

## **DETERMINATION**

**Case reference:** ADA/2566

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

**Admission Authority:** The governing body of Pippins 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 Pippins 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 Pippins 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 Pippins 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 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 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 the relevant extract from the Slough Council's (the council) 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 the council to its website;
  - the document "Appeal Nursery Policy" emailed by the school on 4 December 2013;
  - a copy of the admission arrangements revised in March 2013, emailed by the school on 4 December 2013;
  - an email from the school uniform supplier dated 16 December 2013;
  - an email from the school dated 18 December 2013 with the following attachments:
    - the application form for the nursery;
    - the draft admissions policy revised in December 2013;
    - the relevant extract from the minutes of the governing body meeting of 4 March 2013 relating to the determination of the 2014 arrangements;
    - the draft revised nursery application form with the headteacher's letter to parents dated 5 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. Pippins School is a one-form entry, co-educational foundation primary school with nursery provision in the small village of Colnbrook, near Slough. The school explained that the majority of local children attend either Pippins School or the other primary school in the village. The published admission number (PAN) for the school is 27, there are 26 part-time places in the nursery, and the school has indicated that the majority of children in the nursery have older siblings at the school. The nursery is run as an integral part of the school. From the information provided by the school, it appears that the number of children on roll reduces, particularly in key stage 2, due to children transferring to schools in Windsor which operates a three-tier system.

## Consideration of Factors

9. At the time of the meeting on 12 December 2013 there appeared to be two different versions of the arrangements, neither of which was labelled as applying to admissions in 2014. Parents would have had access to the arrangements in the council's on-line composite prospectus "Primary and Secondary Schools in Slough: A parents' guide to admissions 2013-14". Although the arrangements in the prospectus are labelled as 2013-14 and so appear to apply to the previous year, 2013, the council explained in the meeting that these arrangements should have been labelled correctly as applying to 2014-15, which are quoted below:

*Where applications for admission exceed the number of places available, the following criteria will be applied, in the order set out below, to decide which children to admit:*

- where the child is looked after in the care of the Local Authority;*
- where the child has a statement of special educational needs;*
- for Admission into Reception, where a child is currently in the Nursery at Pippins and has placed Pippins as Priority 1 and submitted the CAF by the due date;*
- where the child will have a brother or sister (natural, step or adopted) attending the school at the time of admission; in the case of two or more children being on the waiting list for classes, where both already have brothers or sisters within the school, the place shall go to the child who has been on the waiting list for the longer time;*
- where there are medical grounds (supported by a doctor's certificate) for admitting the child;*
- the proximity of the child's front door to the school measured by the shortest, safe walking distance, with those living nearer the school being accorded the higher priority*

10. However, in an email dated 4 December 2013, the school sent a different version of the arrangements, shown as having been revised in March 2013. I could not find these arrangements on the school's website before the meeting on 12 December, but I have been able to access them on the school's website since then. Although not labelled with the relevant year, I accept the school's assurance that these are the 2014 arrangements, which are quoted below:

*Where applications for admission exceed the number of places available, the following criteria will be applied, in the order set out below, to decide which children to admit:*

- where the child is looked after in the care of the Local Authority*
- for Admission into Reception, where a child is currently in the Nursery at Pippins;*
- where the child will have a brother or sister (natural, step or adopted) attending the school at the time of admission; in the case of two or more children being on the waiting list for classes, where both already have brothers or sisters within the school, the place shall go to the child who has been on the waiting list for the longer time;*
- where there are medical grounds (supported by a doctor's certificate) for admitting the child;*
- the proximity of the child's front door to the school measured by the shortest,*

*safe walking distance, with those living nearer the school being accorded the higher priority.*

11. The relevant entry in the minutes of the governing body meeting on 4 March 2013 confirms that *'the admission policy revised January 2011 had been circulated earlier. Governors agreed the policy without amendment'*. Given that the governors' meeting at which the admission arrangements were agreed was in March 2013, which aligns with the revision date on the arrangements emailed by the school on 4 December 2013, I accept that these are the 2014 determined arrangements, and that an incorrect version had been published in the council's on-line composite prospectus. In the meeting on 12 December 2013, the council stated that these arrangements had been supplied by the school as the 2014 arrangements, but as the headteacher had not taken up post until April 2013, after the arrangements had been determined, it was not possible for her to confirm which version of the arrangements had been supplied by the school. Nevertheless, the council and the school accepted that two different versions of the admission arrangements may have caused confusion for some parents. For clarity in this determination, I have taken the 2014 arrangements to be those supplied by the school on 4 December 2013, as quoted in paragraph 10 above.

