



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3678

Objector: The Governing Board of Hangleton Primary School

Admission authority: Brighton and Hove City Council for Hangleton Primary School

Date of decision: 12 June 2020

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2021 determined by Brighton and Hove City Council for Hangleton Primary School, Hove.

I have also considered the arrangements in accordance with section 88I(5) and find 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.

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 the governing board of Hangleton Primary School (the governing board), about the admission arrangements for September 2021 (the arrangements) for Hangleton Primary School (the school), a community primary school for children aged 4 to 11 in Hove. The arrangements were determined by Brighton and Hove City Council (the local authority) on 13 January 2020. The objection is to the published admission number (PAN) set for the school and the consultation undertaken by the local authority prior to determining the arrangements.

2. The parties to this case are the local authority and the governing board.

Jurisdiction

3. The school is a community school and so its admission authority is the local authority. Paragraph 1.3 of the Code permits the governing boards of community and voluntary controlled schools to object to the Schools Adjudicator if the PAN set for them by the local authority is lower than they would wish.

4. These arrangements were determined on 13 January 2020 under section 88C of the Act by the local authority. The governing board submitted the objection to these determined arrangements on 1 May 2020. 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. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

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

- a. the governing board's form of objection dated 1 May 2020, its responses to my enquiries and comments on material provided by the local authority;
- b. a copy of the minutes of the meeting of the local authority at which the arrangements were determined;
- c. a copy of the determined arrangements;
- d. the local authority's response to the objection and its response to my enquiries;
- e. the local authority's website and the Department for Education's (DfE) website;
- f. maps of the area identifying relevant schools; and
- g. the determination by the Schools Adjudicator reference VAR860 dated 16 July 2019.

The Objection

7. The governing board said that there were "*mistakes and lack of clarity*" in the process of consulting on the reduction in the PAN of the school. Paragraphs 1.42 to 1.46 of the Code set out the requirements for consultation on school admission arrangements.

8. The governing board said that the reduction in the PAN from 90 to 60 was unfair to parents as it reduced the opportunity for them to be offered a place at the school for their children. Paragraph 14 of the Code requires that admission arrangements are fair.

Other Matters

9. When I requested a copy of the arrangements the local authority provided me with a link to the agenda and papers of the meeting on 13 January 2020 at which the arrangements were determined. Among these papers I could find a list of PANs for community and voluntary controlled schools in the city; a single page, headed “*Admission Arrangements for Brighton & Hove Schools 2021/22*”, which contained a list of oversubscription criteria and no further information, schemes of co-ordination and papers concerning the supply of places. On page 5 of the Code admission arrangements are defined in a footnote as “*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*”. This is more than just the oversubscription criteria and PANs found in the papers which I was referred to. Consequently, it appeared to me that the arrangements omitted much of the detail required by the Code:

- i) The arrangements do not refer to children with Education, Health and Care Plans as required by paragraph 1.6.
- ii) The arrangements do not define sibling links as required by paragraph 1.11.
- iii) The arrangements do not make clear how the home address will be determined and the point in the school from which all distances will be measured as required by paragraph 1.13.
- iv) Linked infant schools are not named as required by paragraph 1.15.
- v) The definition of medical or other exceptional reasons is not set out as required by paragraph 1.16.
- vi) Waiting lists are not described as required by paragraph 2.14.
- vii) The requirements of paragraph 2.16 regarding the admission of children below compulsory school age are not met.
- viii) The requirements of paragraph 2.17 regarding the admission of children outside of their normal age group are not met.

10. Furthermore, paragraph 1.47 of the Code requires “*Once admission authorities have determined their admission arrangements, they must notify the appropriate bodies and must publish a copy of the determined arrangements on their website*”. On 12 May 2020 I could not find the arrangements for 2021 on the school admission pages of the local authority’s website.

Background

11. The school is situated in the north of Hove, west of Brighton. There are nine other state funded primary schools listed on the DfE database as being within one mile of the

school. The school is federated with one of the other nearby schools and was judged by Ofsted to be “Good” in June 2018.

