



DETERMINATION

Case reference: ADA3244

Admission Authority: Leicestershire County Council for community and voluntary controlled primary schools in the county

Date of decision: 6 October 2016

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998 I have considered the admission arrangements for September 2017 determined by Leicestershire County Council for community and voluntary controlled primary schools in Leicestershire and find there are 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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 31 December 2016.

The referral

1. Under section 88I(5) of the School Standards and Framework Act 1998, (the Act) the admission arrangements (the arrangements) for community and voluntary controlled primary schools in Leicestershire for September 2017, for which Leicestershire County Council, the local authority (the Council), is the admission authority, have come to the attention of the adjudicator.
2. In the course of the exchange of correspondence concerning an objection which had been made to the admission arrangements of an academy primary school in Leicestershire for September 2017, the objector in that case drew the attention of the adjudicator to comments made by the school's admission authority about the generation of those arrangements. They had, it said, been drawn up "*in conjunction with the Leicestershire LA's admission service*". The objector referred the adjudicator to the facts firstly that the Council had stated in correspondence that the school's admission arrangements were not in its view unlawful, and second that a phrase which was the subject of the objection which they had made to the school's arrangements also appeared as part of the admission arrangements which the Council had

determined for those schools for which it was itself the admission authority. The objector considered that the arrangements determined by the Council for these schools might also fail to comply with the requirements of the School Admissions Code (the Code).

Jurisdiction

3. These arrangements were determined under section 88C of the Act by Leicestershire County Council, the Council, which is the admission authority for the community and voluntary controlled schools in the county. They came to the attention of the adjudicator on 20 June 2016, which is after the last date when an objection concerning admission arrangements for September 2017 can be lodged. I am satisfied it is within my jurisdiction under section 88I(5) of the Act to consider them as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the Code.
5. The documents I have considered in reaching my decision include:
 - a. the letter drawing the arrangements to the attention of the adjudicator dated 20 June 2016;
 - b. the admission arrangements determined by the Council for community and voluntary controlled schools for September 2017 as posted on its website on 3 July 2016;
 - c. the Council's document "Your Guide to Primary Education 2016-2017";
 - d. confirmation of when the arrangements were last consulted upon;
 - e. the Council's response to the concerns about its arrangements expressed by the adjudicator and supporting documents; and
 - f. copies of the minutes of the meeting of the Council at which the arrangements were determined.

The Referral

6. Paragraph 2.17B of the Code states that:

*"Where an admission authority agrees to a parent's request for their child to be admitted out of their normal age group.....they **must not** give the application lower priority on the basis that the child is being admitted out of their normal age group."*

7. The referrer complained that the phrase "*priority will be given to children in the appropriate age range*", which appears in the arrangements, contravenes the requirement set out in paragraph

2.17B. The objector argued that the presence of this phrase in the arrangements makes the status of an agreed application to be admitted out of the normal age group uncertain, rendering the process for making such an application unclear, contrary to paragraph 2.17 of the Code, which states that: *“Admission authorities must make clear in their arrangements the process for requesting admission out of the normal age group.”*

Other Matters

8. Having had the arrangements brought to my attention, I looked at them and was concerned that they contained what I considered may be further breaches of the requirements of the Code. I therefore sought the comment of the LA concerning these matters in addition to that raised by the referrer. The further matters were that the arrangements:
 - a. state in connection with deferred entry to schools for children who have not reached compulsory school age that *“parents can also request that their child attends part-time”* and that the current document “Your Guide to Primary Education” published by the LA on its website states in connection with deferment of the date of entry *“if your request to defer is agreed”*. I was concerned that these statements appear not to conform with the requirements of paragraph 2.16 of the Code;
 - b. provide a statement concerning the admission of summer born children out of their normal age group, which is repeated in the “Guide” document referred to above, but do not provide a statement concerning other children who might be admitted out of their normal age group and so may breach paragraph 2.17 of the Code;
 - c. state within a list of oversubscription criteria that priority is given to pupils *“basing their application on religious belief”* and may be in breach of paragraph 14 of the Code since this appears to apply to schools for which faith-based admission arrangements are not permitted, and
 - d. do not state clearly what is required to secure priority for applications made on the grounds of religious belief to the county’s voluntary controlled Church of England primary schools, which may breach paragraphs 14, 1.8 and 1.37 of the Code.

