

## **DETERMINATION**

**Case reference:** ADA 2567

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

**Admission Authority:** The governing body of Priory 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 Priory 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 remaining 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 Priory 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 Priory 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 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 88(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 88(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 the relevant extract from the council's composite prospectus for school admissions;
- 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;
- the letter from the school dated 19 December 2013 including the following documents:
  - the draft revised admissions policy for 2014-15;
  - details of the catchment area including a map;
  - a copy of the nursery application form;
  - a copy of the preliminary application form;
  - the minutes of the governing body meeting of 25 March 2013 at which the 2014 arrangements were determined;
  - information about how reception places were allocated; 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. Priory School is a co-educational foundation primary school with nursery provision in Slough. The published admission number (PAN) for the school is 120, and there are 120 part-time places in the nursery: 60 places for morning sessions and another 60 places for afternoon sessions. The nursery is run as an integral part of the school.

## **Consideration of Factors**

9. At the time of the meeting on 12 December 2013 the determined arrangements for 2013 were available only within the council's on-line composite prospectus "Primary and Secondary Schools in Slough: A parents' guide to admissions 2013-14". In the meeting the council explained that its on-line prospectus had been labelled incorrectly, and that the correct year was 2014-15. There were no

admission arrangements at all on the school's website. The school gave an assurance that the 2014 arrangements had been determined and the minutes of the governing body meeting on 25 March 2013 confirm that the 2014 arrangements for the school and also the nursery had been determined. Although the 2014 arrangements had been determined before 15 April 2013, the deadline specified in the Code at paragraph 1.46, they should then have been published on the school's website as soon as possible after that meeting, as specified in paragraph 1.47. Furthermore, the 2013 determined arrangements should also have been displayed on the website until at least the end of the autumn term, as they apply to any waiting list held by the school. The governing body needs to ensure it follows the correct procedure for determining its 2015 arrangements so that they are available on the website no later than 15 April 2014, and labelled with the correct year to avoid confusion for parents.

10. The arrangements in the council's on-line composite prospectus show that if there are more applications than places available in the reception year, then priority for admission will be given to applicants according to the oversubscription criteria shown below:

- 1. Looked After Children in the care of the Local Authority;*
- 2. Children with a Statement of Special Educational Needs where Priory School is named on the Statement;*
- 3. Children who have strong medical or social grounds for admission. These reasons must be fully supported in writing from a professional person, such as a doctor or social worker, and returned with the application form. (Examples of strong medical or social grounds could be serious domestic or family problems or the child having a chronic medical condition);*
- 4. Children having a sibling attending the school at the closing date for application and also at the time of the child's admission. 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;*
- 5. Those having attended Priory Nursery;*
- 6. Those living within the traditional notional catchment area of the school at the closing date for applications and also at the time of the child's admission to school;*
- 7. Proximity of the applicant's home to the school, with those living nearest by the shortest safe walking route being accorded priority. Distance will be measured from the home address to the school using Multimaps wherever possible.*

11. The concern raised by the referrer relates to the "fairness" of the fifth criterion which prioritises applicants for a place in the reception year on the basis of prior attendance at the school's nursery unit. I recognise that the Code is silent on nurseries, and that silence can be interpreted in two ways, either as prohibiting the priority for nursery registration in the admission arrangements or that the priority for nursery registration is permitted, depending on the circumstances and the "fairness" of the arrangements.

12. Accordingly, 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 *'parents of the rising threes pay for the provision, but from the age of three, children at the nursery have only the Early Years Entitlement and their parents do not pay for any additional hours.'* As the school gives priority in the fifth oversubscription criterion to children who have previously attended the nursery, and because some parents of children attending the nursery are paying for provision, it could be argued that the school is giving priority to parents who are financially supporting the school, which would be a breach of the Code at paragraph 1.9(e), but in the particular circumstances, this argument on its is not my sole consideration.

13. Although 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, the Code imports a general requirement that admissions arrangements must be fair. 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'*. Therefore, 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 show that after applicants with special educational needs, children in care, children with medical or social needs, and children with a sibling at the school, applicants who have previously attended the nursery are prioritised ahead of children living in the school's catchment area. I therefore need to consider is whether it is fair that children who live in the catchment area may be displaced by other applicants on the basis that they had previously attended the nursery, even though they may not live in the school's catchment area.

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.

16. In the meeting on 12 December 2013, I 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.

17. 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 catchment children of being allocated a reception place, no matter how far away they might live from the school.

18. 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 the fifth criterion, applicants who had not attended the nursery, even those who live in the catchment area, would be prioritised for their local school only after the applicants who had attended the nursery, no matter how far they might live from the school. I therefore take the view that the priority for applicants on the basis of their prior attendance in non-compulsory nursery education at the school is unfair as it has the effect of disadvantaging catchment children who did not attend the nursery 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.

19. 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)	Medical/social	Sibling	Nursery	Catchment children	Other
<b>2012</b>	120	269	102	80	87	120	1	0	0	44	14	26	35
<b>2013</b>	120	223	97	56	70	120	2	1	0	53	16	32	16

20. After the meeting on 12 December 2013, the school also supplied information about admissions which added further detail to the information in the table above. In 2012 it appears that 48 of the 120 children admitted to the reception year had previously attended the nursery but only 27 of the 48 were from the catchment area. I also note that the school information shows that 50 of the 120 children admitted to reception had a sibling on roll, and that a total of 52 of the 120 children were from the catchment area. In the following academic year 75 children admitted to reception had previously attended the nursery, and 43 of the 75 were from the catchment area. From the 120 children admitted to reception, less than half (49) had a sibling on roll, and just over half of the total intake (65) were from the catchment area.