12. The capacity of the school is given as 654 on the DfE database and the school has had a PAN of 90 except in 2019 when, after it had been determined at 90, the Schools Adjudicator approved the reduction of the PAN to 60 in the determination VAR860. There are currently 558 children on roll at the school, taught in 20 classes, that is three for each year group except Reception (Year R) where there are two classes. The school has another classroom which is currently rented by a private nursery.

Consideration of Case

Consultation

13. When changes are proposed to admission arrangements, admission authorities must consult as set out in paragraphs 1.42 to 1.45 of the Code. Paragraph 1.43 sets out when and for how long consultation should be. That is for at least six weeks between 1 October and 31 January in the determination year. Paragraph 1.44 lists the people and organisations that must be consulted, while paragraph 1.45 sets out the how and where the proposed arrangements must be published.

14. The governing board referred to “*a history of temporary and late PAN reductions*” for the school. There is no such thing as a temporary PAN reduction. Admission arrangements, which include the PAN, must be determined every year and apply for one year only to the relevant age group which is the age group at which pupils are normally admitted to the school. Once determined (other than in some limited circumstances which are not relevant here) they can only be varied with the agreement of the Schools Adjudicator as happened for 2019. While there may have been discussions between the governing board and the local authority on other occasions, that is the only variation which has been agreed by the Schools Adjudicator.

15. The governing board complained that the local authority decided to consult on reducing the PAN without discussion with them and that there were errors in the associated paperwork concerning the other school in the federation. The local authority provided me with copies of correspondence concerning this error and I do not think it distracted from the consultation for the public.

16. The local authority provided me with a link to a page on the ‘Consultation Hub’ on its website. This showed that consultation on the arrangements opened on 15 November 2019 and closed on 6 January 2020. This meets the requirements of paragraph 1.43 of the Code; however, the governing board said that with local government in “*purdah*” prior to the general election on 12 December and the Christmas holiday falling in this period they “*do not believe that parents had a fair opportunity to respond to the consultation during this difficult time.*” This point of view is somewhat undermined by the next comments in the objection which refer to a public meeting being “*very well attended*” and a petition signed by over 1000 parents. Whatever national events were taking place, the requirements of

paragraph 1.43 of the Code were met and it would appear that there was a good level of public engagement with the consultation.

17. The information on the 'Consultation Hub' lists the people and organisations that must be consulted as set out in paragraph 1.44 of the Code and drew attention to there being proposed changes to the PAN at several primary schools. It invited the reader to share the page by Twitter and Facebook; there was also a telephone number and email address of where a hard copy could be obtained. However, paragraph 1.45 of the Code requires that a full copy of the proposed arrangements are published on the admission authority's website together with the details of the person within the authority to whom comments must be sent; neither were. The primary schools where there were proposed PAN reductions were not named, nor were the new PANs set out. I find that the requirements of paragraph 1.45 of the Code were not met.

18. The local authority also provided me with a link to a press release issued on 25 November 2019 concerning the consultation. In this press release, it was stated "*The proposals are to permanently reduce the number of children being admitted to the following schools: Hangleton Primary School: 30 places ...*". This is misleading because PANs are not permanent, they are set every year, and the proposed reduction in PAN at the school was from 90 to 60, that is by 30 places and not to a figure of 30 which could be the interpretation of the wording in the press release. The press release also gave details of public meetings where parents could give their views on the proposals, including one at the school on 10 December 2019.

19. The local authority also provided me with copies of emails to other people and organisations that it was required to consult by paragraph 1.44 of the Code. I am satisfied that the requirements of paragraph 1.44 have been met.

20. Because the local authority failed to meet the requirements of paragraph 1.45 of the Code, I uphold the part of the objection concerning consultation. While it is possible for an admission authority to undertake faultless consultation and subsequently determine arrangements which are not lawful, it is also possible for an admission authority to fail to meet the consultation requirements of the Code yet determine arrangements which are lawful. I will move on to consider the next part of the objection.