Background

9. I have been able to confirm that the County Council determined its admission arrangements at the meeting of its Cabinet on 12 January 2016. When asked for evidence of this determination, the Council had directed me to the minutes of a different meeting, but subsequently confirmed that my own search of its website had resulted in the minutes of the relevant meeting being located.
10. The Council determined a single set of admission arrangements

covering the community and voluntary controlled schools, both primary and secondary in the county for which it is the admission authority. In the document setting out these arrangements, in a section covering *“Deferring first-time admission or Delaying entry”*, the arrangements state:

“When a child’s parents are notified of the allocation of a primary school place, they can request deferment of the child’s admission. The Local Authority will agree to deferment to later in the school year (start of the Summer Term) or until the child reaches compulsory school age in that year. Parents can also request that their child attends part-time until they reach compulsory school age.”

They go on to state that:

“Exceptionally, parents of Summer born children, that is those born between 1st April to 31 August, can request delayed admission, that is they may request that they are admitted out of their normal age group - to Reception rather than Year 1 following their 5th birthday.”

11. This statement is followed in the arrangements by a procedure for the application to be made and details of how such an application will be considered.

12. A later section says that *“Requests for community and voluntary controlled schools are prioritised according to the admission criteria below.”* These criteria are introduced by the phrase *“If there are too many requests, priority will be given to children in the appropriate age-range.....in the following order:”* and consist of a list of eight criteria, the seventh of which is:

“Pupils basing their application on religious belief.”

13. The footnote to which readers of this criterion are directed says:

“For criterion 7 above, a letter of support from your Minister or Religious Leader will be required explaining how the school caters for your faith.

For schools listed below a Minister’s letter is required to support the parent’s application that verifies children from churchgoing families, who have attended a Christian place of worship at least once a month for a year prior to application (sic)”

This criterion only applies to the following CE VC schools” (which are then listed).

Consideration of Case

14. When the Council responded to my concern about the presence of the statement which refers to children in *“the appropriate age-range”* in its admission arrangements, it said that *“it is clear the process of children being educated outside of the normal age group requires an assessment to determine the appropriate age range to which the*

parent/carer will seek admission.”

15. This may be so, but it does not explain why such a phrase should appear as an introduction to the admission authority’s oversubscription criteria. Paragraph 2.17B of the Code makes it clear that if approval has been given for an admission outside the normal age group, that application must be treated equally with others at the point where oversubscription criteria are applied. The phrase included in the arrangements reads in direct contradiction to what paragraph 2.17B sets out, in my view. As a result, parents reading the arrangements would be given quite the opposite impression to that which the Code requires concerning admissions outside a child’s normal age group. As a result I am of the view that the arrangements fail to make sufficiently clear the process for making such applications, as required by paragraph 2.17 of the Code.
16. The Council has indicated to me that *“Your suggested amendments are noted and will be incorporated in due course.”* It is not for the adjudicator to suggest amendments to admission arrangements, and none has been made here. It is for the adjudicator to determine whether or not the arrangements comply with the relevant legislation and the Code. If they do not, the Code then requires that the admission authority must amend its arrangements so that they do so comply, and within the timescale specified.
17. I turn now to the matters which I raised with the Council concerning its arrangements, dealing first with the question of the admission of children below compulsory school age and the admission of all children outside their normal age group. Paragraph 2.16 of the Code says in relation to the admission of children below compulsory school age that:

