

## **DETERMINATION**

**Case reference:** ADA 2568

**Referrer:** The governing body of Langley Hall Primary Academy

**Admission Authority:** The governing body of the Academy Trust of Ryvers School, Slough

**Date of decision:** 29 January 2014

### **Determination**

**In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements for Ryvers School, Slough, for admissions in September 2014. I determine that some aspects do not conform with the requirements relating to admission arrangements.**

**By virtue of section 88K(2) of the Act, the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to make the revisions to its admission arrangements as quickly as possible but no later than 15 April.**

### **The referral**

1. The 2014 determined admission arrangements (the arrangements) for Ryvers School (the school) have been brought to the attention of the adjudicator by the governing body of Langley Hall Primary Academy (the referrer). In the referral letter dated 25 November 2013, the referrer identified Ryvers School as one of a number of schools in Slough whose determined admission arrangements may not be compliant with the requirements of the School Admission Code (the Code) due to the inclusion of attendance at their nursery within the oversubscription criteria.

2. In the letter of 25 November 2013, the referrer commented that the admission arrangements for its own school, Langley Hall Primary Academy, had been the subject of a determination in the previous academic year, and as a result, the priority for attendance at the linked nursery had been removed from the oversubscription criteria. The referrer acknowledged that the concern was outside the normal timescale for objections, but explained this matter had only recently come to its attention.

### **Jurisdiction**

3. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the governing body of the academy trust (the governing body) which is the admission authority for the school.

4. Although the referral on 25 November 2013 was received after the deadline for receipt of objections, arrangements that come to the attention of the adjudicator

by any means may be considered under section 88I(5) of the Act. In addition to the issue drawn to my attention by the referrer, I have noticed other matters that appear not to conform with the Code. I am satisfied that it is within my jurisdiction to consider the arrangements as a whole under section 88I(5) of the Act.

## **Procedure**

5. In considering this matter I have had regard to all relevant legislation and the Code.
6. The documents I have considered in reaching my decision include:
  - the email of 25 November 2013 from the referrer submitting the letter of referral together with relevant extracts from the council's composite prospectus for school admissions;
  - the funding agreement for the school;
  - the 2014 determined admission arrangements emailed by the school on 2 December 2013;
  - the on-line composite prospectus "Primary and Secondary Schools in Slough: A parents' guide to admissions 2013-14" accessed by me on 9 December 2013 using the link provided by Slough Council (the council) to its website;
  - a copy of the minutes of the governing body meeting on 25 February 2013 at which the arrangements were determined, sent by the school on 2 December 2013;
  - copies of draft revised admission documentation for the school amended in response to the meeting on 12 December 2013; and
  - admissions data for the school for 2012 and 2013, supplied by the council in an email dated 14 January 2014.
7. I also arranged a meeting on 12 December 2013 attended by representatives of the school and the council. I have considered the representations made to me during the meeting and the documentation and correspondence submitted before and after the meeting.

## **Background**

8. Ryvers School opened on 1 June 2012 as a state-funded co-educational academy primary school in Slough for pupils aged 3 to 11 years, replacing the predecessor school, Ryvers Primary School. The funding agreement dated 20 February 2012 confirms that the school has a planned capacity of 559, including a nursery unit of 78 places. The nursery is run as an integral part of the school. The admissions policy states that for September 2014 the published admission number (PAN) will be 90.

## **Consideration of Factors**

9. At the time of the meeting on 12 December 2013 only the 2013 arrangements for the school and for the nursery were available on the school's website. The school gave an assurance that the 2013 arrangements had been determined by the

governing body, unchanged, for 2014. The minutes of the governing body meeting on 27 February 2013 confirm that the 2014 arrangements had been determined by 15 April 2013, the deadline specified in the Code at paragraph 1.46, but these arrangements should have been available on the school's website as soon as possible after that meeting, as specified in paragraph 1.47. The governing body needs to ensure it follows the correct procedure for determining its 2015 arrangements so that they are available on the website once determined and labelled with the correct year to avoid confusion for parents.

10. The arrangements published on the school's website show that if there are more applications than places available in the reception year, priority for admission will be given to applicants according to the oversubscription criteria quoted below:

- a. *Looked after children and children with a statement of Special Educational Needs;*
- b. *Children having a sibling at the school at the date of admission and living within the area served by the school at the closing date for application and also at the time of the child admission to school. The roads traditionally served by the school are attached and can be clarified for parents at the school office. Parents may be asked to supply official documentation to establish their address;*
- c. *Children living within the area served by the school at the closing date for application and also at the time of the child's admission to school. The roads traditionally served by the school are attached and can be clarified for parents at the school office. Parents may be asked to supply official documentation to establish their address;*
- d. *Children who have siblings attending the school. 'Sibling refers to brother or sister, half brother or sister, adopted brother or sister, step brother or sister, or the child of the parent/carer's partner where the child for whom the school place is sought is living in the same family unit at the same address as that sibling';*
- e. *Children who have strong medical or social grounds for admission (To be supported by letter from the referring agency eg. Health, Social Services, etc); and*
- f. *Children on the roll of Ryvers Nursery for five sessions per week, prior to the closing date.*

*The following points should be noted:*

- a. *Application of the arrangements described above may not distinguish sufficiently between the applications. Where this is the case, final decisions on admission will be based on geographical proximity to the school. (Distance will be measured... from the front door of the child's home address, including flats, to the main entrance of the school...with those living closer to the school receiving the higher priority.)*

11. The concern raised by the referrer relates to the "fairness" of criterion (f) which prioritises applicants for a place in the reception year on the basis of prior attendance at the attached nursery unit. I recognise that the Code is silent on nurseries so the Code does not prohibit the priority for nursery attendance in the

admission arrangements, but equally, it does not mean that any priority for nursery attendance is permitted.