The published admission number

21. The governing board questioned the evidence used during consultation by the local authority to support the proposal to reduce the PAN. The governing board went on to say "*In conclusion, the admissions code states there needs to be a major change in circumstances. We do not believe there has been a major change in circumstances for Hangleton Primary School. Our numbers have dropped but this is not uncommon in Brighton.*"

22. In this quote, the governing board appears to be referring to paragraph 3.6 of the Code. That paragraph concerns the request for variations to admission arrangements after

they have been determined. Responsible admission authorities do not make frequent use of variations to adjust PANs after they have been set, they look at past trends in admissions and the information from sources such as health authorities about the number of preschool children living in the area before setting PANs.

23. I have looked at the data available to the local authority which was sent to me. This shows that across the whole of its area, the number of children known to it born between September 2009 and August 2010, who started school in September 2014 was 3214. In contrast the number of children known to the local authority born between September 2016 and August 2017 who are due to start school in September 2021 is 2764. This represents a fall of 14 per cent. The governing board acknowledged in the objection that the number of children due to start school across the town is falling.

24. In the West Blatchington and North Hangleton planning area which includes the school the local authority were aware of 113 children in the year which started school in 2014 and 88 who are due to start school in 2021, a fall of 22 per cent. In recent years there have been between 120 and 150 places available at the schools in the area, with the lower figure coinciding with the approved variation to the school's PAN in 2019. The other primary school in the planning area has a PAN of 60.

25. In response to my enquiries, the local authority provided me with details about the number of children offered places at the school in the last three years. I have compared these with the number of children known to be in the planning area.

Year	2018	2019	2020
Children known to be in the planning area due to start school	106	95	74
Number of places offered at the school	80	54	45
Percentage	75%	57%	61%

26. The local authority knows of 88 children due to start school in the area in September 2021. In the last three years the average proportion of children living in the area who were offered places at the school is 64 per cent which would lead to there being 57 places offered. It appears to me that a PAN of 60 is likely to match the demand for places better than would a PAN of 90.

27. In the objection it was said that "*We believe this permanent reduction in the PAN of Hangleton would reduce the chances of parents in the future to choose to attend a strong school.*" I reiterate the point made above; PANs are not permanent and have to be set every year. Furthermore, as explained in paragraph 1.3 of the Code, a local authority is only required to consult the governing board of a community school if it wishes to increase the school's PAN and then, paragraph 3.3 of the Code says that it is only the governing board of the school which could refer an objection to an increase in its PAN to the

adjudicator. Notwithstanding that, an admission authority may admit above PAN. So, if the above modelling, and that of the local authority is wrong, and there is greater need in the area, additional children could be admitted.

28. I asked the local authority for information about the recent pattern of parental preferences for the school and the places offered to those preferences.

Year	Applications			Places offered		
	Preference 1	Preference 2	Preference 3	Preference 1	Preference 2	Preference 3
2020	41	58	38	41	4	0
2019	53	50	33	53	1	0
2018	67	54	50	67	10	3

29. From this table, it can be seen that in the last two years a PAN of 60 would have allowed every first preference to be met and all of the second preferences where it had not been possible to meet their first preference. Taken with the previous table I conclude that a PAN of 60 is likely to be sufficient to meet all first preferences again in September 2021. If reducing the PAN to 60 prevents places being offered to some children whose parents put the school lower on their application form, as noted above, there are nine other primary schools within one mile and an overall surplus number of places. I would expect all local children to be able to find a school place near their home.

30. From the data I have been provided with by the local authority I think it highly unlikely that a PAN of 60 will prevent any child whose parent wants them to attend the school from being offered a place in September 2021 and no unfairness would arise.

31. However, the governing board told me that the number of children currently in Year R and Year 1 were greater than the number given to me by the local authority. The governing board was also expecting more children to start school in September 2020 than the local authority.

Admission year	2018	2019	2020
Number on, or expected to be on, roll in Year R according to the governing board	85	60	50

32. I asked the local authority for an explanation of these discrepancies. From their explanation it would appear that the figures originally provided to me were those offered places at the school on national offer day. To these are added children whose parents had not listed the school as a preference but were offered places there because none of their preferences could be met and it was the nearest school to their home with places available. In addition, there were late applications, families moving home or changing their mind. The exact figure could be changing from day to day with delays in information moving between school and local authority leading to each holding a different figure.