*“Admission authorities**must** make it clear in their arrangements that, where they have offered a child a place at a school:
c) where the parents wish, children may attend part-time until later in the school year....”*
18. The wording set out in the Code make it abundantly clear in my view that in the circumstances described, part-time attendance is at the behest of a child’s parent and not something which is the subject of a request which might or might not be agreed by the admission authority. Admission arrangements are required to make this position clear. They can only do so in my view by avoiding referring to parental wishes as “requests”, and the authority has failed to do this, both in its determined arrangements and in the Guide for parents which it publishes explaining them. As a result, the arrangements fail to comply with what paragraph 2.16 of the Code requires.
19. The Council did not respond directly to my concern that its arrangements did not include a statement making clear the process for requesting admission out of the normal age group for all of the children to which it might apply as required by paragraph 2.17 of the Code. It

stated, however, that the paragraphs contained in its admission arrangements from which I have quoted above would be amended so as to clarify the processes for seeking deferred or delayed entry or seeking admission outside a child's normal age group. As determined however, the arrangements only provide a process for parents of summer born children to request delayed entry to school and do not contain the statement which is required by paragraph 2.17, with which they fail to comply.

20. I also raised with the council my concerns about the wording of the oversubscription criterion related to religious faith within the arrangements and the accompanying footnote. Schools designated as having a religious character under section 69(3) of the School Standards and Framework Act 1998 are the only maintained schools which may have faith-based admission arrangements including any faith-based oversubscription criteria. The only primary schools for which the Council is the admission authority and which have a religious character are a number of Church of England voluntary controlled schools. They are accordingly the only such schools in which faith may play any part in admissions. Criterion 7 and the accompanying footnote, both of which are set out above, appeared to me to mean that priority based on religious belief is given if a letter of support which sets out how the school concerned "caters for your faith" is provided by a Minister or Religious Leader in respect of admissions to all schools for which the Council is the admission authority and that this was not limited to the Church of England schools.
21. The Council replied that it agreed that it would be unlawful for a school which was not so designated for priority to be given to a child on the grounds of their religion or belief. It also said that its own admission arrangements clearly define those schools where faith based criteria are used. I have set out above this part of the Council's admission arrangements.
22. In my view it is entirely possible to read the footnote to the criterion as making a general statement that priority can be obtained for admission to any school for which the Council is the admission authority if a letter from a Minister or Religious Leader is provided saying why the school caters for the parent's faith. I say this firstly because there is nothing in the arrangements to make the reader believe that "criterion 7", and therefore the footnote to it, does not apply to all schools. The statement that "*combinations of the above criteria are used where appropriate*" which follows the list of oversubscription criteria may have been included with this purpose in mind but it conveys no information to this effect to the reader. Second, the statement about a letter from a Minister or religious leader in the footnote is made separately, and before the schools which are voluntary controlled schools are even referred to. Third, when the voluntary controlled schools are first mentioned, another and different requirement (relating to attendance at worship rather than how the school "caters for your faith") is said to apply to them, which would tend to confirm in the reader in my view the

belief that the statement about a letter from a religious leader about the school catering for the parent's faith applies not to the Church of England voluntary controlled schools but to schools generally.