12. In the meeting on 12 December 2013 I explained that, with respect to the fairness of the arrangements, I would want to consider how easy it would be to gain a reception place at the school for a child who had not previously attended the nursery. The school confirmed that the nursery unit provides only the Early Years Entitlement and that parents do not pay for any additional hours. The Early Years Entitlement provides for 570 hours attendance and as parents are not paying for additional hours over and above this government-funded early years provision, the school does not appear to be in breach of the Code at paragraph 1.9(e) because it is not giving priority to parents who are financially supporting the school.

13. There is no specific provision either in admissions legislation or in the Code which deals with the question of giving priority in admissions on the basis of having attended a particular nursery. However, I note that paragraph 14 of the Code states that in *'drawing up their admission arrangements, admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.* Furthermore, paragraph 1.8 clarifies that *'oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation'*. Accordingly, the Code imports a general requirement that admissions arrangements must be fair, so the 2014 arrangements must be considered in terms of whether it is fair to prioritise applicants on the basis that they have previously attended the nursery.

14. The oversubscription criteria in the 2014 arrangements show that after applicants with special educational needs, looked after and previously looked after children, catchment children with a sibling at the school, other catchment children, and non-catchment children with a sibling at the school, the other non-catchment children are prioritised on the basis of whether they have attended the nursery before consideration of how close applicants live to the school. I therefore need to consider whether it is fair that non-catchment children who had attended the nursery are prioritised ahead of those who had not but who may possibly live closer to the school.

15. In considering whether it is fair to prioritise on the basis of previous nursery attendance I note that it is not compulsory for a child to attend school until the beginning of the term after the term in which the child reaches five years of age. In fact, parents do not have to send their child to nursery at all because the nursery phase is not part of compulsory education. It may be that some parents consider it would help their child to start education early by attending the attached nursery so that their child becomes familiar with the school staff, buildings and ethos, and with the classmates they may be working with before entering the reception year. However, by attending the nursery, those children would then have a greater chance than other non-catchment children of being allocated a reception place at the school, no matter how far away they might live from the school.

16. Conversely, some parents may prefer to keep their young child at home until the child reaches compulsory school age. Other parents may choose instead to use relatives or other childcare providers because the hours available at the nursery do

not match the requirements of their work or other responsibilities. As a consequence of criterion (f), their applications would be prioritised only after other out-of-catchment applicants who had attended the nursery. I therefore agree that criterion (f) is unfair because the priority to non-catchment applicants on the basis of their prior attendance in non-compulsory nursery education at the school has the effect of disadvantaging other non-catchment children for a place at their preferred school when they reach compulsory school age. It may also be the case that some parents feel obliged to enrol their child in the nursery so as to have a reasonable prospect of securing a place in reception at the school of their choice

17. I have also considered how places were allocated in previous years. The council provided information related to the applications received and the allocations made in 2012 and in 2013, which I have summarised in the table below.

	PAN	Applications	1 <sup>st</sup> Preference	2 <sup>nd</sup> Preference	3 <sup>rd</sup> Preference	Allocations	SEN	Looked after (incl previously)	Catchment sibling	Other catchment children	Other sibling	Medical/social	Nursery	Other
<b>2012</b>	90	244	84	89	71	90	3	0	10	36	12	0	14	14
<b>2013</b>	90	244	75	80	78	120	2	0	18	22	15	0	18	15

From the data in the table it can be seen that in 2012 for the 90 places available there were 244 applications including 84 first preferences, and 14 of the applicants who gained a place had previously attended the nursery and were admitted on that basis. In 2013 75 of the 244 applications had identified the school as first preference, but the number of the applicants who gained a place against the criterion of previously having attended the nursery increased to 18. From the data available it is not possible for me to ascertain whether any out-of-catchment children living within a reasonable distance of the school were displaced or discouraged to apply for a reception place by children living further away but who had previously attended the nursery. However, there are 78 places available in the nursery and 90 places in the reception year, so if all the nursery children of the relevant age applied for reception places at the school it is likely that there will be increasing pressure on reception places, and that other children living closer to the school would have little chance of being allocated a reception place unless they had attended the nursery. Furthermore, it also seems likely that the pressure on reception places will continue to increase as a result of the rising birth rate in Slough. Therefore, I conclude that for non-catchment children, securing a reception place at the school will become increasingly reliant on prior attendance at the non-compulsory nursery, which for some families may not be possible or desirable.