33. I have considered whether this information changes the analysis above and my conclusion that it was highly unlikely that a PAN of 60 will prevent any child whose parent wanted them to attend the school from being offered a place in September 2021. For those children who were placed at the school because none of their parents' preferences could be met, I can see no unfairness because, their parents did not ask for a place at the school and there are several other nearby primary schools, which would not be significantly farther from their homes with places available. Families who apply late or move home after school places have been allocated cannot be given the same opportunity to have their preferences for a school place met as those who apply on time. With the number of other schools nearby with unfilled places I see no unfairness arising to these children. Should there be any overriding circumstances for a particular child the admission authority has the discretion to admit above PAN, subject to the school being able to meet class size legislation or the independent appeal process is available. Naming the school in an EHCP is another option.

34. When the local authority explained its reasons for reducing the PAN at this and other schools it said that falling rolls across the city were "*placing schools in challenging financial circumstances*". It explained that it wished to avoid closing schools or reducing schools to one form of entry and that as the only school in the West Blatchington and North Hangleton planning area that had three forms of entry, this was the only option in this area.

35. Primary schools must organise classes to meet infant class size legislation which requires that infant classes (those where the majority of children will reach the age of 5, 6 or 7 during the school year) must not contain more than 30 pupils with a single teacher. Larger schools have more headroom in their budgets than small schools to meet this requirement and have more flexibility to organise their infant classes in different ways. A large primary school with a PAN of 90 that admitted, say, 65 children into Year R might be able to afford a third reception class teacher, or have the flexibility to teach some Year R pupils alongside some Year 1 pupils. A small primary school with a PAN of 30 which admitted just 23 Year R pupils may find funding a teacher for that group difficult, but if it had five more children there would be no problem. If a school finds itself in financial difficulty there will almost certainly be an adverse impact on the education of the children.

36. There can be problems for larger schools too. With a PAN of 90 and just 58 Year R places offered a school may set up two classes for the year group, then because the admission authority cannot refuse a place during the school year until the PAN is reached, the school may find three more children arrive and it must take steps to reorganise to meet class size legislation. It was for this reason that a variation to the PAN at the school was applied for in 2019 and granted in VAR860.

37. There is a balance to be struck between setting PANs which allow a high degree of parental preference to be met and supporting the quality of education at smaller schools. In this case I find that there is very little likelihood that reducing the PAN from 90 to 60 for September 2021 would prevent a child whose parent would like them to attend the school from being offered a place. For families who apply late or move into the area after the allocation of places, there are several other schools in the area with places available and a

safety net for any child with exceptional circumstances. I do not uphold this part of the objection.

Other Matters

Publication

38. Paragraph 1.47 of the Code requires local authorities to publish the admission arrangements they have set for community and voluntary controlled schools once they have been determined and paragraph 1.49 requires local authorities to also publish where the admission arrangements for all other schools in their area can be viewed by 15 March each year. These dates are important because if a parent or other person wants to refer an objection about any of these admission arrangements to the adjudicator they must do so before 15 May. Failure to publish prevents people exercising this right.

39. When I asked the local authority to send me a copy of the arrangements, I was sent a link to the papers for the meeting at which the arrangements were determined on 13 January 2020. These included a single side of A4 paper headed "*Admission Arrangements for Brighton & Hove Schools 2021/22*", a list of PANs and other documents about the scheme of co-ordination and school place planning. Because this document appeared not to contain all the detail which the Code requires to be in admission arrangements on 12 March I looked for the 2021 arrangements on the local authority's website. I could not find them.

40. When I raised this matter with the local authority, I was sent another link to a page on the local authority's website which had the heading "*Determined school admission arrangements for next year*." I tried to find this page from the home page of the local authority's website. I went to "*Children and learning*", then "*Apply for school*". On this page the first section was headed "*Apply for a place*" with six titled links below it and one link to "*More*". I found nothing in this section about admission in 2021. The next heading on the page was "*Help with applying*" with four titled links and "*More*". Among the links revealed by clicking on "*More*" was one with the heading "*Determined school admission arrangements for next year*". This took me to the same page as the link sent to me by the local authority. Even then a further two clicks were required to see limited details about the 2021 arrangements.

