

DETERMINATION

Case reference: ADA/2558

Referrer: a parent

Admission Authority: the Metropolitan Borough of Trafford

Date of decision: 3 December 2013

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Cloverlea Primary School determined by the Metropolitan Borough of Trafford. I determine that the arrangements do conform with the requirements relating to admission arrangements.

The referral

1. The admission arrangements (the arrangements) of Cloverlea Primary School (the school), a community school for age range 3-11 years for September 2014 have been brought to the attention of the Schools Adjudicator by a parent by email of 3 October 2013. The referral is to the over subscription criteria which do not include a priority for social/medical conditions and, as such, the parent argues, do not make provision for consideration of reasonable adjustments in accordance with the mandatory requirements of the Schools Admissions Code (the Code).

Jurisdiction

2. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the Metropolitan Borough of Trafford, the local authority (the LA), which is the admission authority for the school. These arrangements were referred to the adjudicator on 3 October 2013. I am satisfied the arrangements have come to my attention in accordance with section 88I of the Act and it is within my jurisdiction to consider them.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the Code.
4. The documents I have considered in reaching my decision include:
 - a. the referrer's emails dated 28 August and 10 September making

enquiries, the email referral of 3 October 2013, supporting documents and subsequent correspondence;

b. the LA's response to the referral and supporting documents;

c. the LA's composite prospectus for parents seeking admission to schools in the area in September 2014;

d. confirmation of when consultation on the arrangements last took place; and

e. a copy of the determined arrangements.

The Referral

5. The referrer asserts that the admission arrangements do not comply with equalities legislation and therefore do not comply with the paragraph 1.8 of the Code which says, "*Oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.*"
6. She argues that the admission arrangements do not comply as there is no provision within the oversubscription criteria to give priority for admission to a school on social/medical grounds and therefore the LA is not able to consider a reasonable adjustment as required. The Equality Act 2010 places a legal obligation on admission authorities to consider a reasonable adjustment in the operation in admission arrangements, this is referred to in the Code in the appendix "*Equality Act 2010: 2. This Act consolidates the law prohibiting discrimination, harassment and victimisation and expands the list of protected characteristics. All schools must have due regard to their obligations under the Act and to review their policies and practices to make sure these meet the requirements of the Act, even if they believe that they are already operating in a non-discriminatory way.*"

Background and consideration of factors

7. The referrer made an unsuccessful application and appeal for a school place for a younger sibling. The referrer provided much information about her particular circumstances, the application and the appeal. However, I have no jurisdiction to consider this particular application or appeal, my jurisdiction is to consider whether the admission arrangements comply with the Code and relevant admissions legislation.
8. The oversubscription criteria for the school are, in summary
 - I. A 'looked after child' or a child who was previously looked after but immediately after being looked after became subject to an adoption, residence, or special guardianship order
 - II. Children who live in the catchment area of the requested

school who will have a sibling attending the requested primary, infant or partner junior school at the time of the applicant's proposed admission

- III. Children who live in the catchment area of the requested school.
- IV. Children, who live outside the catchment area of the requested school, with a sibling attending the requested primary, infant or partner junior school at the time of the applicant's proposed admission
- V. Children who live nearest to the requested school, calculated in a direct straight line from the child's permanent place of residence to the school.

9. I will take into account the references to the Equality Act 2010 in the Code and what the Code has to say about oversubscription criteria in admission arrangements for admission of a child to a school.
10. The referrer argues that the Code obliges admission authorities to make provision for consideration of reasonable adjustments as required by the Equality Act 2010 and particularly the Public Sector Equality Duty of the same Act and that that the LA makes no provision to comply as it does not include an oversubscription criterion to consider social/medical issues. Consequently, the referrer says that the LA refuses to consider disadvantage or reasonable adjustment because it has not made provision to do so in the determined admission arrangements.
11. The LA argues that the relevant legislation (Equality Act 2010) permits the use of admissions criteria on the basis that the criteria do not discriminate, either directly or indirectly, against anyone with a protected characteristic and that Section 149 of the Equality Act 2010 relates to the Public Sector Equality Duty which in this case requires the LA to ensure that the information and application process is accessible to disabled people and or makes reasonable adjustments as necessary.
12. It further argues that it meets its obligations under the Equality Act “the duty to make a reasonable adjustment is met as required.” In particular it argues that it made reasonable adjustments as follows; “Although the admissions criteria for Trafford’s community and voluntary controlled schools do not include medical and social criteria, reasonable adjustments are made at the point of admission.” The LA provided examples of how it has made or offered to make adjustments that it views as reasonable.
13. The Code requires admission authorities to have oversubscription criteria and sets out certain matters that must be included, such as

priority for looked after and previously looked after children. It also includes certain considerations that must not be taken into account when allocating places. As cited by the referrer, the Code at paragraph 1.8 sets a requirement that to have “Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation”.

14. The nub of the referrer’s case is that a reasonable adjustment of giving priority for admission to the school was not possible because there was no provision within the determined admission arrangements and that the LA is in breach of the Code in failing to include it. I cannot examine the interpretation or performance of the LA in relation to whether adjustments it offers in taking into account equalities legislation are reasonable; my jurisdiction relates to the Code and related legislation concerning admissions.
15. In paragraph 1.10 The Code explains that some criteria may be included, *“This Code does not give a definitive list of acceptable oversubscription criteria. It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances. The most common are set out below.”* and refers to social and medical needs in paragraph 1.16 *“If admission authorities decide to use social and medical need as an oversubscription criterion, they **must** set out in their arrangements how they will define this need and give clear details about what supporting evidence will be required (e.g. a letter from a doctor or social worker) and then make consistent decisions based on the evidence provided.”*
16. This criterion the referrer wishes to have included in the LA’s arrangements is shown in the list of criteria that may be included, that is, the Code permits, but does not require, the inclusion of this category. I find, therefore, that the absence of social/medical needs as an oversubscription criterion does not breach the Code.

Conclusion

17. The referrer argues that the LA has a duty under the Code to comply with equalities legislation. I agree that that this is required by paragraph 1.8 of the Code.
18. The referrer argues that in order for this duty to be met the LA must include within the oversubscription criteria of the determined admission arrangements a criterion to consider social/medical issues. The LA argues that it chooses to meet its obligations to make reasonable adjustment in other ways. The Code says the inclusion of such a criterion is not mandatory, but permitted. I find that the absence of such a criterion does not breach the Code.

Determination

19. In accordance with section 88I (5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Cloverlea Primary School determined by the Metropolitan Borough of Trafford. I determine that the arrangements do conform with the requirements relating to admission arrangements.

Dated: 3 December 2013

Signed:

Schools Adjudicator: Ms Jill Pullen