

DETERMINATION

Case reference: ADA/002455

Objector: Somerset Local Authority

Admission Authority: The Governing Body of South Petherton
Church of England VA Infants and Pre-School

Date of decision: 24 September 2013

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body for South Petherton Church of England Infants and Pre-School, South Petherton, Somerset.

I have also considered the arrangements in accordance with section 88I(5). I determine that the oversubscription criteria do not conform with the requirements relating to admission arrangements.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by Somerset County Council, the objector, which is the local authority (the LA) for the area, about the admission arrangements (the arrangements) for South Petherton Church of England Infants and Pre-School (the school), a voluntary aided (VA) school for three to seven year olds for September 2014. The objection is to the use of the word "normally" in paragraph 2.1 of the arrangements: "Where there are fewer applications than places available within the published admission number (PAN) or admission limit set for the required year group, places will normally be provided for every child."

Jurisdiction

2. These arrangements were determined under section 88C of the Act by the school's governing body, which is the admission authority for the school. The objector submitted their objection to these determined arrangements on 20 June 2014. 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.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
 - a. the objector's email dated 20 June 2013;
 - b. the school's responses to the objection and supporting documents dated 10, 19 and 29 July, 5 August and 4 September 2013;
 - c. the response of the Church of England Diocese of Bath and Wells (the diocese), which is the faith body for the school, to the objection dated 23 and 31 July 2013;
 - d. the LA's composite prospectus for parents seeking admission to schools in the area in September 2013;
 - e. the LA's fair access protocol;
 - f. a map of the area identifying relevant schools;
 - g. confirmation of when consultation on the arrangements last took place;
 - h. a copy of the determined arrangements, and
 - i. a copy of the school's trust deed dated 1867.

The Objection

5. The objection is to the use of the word "normally" in the following sentence of paragraph 2.1 of the arrangements: "Where there are fewer applications than places available within the PAN or admission limit set for the required year group, places will normally be provided for every child."
6. The LA argues that this breaches requirements in paragraphs 15 d, 1.6, 2.8 and 2.11 of the Code concerned with ensuring that, where a school is not oversubscribed, it must offer a place to every child whose parent has applied for one and that in normal years of entry schools admit up their PAN where there are enough applications for places.

Other Matters

7. In the course of considering the objection, I also examined the arrangements as a whole and found other matters that appeared not to conform to the requirements of the Code. The other matters were:

- a. That the arrangements as a whole were not clear as required by paragraph 14 of the Code which states that “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”; and
- b. the oversubscription criterion which gives priority (after looked after and previously looked after children) to “children entitled to receive free school meals who live within the designated school catchment area”. The criterion appeared not to conform to the provisions of paragraph 1.9 f of the Code which states that admission authorities “**must not**...give priority to children according to the occupational, marital, financial or educational status of parents applying....”.

Background

8. This infant school was established in the 19th Century. The trust deed for the school’s site says that it is “a site for a school for poor persons of and in the parish of South Petherton... and for the residence of the Schoolmistress or for other purposes of the said School and for no other purpose whatsoever..” The trust deed provides also that the school is to be conducted in accordance with the principles of the Church of England.
9. The school has a published PAN of 35 for 2014. Until 2013 the PAN was 40. It has been reduced for 2014 following consultation between 17 December 2012 and 18 February 2013. The reasons I have been given for the reduction are that the school’s accommodation is better suited to a PAN of 35 and this would meet the prevailing demand for places at the school. As an infant school, the school has one normal year of entry to which the PAN applies and that is the reception year (YR). As the school was undersubscribed in 2012 and 2013 and was thus able to offer a place to every child who wanted one in YR, it did not have to apply its oversubscription criteria. The school’s published admission arrangements for 2014 are easy to find on its website.
10. The oversubscription criteria can be summarised as follows:
 - a. looked after and previously looked after children;
 - b. children entitled to receive free school meals;
 - c. children living in the designated school catchment area with a sibling at the school;

- d. children whose parents are resident in the parish of South Petherton and the Seavingtons, who attend a service of Christian worship at a registered Church or other place of worship on at least one day a month and have done so for the six months prior to application;
 - e. children living in the designated school catchment area;
 - f. children living outside the designated catchment area with a sibling at the school;
 - g. children who attend a service of Christian worship at a registered Church or other place of worship on at least one day a month and have done so for the six months prior to application, and
 - h. children not satisfying a higher criterion.
11. There is a satisfactory tie-breaker - the drawing of lots - to distinguish between two final applicants who cannot otherwise be separated.

