

DETERMINATION

Case reference:	ADA/2569
Referrer:	A member of the public
Admission Authority:	The governing body of St Nicolas' Church of England Infant School, Guildford
Date of decision:	3 February 2014

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I determine that the admission arrangements for St Nicolas' Church of England Infant School 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, but no later than 15 April.

The referral

1. Under section 88I(5) of the Schools Standards and Framework Act 1998 (the Act) the admission arrangements (the arrangements) for St Nicolas' Church of England Infant School (the school), Guildford, Surrey have been brought to the attention of the Adjudicator. The school is a voluntary aschool and the governing body is the admissions authority. The local authority is Surrey County Council (the council). The school is within the Diocese of Guildford (the diocese).
2. The concern raised is that the sixth oversubscription criterion in the school's arrangements gives priority for reception places in the reception year to children who are attending one of two independent, fee-paying early years providers at the time of application.

Jurisdiction

3. The referrer wrote on 27 November 2013 to object to the arrangements. The objection was received after the deadline of 30 June 2013 for 2014 admissions and I have decided to view the "objection" under section 88I(5) of the Act as the arrangements have been brought to my attention. I am satisfied that it is within my jurisdiction to consider the arrangements. I have also used my power

under section 88I(5) of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
 - a. the referral dated 27 November 2013;
 - b. the school's response of 13 December 2103;
 - c. the council's response of 14 January 2014;
 - d. the diocese's response of 14 January 2014;
 - e. Surrey County Council's composite prospectus for parents seeking admission to schools in the area in September 2014; and
 - f. a copy of the determined arrangements for the school.

The Referral

6. The school's arrangements for September 2014 list as criterion six of the oversubscription criteria; "Children attending Child's Play pre-school or Fitzsimmons Place Nursery". The concern in the referral is that these are both fee-paying independent nurseries and the arrangements contravene the Code at paragraph 1.9(l) which states "admission authorities must not name fee paying independent schools as feeder schools".

Background

7. St Nicolas' Infant School is a Church of England voluntary aided school and as such, the governing body is its admission authority. The published admission number for the school is 40.
8. The admission arrangements for admission to the reception year (Year R) for September 2014 have been published with the following oversubscription criteria, (there are explanatory notes that accompany the criteria that are not included here);
 1. Looked after children and previously looked after children in the care of the Local Authority;
 2. Children with exceptional medical or social needs;
 3. Siblings of children attending St Nicolas' School at the time of admission;

4. Siblings of former pupils where the former pupil left the school within the previous four academic years and whose only or main residence is within 2000 metres of the school;
 5. Children, where one or both parents are able to demonstrate an active commitment to a Christian Church by attending at least once a month for two years immediately preceding their application AND whose only or main residence is within 2000 metres of the school; OR where St Nicolas' Infant School is the nearest age appropriate Church of England infant school, distance to be determined as above;
 6. Children attending Child's Play or Fitzsimmons Place Nursery whose only or main residence at the time of application is within a radius of 2000 metres of the school;
 7. Children whose parents wish them to attend this church school.
9. The two early years settings that form the basis of this referral are Child's Play Pre-school in Guildford and Fitzsimmons Place Nursery School in Guildford; both these settings are near to the school. Child's Play is a pre-school run at the Guildford United Reformed Church and takes children from age two and a half until five years old. It admits children in age order so that the oldest have the best chance of attending and offers parents the option of flexible hours with the first 15 per week up to a total of 570 hours per year being covered by the early years entitlement once the child is three years old and any additional hours are then paid for by the parents.
 10. Fitzsimmons Place Nursery offers full-time and part-time care for children aged one to five years. All places are charged fees with some remission for those who receive the early years entitlement of 570 hours which is claimed on parents' behalf by the nursery. This grant does not cover the fees in full and parents are required to fund the difference.

Consideration of Factors

11. The Code makes no specific reference to whether or not a school can give priority to children who have previously attended pre-school provision but there are relevant paragraphs within the Code that need to be considered. The referrer in this case has drawn attention to paragraph 1.9(l) of the Code that *prohibits admission authorities from naming fee paying independent schools as feeder schools*. In addition, paragraph 1.9 (b) of the Code says that admission authorities "*must not take into account any previous schools attended, unless it is a named feeder school*". Paragraph 1.9(e) says that admissions authorities must not "*give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including any religious authority.*" Finally, 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.”*

12. In its response to my enquiries, the school said that it understood that the two early years providers that it refers to in its arrangements are child care establishments and not schools, so paragraph 1.9(l) about feeder schools does not apply.
13. The diocese agreed with the school on this point and supported the school in giving priority to children who had attended the named nurseries on the grounds that it is not directly prohibited by the Code.
14. The council said that it had raised its concern with the school about whether giving priority to the two nurseries was compliant with the Code but had decided at that time not to make a formal objection. This was because, on considering the initial allocation for places in 2013, the council noted that the school had still been able to allocate 19 places on distance under the last criterion. These places would have been to local children not attending a named nursery. In this way the council was satisfied at the time that inclusion of priority for children attending named nurseries was not unfair on other local families.
15. I shall begin by considering whether the early years providers referred to in this case are independent, fee paying schools. They are independent businesses that receive some funding through the early years entitlement funding and they charge fees to parents so might be considered to be both independent and fee paying. However, both providers are registered with Ofsted as early years providers and on the Ofsted website under their provider details both are described as providing “childcare on non-domestic premises”. So although one provider has “school” in its name and the other has one age group with school as part of its name, the Ofsted registration confirms that they are not schools. In consequence, the prohibition set out in paragraph 1.9(l) of the Code does not apply in this case.
16. Paragraph 1.9(b) prohibits naming schools in arrangements unless they are feeder schools. These providers are not schools so they cannot be named as feeder schools.
17. Paragraph 1.9(e) prohibits arrangements where parents are asked to make a financial contribution to the school or an associated organisation. By being named within the school’s arrangements the early years providers become associated organisations. The early years providers offer the funded early years entitlement of 15 hours a week for 38 weeks or up to 570 hours per year to parents but then ask for financial contributions for additional hours. In this respect the arrangements do not comply with the Code.

