



Office of
the Schools
Adjudicator

Determination

Case reference: REF3749

Admission authority: the London Borough of Waltham Forest for the community and voluntary controlled schools in its area

Date of decision: 7 January 2021

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998 I have considered the admission arrangements for September 2020 and September 2021 determined by the London Borough of Waltham Forest for community and voluntary controlled schools in its area and find that the arrangements do not conform with the requirements relating to admissions.

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 decision, whichever is sooner. In this case the arrangements must be revised by 28 February 2021.

The referral

1. Under section 88E of the School Standards and Framework Act 1998, (the Act), requests were made to the adjudicator for variations to determined admission arrangements by the London Borough of Waltham Forest (the local authority). The local authority is the admission authority for the community and voluntary controlled primary and secondary schools in its area. When the arrangements for these schools came to my attention in the course of considering the requests for variations, I considered that the matters detailed below did not, or might not, conform with the requirements for admission arrangements. The local authority was given the opportunity to respond to my concerns.

Jurisdiction

The arrangements for 2020 and 2021 were determined under section 88C of the Act by the local authority, which is the admission authority for the community and voluntary controlled schools in its area on 26 February 2019 and 25 February 2020, respectively. When they were brought to my attention it appeared that the arrangements did not, or might not, conform with the requirements for admission arrangements. I therefore decided to use my power under section 88I(5) of the Act to consider them as a whole and informed the local authority of this decision.

Procedure

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

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

- a) the local authority's requests for the variations to the arrangements for five schools, supporting documents and responses to my requests for further information;
- b) copies of the determined arrangements for 2020 and 2021;
- c) the local authority's composite prospectus for parents seeking admission to schools in the area in September 2021;
- d) information available on the websites of the local authority and the Department for Education; and
- e) previous determinations following requests for variations to admission arrangements made by the local authority including:
 - VAR737, VAR813, VAR865 and VAR932 regarding Thorpe Hall Primary School;
 - VAR758, VAR858 and VAR933 regarding The Winns Primary School;
 - VAR747, VAR864 and VAR928 regarding George Tomlinson Primary School;
 - VAR767, VAR827 and VAR930 regarding Edinburgh Primary School;
 - VAR929 regarding Downsell Primary School; and
 - VAR931 regarding Heathcote School and Science College. I shall refer to these determinations as the previous determinations.

Matters of concern

4. The previous determinations all concerned proposed variations that the published admission numbers (PANs) for the named schools be reduced. Adjudicators when considering the proposed variations raised with the local authority other matters in the arrangements which might not comply with the Code and, where appropriate, these matters were addressed in determinations. A further five requests for variations were made for reductions in PANs for 2021 and I was appointed as the adjudicator to consider these proposed variations. I noted that the following matters appeared not to comply with the Code. The matters were (with the most relevant paragraph or paragraphs of the Code in brackets):

- 4.1. The published admission arrangements do not appear to be clear as they are published as part of the co-ordinated admissions scheme, a document which serves a different purpose (14).
- 4.2. The information on the admission of a child with an education, health and care plan (EHC plan) does not appear to be accurate.
- 4.3. The definition of a looked after child is not the same as that required by the Code and this may make the arrangements unclear as well as in breach of the specific requirements relating to these children (14 and 1.7).
- 4.4. The tie-breaker does not appear to be clear (1.8).
- 4.5. The information on the entitlement of a parent to defer admission or that their child should attend school part-time until the child reaches compulsory school age does not appear to be accurate or clear (14 and 2.16).

5. A letter was sent to the local authority on my behalf on 26 November 2020 which, following previous communications on these matters, brought all these matters to the attention of the local authority.