21. From the two sources of data it is not possible for me to ascertain whether any catchment children had been displaced or discouraged to apply for a reception

place by children who had previously attended the nursery, and who may live further away and even outside the catchment area for the school. However, there are 120 places available in the nursery and 120 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 it may be the case that 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 even for 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, and this adds to the unfairness of the fifth criterion.

22. I recognise that the Code neither permits nor prohibits the inclusion of a nursery priority within oversubscription criteria, and I also 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. For parents to have to consider nursery provision when looking ahead to applying for a reception place in a future year further underlines in my view the unfairness of criterion 5.

23. I appreciate that at the meeting on 12 December 2013 the council said that *'everyone who had wanted a place at the school got one'*. I note also that in an email of 10 January 2014, the school confirmed that the oversubscription criteria have not had to be used in the allocation of reception places, as the school had recently expanded from three to four-form entry, so all applicants for reception places had been able to be accommodated. I also note that in the meeting on 12 December the headteacher said that, at the moment, as there are only 88 children in the nursery, it is not full. However, whether or not criterion 5 is fair does not rely on whether there has been any call to apply it in previous years, nor whether all the children in the nursery in this academic year expressed a preference for the school. As the effect of applying the fifth criterion would be unfair, I conclude that the 2014 arrangements are unfair because they contravene the Code at paragraphs 14 and 1.8.

### **Other matters**

24. 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. As explained above, the 2014 arrangements had been determined before 15 April 2013, the deadline specified in the Code at paragraph 1.46. In addition, to comply with paragraph 1.47, the arrangements should have been

published on the school's website as soon as possible after being determined at the governing body meeting on 25 March 2013. The 2013 arrangements should also have been on the school's website until at least the end of the autumn term as they would apply to any waiting list held by the school. By the time of this determination, the school confirmed that the draft revised 2014 arrangements were available for publication;

b. In accordance with paragraph 2.16 of the Code, the draft revised 2014 arrangements have yet to make clear that: *'a) parents can request that the date their child is admitted to school is deferred until later in the academic year or until the term in which the child reaches compulsory school age, and b) parents can request that their child takes up the place part-time until the child reaches compulsory school age'*;

c. The Code at paragraph 1.6 makes clear that all children with a statement of special educational needs naming the school **must** be admitted. Therefore the second criterion which refers to children with a statement of special educational needs must be removed from the oversubscription criteria. However, for clarity of the arrangements overall, it would be helpful to include a reference to the admission of children who have a statement that names the school in any introductory paragraphs beforehand. I note that the draft revised 2014 arrangements have been amended appropriately;

d. Although the first criterion prioritises looked after children, the Code at paragraph 1.7 specifies that the highest priority **must** be given to looked after children and previously looked after children. The wording of the first criterion must therefore 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;

e. Criterion 6 refers to *'traditional, notional catchment area'*, but paragraph 1.14 of the Code specifies that *'catchment areas **must be designed so that they are reasonable and clearly defined**'*. Since the meeting on 12 December 2013 the school has submitted a map and a list of roads which clearly defines the catchment area, which should now be displayed on the school's website;

f. Criterion 7 identifies that proximity of the applicant's home to the school will be measured *'using Multimap'* but this system no longer appears to exist. To comply with the Code at paragraph 1.13, the governing body must update this criterion to clearly set out how distance from home to the school will be measured, stating how the 'home' address will be determined and the point in the school from which all distances are measured;

g. 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. Although the draft revised 2014 arrangements now explain that *'where the distance between two*

*children's homes and the school is the same... then allocation will be decided by the Surname, in alphabetical order*'. Deciding whether a child is allocated a reception place on the basis of their surname is not a fair method, in my opinion, and in any case, it does not serve as a final tie breaker as it would not be able to decide between two children who live at exactly the same distance from the school (perhaps both families live in a block of flats) and happen to have the same surname. Accordingly, the governing body have yet to provide an effective and fair final tie breaker, such as random allocation, to decide which applicant has the higher priority when two applications cannot otherwise be separated; and

h. After the meeting on 12 December 2013, the school sent me a copy of the Preliminary Application Form. For admissions to compulsory schooling, either for a place in the reception year or as an in-year admission, there is no place for a preliminary application form. For the form to be used for in-year admissions it would need to be clearly labelled accordingly, but the form must play no part in the normal admissions round. In addition, the form is not appropriate as a supplementary information form as parents apply for a reception place at the school using the council's common application form, and so the school does not need any additional information in order for the oversubscription criteria to be applied. However, after the application process, once a place has been offered, the school may then need to ask for proof of key information such as address and birth date, but the school **must not** ask for a copy of the child's full birth certificate as this would contravene the Code at paragraph 2.5.

## **Conclusion**

25. 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 5 is unfair when compared to the potential disadvantage to 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 the fifth criterion would be unfair, the 2014 arrangements contravene the Code at paragraphs 14 and 1.8.

26. 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.

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

## **Determination**

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



29. 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 remaining 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