23. I am bound to say that I find the first statement in the footnote saying what is required to secure priority on the basis of religious belief a curious statement in itself. Any school designated as having a religious character has that character plainly defined as a result, so there can be no doubt in anyone's mind that a school with a Church of England character, for instance, will cater for children from Church of England families, notwithstanding the fact that many such schools also cater for children from other faith backgrounds and from families where no faith is observed. The same argument applies to any other religious character which has been defined for a school and there can be no reason for a religious leader (or anyone else for that matter) to need to say so. It would make sense, however, for a religious leader to consider that a school, whether one with a religious character or not, might be particularly sensitive to faiths for which the school was not itself designated. That is to say, not only would it make perfect sense to a parent reading the arrangements that any school to which the arrangements apply, including community schools, might be considered to be one which was adept at catering for the needs of a particular faith, in my view it makes more sense to read the arrangements in this way.
24. In summary, I believe that there are compelling arguments which support a reading of the Council's arrangements as allowing priority for admission to be given on the grounds of faith, in the way described in the arrangements, to any school for which the Council is the admission authority. I can also find no reason for there to be in the arrangements the statement which on such a reading describes how this priority would be given, since a separate and different requirement concerning attendance at church is stated as applying to the listed voluntary controlled schools, which are the only ones where giving priority on religious grounds is permitted.
25. I have also raised with the Council my concern that the statement relating to attendance at church, which I have also set out above, fails to be clear. On reading it, I could not be sure because of the presence of the phrase "for example" whether the stated level and duration of observance was the only such that could secure priority, or whether what was stated was an example. Neither could I be clear whether only those of the Christian faith are given priority. If other faiths are given priority, the arrangements do not say which faiths these might be and what might be required by way of religious observance in accordance with the tenets of the faith concerned to secure priority for admission to the schools. The Council has stated that it is willing to remove the phrase "for example" from its arrangements. Doing so would provide a clear statement and would mean that those of faiths other than the Christian faith would not be given priority. However, the Council has also said in relation to those of other faiths that "*due consideration*

would be given to all applicants from different faiths” and that this would be on the basis of “a letter from their minister evidencing attendance”. What I take from this response is that the Council meant to write arrangements which would have the effect it is now describing to me. In such arrangements, the statement that the Council is now willing to amend could have remained, if it had been accompanied by others setting out a clear position for those of other faiths. However, neither the determined arrangements nor those now put forward by the Council say anything in this regard. Neither has the Council responded to my concern that it is not clear which other faiths are given priority, unless it means by what it has now said to me that it gives due consideration to applicants of all other faiths. If that is the case, the Council must mean that it defers concerning faith membership to all those who say they belong to a faith other than the Christian faith and will accept a letter from any person stating that he or she is a minister of any such organisation. However, none of these matters is clear in the arrangements which the Council has determined for its voluntary controlled schools, and I remain of the view that the arrangements do not provide a clear statement which would allow a parent to know, if they sought admission to one of the county’s voluntary controlled Church of England primary schools on the grounds of religious belief, whether their membership and practice of their own faith would be such that their application would be given priority.

26. I welcome the Council’s statement that it agrees that priority given to applicants on the grounds of faith, other than in the case of schools with a designated religious character, is not lawful. However, its arrangements give quite the opposite impression and manifestly fail to be clear, which is a requirement of paragraph 14 of the Code. The failure of the arrangement to provide any clear definition of what is required to secure priority for admission to the county’s voluntary controlled primary schools constitutes a further breach paragraph 14, and also of paragraph 1.8 concerning the clarity of oversubscription criteria and of paragraph 1.37 which states that admission authorities for schools with a religious character “*must ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied*”.

Summary of Findings

27. I have come to the view that the Council’s arrangements are in breach of paragraphs 2.17 and 2.17B of the Code because they include a phrase referring inappropriately in the context in which it appears to children “in the appropriate age-range”.

28. I find that the arrangements do not comply with paragraph 2.16 because they fail to state that attendance on a part-time basis below the age of compulsory schooling is an entitlement, and with paragraph 2.17 because they do not set out a process for any parent seeking admission to a school for their child in a year group which is not their normal one.

29. I also find that the arrangements are not clear, since they can be read as giving priority to the admission of children to schools which are not designated as having a religious character on the basis of faith, and so are in breach of paragraph 14 of the Code. They also fail to state clearly what is required to secure priority for admission to voluntary controlled primary schools in the County of the grounds of religious belief, and that they breach paragraphs 14, 1.8 and 1.37 of the Code as a result.

Determination

30. In accordance with section 88I(5) of the School Standards and Framework Act 1998 I have considered the admission arrangements for September 2017 determined by Leicestershire County Council for community and voluntary controlled primary schools in Leicestershire and find there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.
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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 31 December 2016.

Dated: 6 October 2016

Signed:

Schools Adjudicator: Dr Bryan Slater