Consideration of Case

The publication of the arrangements

6. In the course of considering proposed variations for a number of schools, I was provided with a link to what the local authority said were its determined admission arrangements. This document appeared to me to be the co-ordinated admissions scheme. The purpose of the co-ordinated admissions scheme, which every local authority responsible for education must formulate and publish on its website, is to coordinate the process for admissions to all publicly funded mainstream schools within its area. It has the key aim of ensuring that all children receive a single offer of a place and that that place is at the school their parents most wish them to attend which can accommodate them. The scheme and the document setting it out thus serve a different purpose from determined admission arrangements which set out for each school how applications will be ranked if the

school is oversubscribed and ancillary matters. The local authority was asked again for the admission arrangements. I was provided with the same document. I looked on the local authority's website to try to find what a parent or other interested party would see. On the page giving information about school admissions I found, under the heading "related documents", a list of documents related to school admissions. One item on the list said, "Please view the Waltham Forest Determined Admissions Arrangements for 2021/22." This again linked to the document that I considered to be the co-ordinated admissions scheme. I asked the local authority for its comments.

7. Representatives of the local authority responded that:

7.1. "Parents in the London Borough of Waltham Forest use document (sic) all the time and no one has complaint (sic) about this document, I take your comments about document reading like a committee paper but parents in London Borough of Waltham Forest find it suitable, so do we need to change it? I am keen to do any changes required, the document provides admission arrangements for its community and voluntary controlled schools not any schools where schools are their own admission authority. The only confusing part might be in the very end I list ALL schools including schools that are not community and VC, if I remove them will the document work?"

7.2. "Please excuse my lack of knowledge but I don't see the issue with what we have sent you since the admissions code states 'The local authority will collate and publish all the admission arrangements in the area in a single composite prospectus'. To me it seems that it is all in the 1 document as described."

8. These comments appear to show that there is some confusion about the purpose and contents of the determined admission arrangements, the co-ordinated admissions scheme and the composite prospectus. I will therefore describe the purposes of these three documents in more detail. In passing, I note that my jurisdiction is limited to the admission arrangements and does not extend to the co-ordinated admissions scheme or the composite prospectus.

9. Every admission authority must determine its admission arrangements and do so each year by 28 February (so by 28 February 2020 for admissions in September 2021). In this case, the local authority is the admission authority for the community and voluntary controlled schools in its area. Paragraph 1.47 of the Code says that once admission arrangements have been determined, admission authorities "**must** publish a copy of the determined arrangements on their website displaying them for the whole offer year (the school year in which offers for places are made)". The Code specifies what matters must be included in admission arrangements. Paragraph 14 of the Code says, "In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated." This is what the local authority must produce in its role as an

admission authority. Every admission authority in England must do these things, whether or not it is a local authority or an academy trust or a school governing body. If the local authority were not an admission authority (which would be the case if there were no voluntary controlled or community schools in its area) then it would not have to determine admission arrangements and, of course, not have to publish them.

10. In addition, there are co-ordinated admissions schemes. These describe the process by which individual local authorities co-ordinate the applications by parents for places, the exchange of information about preferences expressed by parents between admission authorities and finally make offers of places for schools in their area. The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 set out the requirements of the scheme. As paragraph 2.20 of the Code explains, the scheme must be formulated and published on the local authority's website by 1 January of the relevant year so by 1 January 2020 for admissions in September 2021. A local authority must inform the Secretary of State on or before 28 February in the same year whether it has secured the adoption of a qualifying scheme or not. A co-ordinated admissions scheme is a technical document which includes considerable information about systems and processes which are not required in the admission arrangements determined by an individual admission authority. This is what the local authority must produce in its role of co-ordinating admissions for all the publicly funded mainstream schools in its area. The local authority would have to draw up a co-ordinating admissions scheme irrespective of whether it were or were not an admission authority itself.

11. There is also the composite prospectus. This document is published by the relevant local authority and must be published by 12 September in the offer year (which means the academic year in which offers for places will be made for the following year and so by 12 September 2020 for admissions in September 2021). The requirements as to the content of the composite prospectus are set out in paragraph 1.51 of the Code which explains that it is to "contain the admissions arrangements and any supplementary information forms for each of the state funded schools in the local authority's area to which parents can apply." It must thus cover academies, voluntary aided and foundation schools as well as the voluntary controlled and community schools for which the local authority is the admission authority. The main intended readership of this document is local parents and the Code states that it is to be "written in a way that makes it clear and accessible to all parents." The local authority would have to produce a composite prospectus even if it were not an admission authority itself.