Consideration of Factors

12. I will address together the LA's objection and my wider concern that the admission arrangements are not clear as required by paragraph 14 of the Code.
13. The LA's objection is to the use of the word "normally" in paragraph 2.1 of the arrangements: "Where there are fewer applications than places available within the PAN or admission limit set for the required year group, places will normally be provided for every child." The LA argues that this wording breaches requirements in paragraphs 1.5 d, 1.6, 2.8 and 2.11 of the Code. It argues that these paragraphs are concerned with ensuring that where a school is not oversubscribed in normal years of entry, it must offer a place to every child whose parent has applied for one and that in a normal year of entry a school must admit up to its PAN where there are enough applications for places.
14. The school in its response of 12 July emphasised that the governing body takes its responsibilities as an admission authority very seriously and would always intend to comply fully with the requirements of the Code. It explained that the governing body accepts the requirement to admit up to for YR and it quotes section 1.3 of its admission arrangements which do indeed state that "places will be offered until the PAN is reached".
15. The school has given me a detailed account of the reasons for its references to normally in relation to admissions outside its normal year of entry, YR. It argues that – outside the normal year of entry - the law and Code allow admission authorities in certain circumstances either to refuse admission even when the year group is not full or, indeed, to admit an additional child when the year group is full. The school cites

paragraph 3.12 of the Code which is concerned with the requirement on admission authorities to refer to the LA for action under its fair access protocol cases where they do not wish to admit a child with challenging behavior outside the normal admissions round even if there is a place available in the year group concerned. Against this background, the school considers it appropriate to use the word “normally” in the sections of its admission arrangements set out below.

“2.1 Where there are more applications than there are places available within the required year group, the governors will consider all applications received on time against the following oversubscription criteria. This will enable the governors to rank children according to priority and identify those children who should be allocated a place within the PAN or admission limit (see section 1.3) and those who should be refused. Where there are fewer applications than places available within the PAN or admission limit set for the required year group, **places will normally be provided for every child.**”

“4.2 The governors’ Admissions Committee will take admission decisions within five days of receipt of application forms. Where the request is for the child’s chronological age year group and there is a place available, **the decision will normally be to admit the child concerned** and applicants will be notified of this in writing.”

“4.4 Where the requested chronological age year group is oversubscribed, the governors will carefully consider whether an additional child might still be admitted to the school without impacting on the available resources or affecting the delivery of education. **Normally the decision will be to refuse** admission if the year group is full and, where this is the case; parents will be notified in writing of the reasons for refusal and about how to appeal against the governors’ decision (see Part 5 of these arrangements).”

16. The emphases above do not appear in the published arrangements but were included by the school when it quoted from the arrangements in its letter to the Office of the Schools Adjudicator (OSA) of 10 July.
17. Finally, the school states that they did explain their position to the LA when the LA first raised its concern. The LA’s objection refers to raising this issue with the school but states that it receives no response. There seems to have been a breakdown in communication at some point.
18. The diocese in its letter of 23 July supports the school’s position.
19. I accept the school’s argument that its intention is to offer places up the PAN in YR and that this is what it does in fact do. I recognise that its arrangements say as much in section 1.3. However, 2.1 (which comes under the heading of over subscription criteria) to my mind conflicts

with 1.3 where it says “Where there are fewer applications within the PAN or application limit set for the required year group, places will normally be provided for every child”. The school’s admission arrangements are over 12 pages long (excluding its supplementary information form (SIF) and clergy form which bring the total length to 17 pages). They include a good deal of information about the school which I am sure is of interest to parents but which is more commonly found on other parts of a school’s website and in other publications about the school. It is particularly helpful that the school’s website includes a clear map of the catchment area and I commend the school on this.

20. Because the arrangements are relatively long, it is quite likely that a parent wanting to know what chance his or her child has of securing a place at the school might turn directly to the section headed over subscription criteria and come to section 2.1. Such a parent could reasonably conclude that that the school might not admit up to PAN in YR and that places would only normally be provided for every child up to that number. I appreciate that 2.1 does include a cross reference to 1.3. However, a cross reference does not make an inaccurate statement accurate. Moreover, 2.1 is not the only possible source of confusion about the operation of the PAN for YR. The wording of the final paragraph of section 1.2 is also not as clear as it might be. It states that: “It is the aim of the Governors, as far as it is possible, to admit all children whose parents apply for them to come to the school, up to the published admission number which is 35 [for YR]”. I consider that the inclusion of “as far as it is possible” could lead a parent to infer that there might be circumstances in which the school would not admit up to PAN even if there were enough applicants. The Code on the other hand is clear that schools must admit up to PAN where there are enough applicants.
21. I accordingly find that the admission arrangements do not conform to paragraphs 15d, 1.6 and 2.8 of the Code. The Act requires the school to revise its arrangements as quickly as possible.
22. The LA in its objection referred also to paragraph 2.11 of the Code. As the school noted in its response, this paragraph is concerned with the LA’s duty to ensure that, where a child could be allocated a place at more than one school, the offer made is for the highest preference school. I agree with the school that that paragraph is not relevant in this case.
23. I noted above that I was concerned on reading the arrangements that they were not clear as required by paragraph 14 of the Code and that they do not meet the test in that paragraph that parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated. This is partly because of the length of the arrangements. As the sections I have quoted above demonstrate, when arrangements become lengthy, it can be possible for inconsistencies to be introduced without the authors’ necessarily realising this. However,

