the child turned three years old, but if the parents are no longer in receipt of benefits when the application is made, this is likely to be because their circumstances have changed, possibly because they are working. It is difficult to understand, therefore, why it would be reasonable to give applicants who are working priority on the basis that they are disadvantaged. I can only guess that perhaps the arrangements are as they are because parents make their applications in January and, at that point, it is not possible to know whether the child will remain eligible when he/she starts school. If the local authority has a rational basis for this oversubscription criterion being as it is, then the arrangements are reasonable. If not, this aspect of the arrangements will need to be revised. The same point applies to the eligibility for service premium. I cannot see any reason why an applicant who was eligible for service premium but has ceased to be so eligible at the time of the application should be given priority. The rationale for this has not been explained by the local authority in response to my request for an explanation. Again, unless the local authority has a rational basis for determining why an applicant who is no longer eligible for service premium should be given priority, the arrangements will need to be revised. I would request that the local authority give fuller consideration to these points.

Summary of Findings

40. For the reasons set out above, I find that the arrangements do not conform with paragraphs 2.16, 2.17, 2.17A, 2.17B and 14 of the Code. In summary, the arrangements mis-state parents' entitlement to deferred entry and part-time attendance in Reception and are misleading for parents; they create an impression that agreement to deferred entry and part-time attendance in Reception is something which is determined by the head teacher of the school in question and is at his/her discretion; they imply that education outside a child's chronological year group applies only to summer born children, whereas a request can be made for this at any point of admission; they do not explain clearly the process for requesting that a child be educated outside his/ her chronological year group, or when and how such a request must be made. Parents will also need to be told which factors must be taken into account in determining a request for a child to be educated outside his/her chronological year group, but these factors need not be set out in the arrangements themselves. Under paragraph 14, it is sufficient for the arrangements to set out correctly how parents go about making the request. Parents must also be given reasons for any decision made,

41. Again for the reasons set out above, I also find that there are other matters which do not conform to paragraph 14 of the Code. Some of the definitions of Looked After and Previously Looked After children are incorrect which renders them misleading and therefore unclear. The provisions relating to changing address and multiple applications made by separated parents are unclear. The oversubscription criterion relating to EYPP and service premium appears to be unreasonable, and the section relating to further applications from

the same household is unclear and additionally does not conform with paragraph 2.12 of the Code.

Determination

42. I have considered the admission arrangements for September 2020 for community and voluntary controlled schools in the area of Warwickshire County Council in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that the provisions in the arrangements relating to the education of children outside their chronological year group, and deferred entry to, and part-time attendance in, Reception, do not conform with the requirements in the School Admissions Code. I have also found that there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

43. 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 or by 28 February following the date of the determination whichever is sooner unless an alternative timescale is specified by the adjudicator. In this case I determine the arrangements are to be revised by 28 February 2020

Dated: 28 January 2020

Signed:

Schools Adjudicator: Dr Marisa Vallely