18. I recognise that the Code neither permits nor prohibits the inclusion of a nursery priority within oversubscription criteria: the Code is silent on this matter. Furthermore, I acknowledge that nursery admission arrangements are not required to comply with the Code. However, I also consider that it is inherently unfair that a child's chance of compulsory education at the school chosen by his/her parents should be governed by whether s/he had first attended a nursery where the

arrangements are not subject to the admissions regulations and the Code. Some parents may feel obliged to send their child to the nursery in order to have a chance of gaining a place at the school, which in my view is unreasonable.

19. In the meeting on 12 December 2013, I also explained that the application form for the nursery requires information that would not be lawful for the school to request in respect of an application for a reception place, for example, the requirement to provide medical and also ethnic/cultural information. As the nursery phase is not part of compulsory education, I recognise that the nursery admission arrangements are not required to conform with the Code, and so the governing body may ask for whatever information it considers relevant. However, I consider it would be unfair for places in the reception year to be gained through having priority for first attending the nursery which requires information at the application stage which would not be lawful for a reception place in the school.

20. I appreciate that at the meeting on 12 December 2013 the council explained that *'everyone who had wanted a place at the school got one'* but whether or not criterion (f) is fair does not rely on whether there has been any call to apply it in previous years. As the effect of applying criterion (f) would be unfair, I conclude that the 2014 arrangements are unfair because they contravene paragraphs 14 and 1.8 of the Code.

### **Other matters**

21. In reviewing the 2014 admission arrangements I noticed other matters which appeared not to comply with the requirements relating to admission arrangements, so I used my powers under s88I of the Act to review the arrangements as a whole for full compliance with the Code. During the meeting on 12 December 2013 I raised a number of matters which appeared to contravene the Code, offered the school the opportunity to make the necessary amendments immediately as variations permitted under paragraph 3.6 of the Code to give effect to mandatory requirements, and I agreed to note their progress in my determination. I raised the following points:

a. Only the 2013 admissions policy was available on the school's website at the time of the meeting on 12 December 2013. It is the case that the 2013 policy should remain on display at least until at least the end of the autumn term as it applies to any waiting list held by the school. However, the 2014 policy which was determined at the governing body meeting on 27 February 2013 should have been published on the school's website as soon as possible afterward that meeting. By the time of this determination, the school confirmed the draft revised 2014 arrangements were available for publication;

b. The Code at paragraph 1.6 makes clear that all children with a statement of special educational needs naming the school **must** be admitted; any oversubscription criteria would apply only to other applications. The reference to children with a statement of special educational needs should be removed from the first oversubscription criterion but may be included in any introductory paragraphs before the oversubscription criteria. I note that the draft revised 2014 arrangements have been amended appropriately;

c. The Code at paragraph 1.7 specifies that the highest oversubscription priority **must** be given to looked after children and previously looked after children. The wording of criterion (a) must be amended to include previously looked after children (those who were looked after, but ceased to be so because they were adopted or subject to residence orders or special guardianship orders immediately following having been looked after). I note that the draft revised 2014 arrangements have been suitably amended;

d. The note after criterion (f) refers to a tie breaker related to proximity but does not explain *how* the distance from home to the school would be measured, contrary to the Code at paragraph 1.13. This issue has been addressed in the draft revised 2014 arrangements which now explain that distance will be measured using *'the local authority's measuring system'*;

e. To comply with the Code at paragraph 1.8, the arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated. The draft revised arrangements now explain that random allocation will be used for criteria (b) and (c) to decide which applicant has the higher priority if the distance between the home and the school is the same, and that the process will be independently verified; and

f. In the paragraph immediately before the oversubscription criteria of the 2014 arrangements, the school stated that a placement would be offered subject to four conditions. However, conditionality is prohibited by the Code. In the draft revised 2014 admissions policy the school has indicated that this conditionality paragraph will be removed.

## Conclusion

22. I have considered the 2014 arrangements that have been brought to my attention. I recognise the potential benefit of an early start to education for some children by attendance at the nursery, but the additional advantage of priority for a place in reception through the application of criterion (f) is unfair when compared to the potential disadvantage to other non-catchment families who are unable or choose not to send their child to the nursery, and may well live closer to the school. I have concluded that as the effect of applying criterion (f) would be unfair, the 2014 arrangements contravene the Code at paragraphs 14 and 1.8.

23. In addition, I remain concerned that the procedures and timescale for the determination of the 2014 arrangements appear not to have been fully compliant with the Code.

24. For the reasons above, I have concluded that some aspects do not conform with the requirements relating to admission arrangements.

## **Determination**

25. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements for Ryvers School, Slough, for admissions in September 2014. I determine that some aspects do not conform with the requirements relating to admission arrangements.

26. By virtue of section 88K(2) of the Act, the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to make the revisions to its admission arrangements as quickly as possible but no later than 15 April.

Dated: 29 January 2014

Signed:

Schools Adjudicator: Ms Cecilia Galloway