18. I now turn to paragraph 14 of the Code which is quoted above and refers to the general duty to be "fair". I shall examine the school's arrangements and consider how they meet the criterion for fairness.
19. The school gives priority as required by the Code to looked after and previously looked after children. After this, the school gives priority to siblings and then brings in a distance criterion of 2000 metres from the school. In the urban context of the school this 2000 metre circle around the school encompasses a large part of the urban area of Guildford. There are likely to be more reception age children resident in that area than the school can admit and there are three other schools admitting at reception age within that area and a fourth school that is located 56 metres outside the 2000 metre circle. The school however is the only Church of England faith school in this area.
20. In order to allocate places from within this 2000 metre circle, the school prioritises children whose siblings attended the school within the last four years and then gives priority to those children whose parents have attended a church at least once a month for the past two years if this attendance been confirmed by a church minister or priest.
21. This element of the arrangements is complicated by an either /or criterion for those who attend church. Both parts involve distance so children must either live within the 2000 metre radius or live closer to the school than to the next nearest age appropriate Church of England school. The nearest Church of England school is 3987 metres away with others at 4100, 4200, 4900, 5700, 5800 and 6200 metres distance. This means that children living up to 3100 metres from the school could potentially be admitted because they live less than half the distance from their next nearest age appropriate Church of England school. The school has confirmed that the available places are allocated strictly in a combined rank order of distance across these two measures.
22. Once all those seeking faith places have been allocated, the next criterion is for those who meet the criterion of attendance at one of the two early years providers specified in the arrangements providing that they live within the 2000 metres radius.
23. In considering the fairness of these arrangements I have looked to see the impact for some of the children living in close proximity to the school. A parent whose child has a sibling at school or who is a sibling of a former pupil can feel fairly confident of gaining a place at the school. A parent who meets the church attendance criterion and who lives close to the school will also feel fairly confident that they stand a good chance of obtaining a place at the school for their child. However, the next group to gain priority will be those who attend one of the two local early education providers. I question the fairness of this criterion for two reasons. Firstly, within the 2000 metre circle that

has been defined, these two early years providers are only two out of a wider group of early years providers in the area and so it is unfair that parents should have to choose one of these two providers in order to try and gain a place at the school. Secondly, parents are not legally required to ensure their children attend any preschool or other type of nursery provision before starting school.

24. It is my view, therefore, that criterion six with the priority for admission it confers for attending one of the two early years providers is unfair because it will disadvantage those parents who choose either to send their child to a different early years provider to meet their requirements for child care or they choose, as they are entitled, not to send their child to this form of early years provision. The criterion is therefore not compliant with the Code at paragraph 14 for the reason that it does not meet the requirement for fairness.
25. Having considered the matter of criterion six in the arrangements I looked at the overall arrangements following the referral. I looked for the school's admission arrangements on its website in early December 2013. The 2013 admission arrangements and accompanying supplementary information form (SIF) were available to view but not the 2014 arrangements and SIF. The school has now rectified this matter but at the time the school was not complying with the requirements of paragraph 1.47 of the Code to display the admission arrangements.

Conclusion

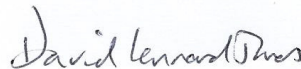
26. The referral draws attention to criterion six that gives priority to children who have attended one of two named independent and fee paying nursery providers. I considered whether paragraph 1.9(l) applies and decided that in this case the early years providers are not schools and so neither paragraph 1.9(l) nor 1.9(b) of the Code apply in this case.
27. I have referred to paragraph 1.9(e) of the Code that prohibits a school giving priority to children whose parents have made a financial contribution to an associated organisation. I consider that these arrangements do not comply with this paragraph because some parents will have made parental contributions towards the fees. In addition, I find that this criterion is not compliant with paragraph 14 of the Code on the grounds that it is unfair to parents who choose that their children attend a different early years provider or who decide that they do not wish their child to attend an early years setting at all.
28. It is for these reasons that I conclude that the arrangements are not compliant with the Code and must be revised as soon as possible.
29. As well as considering the matter above, I looked at the school's overall arrangements. The school was not complying with the Code's requirement to display the admission arrangements on its website.

This has now been rectified and the 2014 admission arrangements are now displayed on the school's website in compliance with paragraph 1.47 of the Code.

Determination

30. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I determine that the admission arrangements for St Nicolas' Church of England Infant School do not conform with the requirements relating to admission arrangements.
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 as quickly as possible, but no later than 15 April.

Dated: 3 February 2014



Signed: _____

Schools Adjudicator: David Lennard Jones