12. The three documents described above serve different purposes. The information provided to me and published on the local authority's website, as if it were the determined admissions arrangements, is the co-ordinated admissions scheme. The scheme has a section (appendix 2) which commences on page 34 that seems to be, and that I take to be, the admission arrangements for voluntary controlled and community schools. The whole 41 page document contains much other information which makes it difficult to meet the requirement of paragraph 14 of the Code to be clear as it is not information that parents need to know. Appendix 2 follows various technical schedules and other information not

relevant to parents seeking to understand the admission arrangements for the school or schools in which they are interested.

13. The document also reads like a committee paper in that it provides information which may be of use to a councillor considering whether or not to approve the paper. As reported above in paragraph 7.2, the local authority suggested that this document is also the composite prospectus. However, and while noting that this is not a matter within my jurisdiction, I cannot see that this can sensibly be the case. The document does not have the majority of the information required in the composite prospectus and was published before the admission arrangements for academies and for foundation and voluntary aided schools have to be reported to the local authority (15 March). The two documents, the co-ordinated admissions scheme and the composite prospectus, serve different purposes and work to very different timetables. The co-ordinated admissions scheme is required to be published by 1 January, and the composite prospectus (which has to include the arrangements determined by all admission authorities in the area, including the local authority if it is an admission authority) is required to be published by the following 12 September.

14. Appendices 3 and 4 to the co-ordinated admissions scheme provided to me list the PANs for all the primary and secondary schools in the local authority area. Some of these PANs are set by the local authority as it is the admission authority for the schools concerned but the list includes the PANs for schools where the local authority is not the admission authority. This in itself is puzzling as to meet the deadline for publication of the co-ordinated scheme, the local authority would have to complete it and publish it before other admission authorities are required to have determined their arrangements, including their PANs. Appendix 2 which is described as the admission arrangements for the community and voluntary controlled schools is followed by appendices 3 and 4. There is no indication of whether each of the schools listed in appendices 3 and 4 is a community, voluntary controlled, voluntary aided, foundation or academy school so the reader could assume that they are the schools to which appendix 2 relates. Appendix 2 only relates to some of these schools but this is not clear.

15. As explained above, the co-ordinated admissions scheme must be formulated and published on the website of the local authority by 1 January in the relevant determination year. The admission arrangements must be determined by 28 February in the determination year. I can only find the one document, as described above, on the website for the local authority.

16. I conclude that providing the determined admission arrangements within a document published for a different purpose makes it difficult for parents to “understand easily how places for that school will be allocated”, and so the arrangements do not meet the requirements of paragraph 14 of the Code. The document is not fit for this purpose.

17. The admissions page on the local authority’s website also provides what is described as the “Waltham Forest Determined Admissions Arrangements for 2020/21.” These are in the same format as those for 2021 and so also do not meet the requirements of the Code

for the same reasons. The arrangements for 2022 are not within my jurisdiction as they have not yet been determined but I note that the proposed arrangements for 2022 available on the local authority's website are also in the same format. This format is not acceptable as the admission arrangements for the community and voluntary controlled schools for which the local authority is the admission authority.

18. In the rest of this determination I need to treat appendix 2 described above as if it were, in isolation, the determined admission arrangements for community and voluntary controlled schools. I will also refer to previous determinations which brought matters which did not meet the requirements of the Code to the attention of the local authority and required them to be addressed. The determination by a fellow adjudicator, VAR933 regarding The Winns Primary School and dated 1 June 2020, raised several other matters and determined that the arrangements for 2020 and 2021 did not meet the requirements of the Code and detailed in what ways.

19. These matters were referred to again in determinations: VAR928, VAR929 and VAR930. VAR933 said: "I have...considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the 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." For sake of absolute clarity this means that the admission authority was required by section 88K of the Act to revise the arrangements within two months of the date of determination. As the determination was published on 1 June 2020 that would have been by 1 August 2020. When I looked on the local authority's website on 9 December 2020 the arrangements for 2020 and 2021 had not been amended to address all the matters raised. The local authority has not complied with the law in this regard.