my concern relates most particularly to paragraph 2.1. This begins with the statement: "Where there are more applications than there are places available within the required year group, the governors will consider all applications received on time against the following oversubscription criteria." The only year group at the school for which there is a deadline and thus for which applications can be received "on time" is YR. The reference to "required year group" seems to me therefore to be misleading. Indeed, section 4 of the arrangements which deal with in-year admissions begins by saying "Applications can be submitted at any time during the academic year" and goes on to say that the school "will take admissions decisions within five days of receipt of applications forms."

24. I find that the arrangements are not clear as required by paragraph 14 of the Code. The Act requires the school to revise its arrangements as quickly as possible.
25. I turn now to the school's second oversubscription criterion which provides for priority to be given to children who are entitled to receive free school meals who live in the designated catchment area. The arrangements note that this criterion supports the school's trust deed and I have set out the relevant section of the trust deed above. At my request, OSA asked the school on 12 August if anyone had been admitted using this criterion but this has not been received. I appreciate that the school may well not have this information to hand as it has not had to apply its oversubscription criteria for at least the past two years.
26. In correspondence with the OSA the school has confirmed that the inclusion of this criterion does indeed stem from the requirements of the Trust Deed. It added that: "Most Church schools have moved to identify a modern interpretation in order that it is practical in implementation. This approach tends to be supported/promoted by Diocese and regularly translates as support (prioritisation) for children entitled to receive free school meals. A founding school Trust Deed must be properly reflected in the published school admission arrangements." The diocese has confirmed that it supports this approach and notes that many of the 180 Church of England schools in the diocese have a similar criterion in their oversubscription arrangements.
27. All admission authorities, LAs and adjudicators are bound by admissions law and the Code. Paragraph 1.9 f of the Code provides that admission authorities "**must not** ...give priority to children according to the occupational, marital, financial or educational status of parents". In addition to this unequivocal statement, a footnote to 1.9 f adds that: "Free Schools and Academies may, where their Funding Agreements permit, give priority in admission arrangements to children eligible for Free School Meals (in future, the Pupil Premium)." There is no equivalent provision for VA or any other category of maintained school.

28. Further confirmation that maintained schools cannot include such priority comes from an order (The Lawrence Sheriff (Pupil Premium Admissions Priority) Order 2013) made earlier this year by the Secretary of State for Education under section 2(1) of the Education Act 2002 to allow another VA school to give priority in admissions to pupils eligible for the pupil premium. The purpose of such orders – known as power to innovate orders - is to allow schools to do things which would not otherwise be lawful. Clearly, the Secretary of State would not have made such an order had he considered that the school was already entitled to give priority in its oversubscription criteria to such pupils.
29. For the avoidance of doubt, I should say something about the school's trust deed, given that the admission arrangements refer to it and that the school and diocese have both referred to it in their correspondence with the OSA. It is not for me to comment on the merits or requirements of the school's trust deed or what the school should or should not do to comply with that trust deed. However, I am clear that no trust deed provision can be used to justify a breach of the statutory framework for admissions put in place by Parliament.
30. I find accordingly that the oversubscription criterion giving priority to children eligible for free school meals does not conform to the Code. The Act requires the school to revise its arrangements as quickly as possible.

Conclusion

31. For the reasons given above, I have concluded that the school's arrangements do not conform to paragraphs 15 d, 1.6 and 2.8 of the Code because it is not unequivocally clear that places will be offered up the PAN if there is enough demand for them. I have concluded also for the reasons given above that the requirements overall are not clear and hence do not conform to paragraph 14 of the Code and that by giving priority to children in receipt of free school meals the arrangements breach paragraph 1.9 f of the Code. The Act requires the school to revise its arrangements as quickly as possible.

Determination

32. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body for South Petherton Church of England Infants and Pre-School, South Petherton, Somerset.
33. I have also considered the arrangements in accordance with section 88I(5). I determine that the oversubscription criteria do not conform with the requirements relating to admission arrangements.

34. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.

Dated: 24 September 2013

Signed:

Schools Adjudicator: Shan Scott