41. The Oxford Dictionary defines "publish" as "1. *Make generally known ... 2. Announce formally, promulgate ...*". Although the 2021 arrangements can be found on the local authority's website, their location hardly matches the definition of 'publish' and they would be difficult for parents or others to find. In my view the requirements of paragraph 1.47 have not been met. Furthermore, I could not find details of where the 2021 admission arrangements for academies, foundation or voluntary aided schools in the area could be viewed and so I also find that the requirements of paragraph 1.49 have not been met.

Omissions from the arrangements

42. The page which the above process led me to says that the committee determined the arrangements for 2021 on 13 January 2020. It then says "*There will be no changes to the existing secondary school catchment areas and council's admission priorities.*" There is no mention of the agreed changes to primary school PANs.

43. There is then a link to the committee papers and one to "*Download and read our agreed school admission priorities, school place admission numbers and catchment area map.*" This link takes you to a page with downloadable copies of a list of PANs for 2021 and "*School admission arrangements 2021 to 2022*". This document was the same as the one I had originally been sent containing no more than a list of oversubscription criteria.

44. On page 5 of the Code admission arrangements are defined in a footnote as "*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*". This is more than just the oversubscription criteria and PANs. It appeared to me that the arrangements omitted much of the detail required by the Code:

- i) The arrangements do not refer to children with Education, Health and Care Plans as required by paragraph 1.6.
- ii) The arrangements do not define sibling links as required by paragraph 1.11.
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- iv) Linked infant schools are not named as required by paragraph 1.15.
- v) The definition of medical or other exceptional reasons is not set out as required by paragraph 1.16.
- vi) Waiting lists are not described as required by paragraph 2.14.
- vii) The requirements of paragraph 2.16 regarding the admission of children below compulsory school age are not met.
- viii) The requirements of paragraph 2.17 regarding the admission of children outside of their normal age group are not met

45. When I raised these matters with the local authority it sent me a revised version of the arrangements. I was sent no evidence that these revised arrangements had been formally approved by the local authority and so I have taken them as draft and a recognition that the arrangements as determined did not meet the requirements set out above. These draft arrangements address all of the omissions in ways which conform with the Code with the exception of the final one, compliance with paragraph 2.17.

46. Under the heading of “*Admission outside a normal age group*” the revised arrangements say “*Applications for admission outside a normal age group and for Summer Born pupil’s application for Reception should be made for the ‘normal’ year for the child’s admission by the closing date for that admission process. The ‘normal’ year for reception applications, is the academic year when the child will be five years old*”. The requirement of paragraph 2.17 to make clear the process for requesting admission outside the normal age group applies for all normal age groups, Year R for infant and primary schools, Year 3 for junior schools and Year 7 for secondary schools. The draft arrangements only refer to Year R.

47. The process of requesting admission outside of the normal age group set out in the draft arrangements does not allow for the possibility that a parent might wish their child to be admitted early to a school, if they waited until the normal year this would be too late.

48. I find that the determined arrangements do not conform with the Code in the ways set out above.

Summary of Findings

49. Because the local authority did not meet the requirements of paragraph 1.45 of the Code I uphold the part of the objection concerning consultation.

50. I have concluded that reducing the PAN from 90 to 60 at the school for 2021 is reasonable in the light of recent patterns of admission and information available about the number of children needing places in the area in 2021. I consider it highly unlikely that reducing the PAN to 60 will prevent any child from being offered a place at the school if it is one of their parents’ preferences in 2021. I also see no unfairness arising from there being less opportunity for children of parents who had not expressed a preference for the school to be offered a place there. I therefore do not uphold the part of the objection concerning the PAN.

51. I find that the determined arrangements as a whole do not meet the requirements of the Code in the ways set out above.

Determination

52. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2021 determined by Brighton and Hove City Council for Hangleton Primary School, Hove.

53. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

54. 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: 12 June 2020

Signed:

Schools Adjudicator: Phil Whiffing