Education, health and care plans

20. The previous determination, VAR933, explained that the arrangements said "Children who have a statement of special educational needs or Education, Health and Care Plan (EHCP) are placed in schools under the terms of the Education Act 1996 and the Children and Families Act 2014. They are not considered under the Admission Criteria referred to below. These children and young people will be allocated a place at the school they must attend which will be named on the Statement or EHCP." Determination VAR933 stated that this was "inaccurate because not all children with an EHCP have a school named on it. Some EHCPs may specify non-school provision and it is also possible (for example if no specific school is requested by the parent) for an EHCP to specify only that the child's needs can be met in a mainstream setting. In such cases, the school's oversubscription criteria would be applied. I find that this paragraph of the arrangements is unclear and must be revised."

21. The arrangements for 2020 and 2021 use the same wording as that quoted above so the matter has not been addressed. The admission arrangements continue not to meet the requirements of the Code.

Definition of looked after children

22. This was not a matter raised in VAR933. The definition of looked after children in the composite prospectus for 2020 and 2021 for community and voluntary controlled schools is: "Looked after children are children who are in the care of local authorities as defined by Section 22 of the Children Act 1989. In relation to school admissions legislation a 'looked after child' is a child in public care at the time of application to a school."

23. The definition provided in the Code is, "A 'looked after child' is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions (see the definition in Section 22(1) of the Children Act 1989) at the time of making an application to a school." The determined admission arrangements use the same definition as that provided in the Code but the composite prospectus does not. These matters are therefore not consistent within the local authority's information for parents. Paragraph 14 of the Code requires that admission arrangements be clear. Having different versions of the 2020 and 2021 arrangements on the local authority's website cannot be considered to be clear.

Tie-breaker

24. VAR933 said, "Paragraph 1.8 of the Code requires that there is a clear and effective tie-breaker for all oversubscription criteria. The version of the arrangements which I initially sent only had a tie-breaker for the final criterion, of distance from home. When I drew this to the attention of the local authority, it referred me to page 37 of the more recent set of arrangements...[where] some new text has been inserted in a different font under the heading "Tie-breaker". It begins "The tie-breaker is to decide between two applications that cannot otherwise be separated under the distance priority ...". This misses the point. While it may be rare for a tie-breaker to be needed to separate children meeting higher criteria [such as siblings], the Code requires that one is in place and I find that this is not the case."

25. The arrangements provided to me say, "The tie-breaker is to decide between two applications that cannot otherwise be separated under the distance priority." The arrangements therefore continue only to apply the tie-breaker to where children live the same distance from the school and so continue not to meet the requirements of the Code in this matter.

The entitlements of parents of children starting school below compulsory school age

26. This matter was not raised in case VAR933. Paragraph 2.16 of the Code says, "Admission authorities must provide for the admission of all children in the September following their fourth birthday. The authority **must** make it clear in their arrangements that, where they have offered a child a place at a school:

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

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

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

27. The information in the arrangements on a child attending part-time and on deferring admission until the child is of compulsory school age says "Parents/carers can request" this (my underlining for emphasis). Paragraph 2.16 of the Code says that admission authorities **must** make it clear in their arrangements that parents are entitled to have their child attend part-time and to defer entry when the child is below school age. The use of the word request implies that this can be rejected. An entitlement is absolute; it cannot be turned down. The arrangements do not meet the requirements of the Code in this regard.

28. I am concerned that the local authority has not followed the law and the requirements of the Code and has not addressed outstanding matters.

Summary of Findings

29. The arrangements for 2020 and 2021 have not been amended so the local authority has not met the requirements of section 88K(2) of the Act to address the matters determined by the adjudicator. In addition, the local authority has not met other requirements of the Code as detailed above.

Determination

30. I have considered the admission arrangements for September 2020 and September 2021 for the London Borough of Waltham Forest in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation the arrangements do not conform with the requirements.

31. 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 decision, whichever is sooner. In this case the arrangements must be revised by 28 February 2021.

Dated: 7 January 2021

Signed:

Schools Adjudicator: Deborah Pritchard