12. Although I have accepted that the 2014 arrangements were determined by the governing body at the meeting on 4 March 2013, and therefore before 15 April 2013, which is the deadline specified in the Code at paragraph 1.46, those arrangements 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 would 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.

13 The concern raised by the referrer relates to the "fairness" of the second criterion which prioritises applicants for a place in the reception year on the basis of their attendance at the school's nursery. 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. As the Code is silent on nurseries, 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. 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

15. The oversubscription criteria in the 2014 arrangements show that children who have attended the nursery are prioritised at the second criterion, ahead of applicants with siblings, those with medical needs, and other children on the basis of the proximity of their home to the school. Although there is no mention of a priority for catchment children in the oversubscription criteria, the school explained in the meeting on 12 December 2013 that the village is the catchment area, and this was confirmed by the council. I therefore need to consider whether it is fair that local children living close to the school may be displaced by other applicants on the basis that they had previously attended the nursery, even though they may live further from the school.

16. 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. I also note that the nursery provides only the Early Years Entitlement and that parents do not pay for any additional hours. As parents are not paying for additional hours over and above this government-funded provision of up to 570 hours nursery attendance per year, 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.

17. However, it is also the case that some parents may not wish to enrol their child in the nursery. 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 second criterion, applicants who had not attended the nursery, even those who live close to the school, would be prioritised only after the applicants who had attended the nursery, no matter how far they might live from the school. I therefore consider 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 local children who did not attend the nursery for a place at their preferred school when they reach compulsory school age. It is also unfair that some parents may 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.

18. 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, shown 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)	Nursery (*incl other priorities)	Sibling	Medical/social	Other catchment children
2012	27	66	30	25	11	27	0	0	22*	11	0	16
2013	27	60	31	17	12	27	0	0	2	12	0	13

From the data in the table it can be seen that for the last two years the school has been oversubscribed with applicants putting the school as their first preference. It is also apparent that in each year a number of applicants who had chosen the school as their first preference were not allocated a place.

19. From the data it is not possible for me to ascertain whether any local children were displaced for a reception place by children who had previously attended the nursery, and who may live further away and even outside the village catchment area for the school. However, there are 26 places available in the nursery and 27 places in the reception year and at the meeting on 12 December 2013, the school said that *'reception places are very sought after'*. Given the likelihood that the number of primary age children will continue to increase, it is likely that children living close to the school would have little chance of being allocated a reception place unless they had first attended the nursery. I conclude, therefore, that even for village 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.

20. In the letter of 4 December 2013, the school gave a number of reasons which it felt justified the high priority given to nursery children for a place in reception. The school asserted that with 26 nursery places *'there is a place spare for reception class intake at 27'*, but it is my view that this further exemplifies that there would be very little chance of a local village child getting a place unless enrolled already in the nursery. The school explained that the nursery shares an area with reception, so that through shared resources and joint activities *'the school and parents build relationships* which then facilitates a *'smooth transition from nursery to reception'*, and that the admissions policy *'reflects the commitment of all stakeholders and our community'* and *'enables families to commit and ensure Pippins intake is stable'*. However, the school also stated that *'our nursery children automatically enrol into Pippins School life'* and that *'families are committed; purchase school uniform and other Pippins accessories'*. In the meeting on 12 December 2013, the school explained this to mean that when their child joins the nursery, his/her family commits long-term to the school and so purchase the school uniform and other accessories in anticipation of their child moving into the reception year. In an email dated 16 December 2013, the supplier confirmed that *'the school receives no commission based on sales of the uniform'* and from this I accept that the school is not receiving any financial benefit from the sale of uniforms and accessories, and so is not in breach of paragraph 1.9(e) of the Code. However, as the school and parents appear to assume that children in the nursery will transfer automatically into reception, I

conclude that the school may not be to complying with the Code at paragraph 15(d), which requires that the governing body **must** make clear in the admission arrangements that '*a separate application must be made for any transfer from nursery to primary school*'.

21. Furthermore, 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. Nevertheless, I also 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. I note that since the meeting on 12 December 2013, the school has significantly revised the nursery application form.

22. I recognise that the Code neither permits nor prohibits the inclusion of a nursery priority within oversubscription criteria, but I conclude 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 non-compulsory education at the nursery, and that as a result, some parents may feel they have to send their child to the nursery in order to have a better chance of securing a place in reception. As the effect of applying the second criterion which prioritises children on the basis of prior attendance at nursery would be unfair, I conclude that the 2014 arrangements are unfair because they contravene paragraphs 14 and 1.8 of the Code.

### **Other matters**

23. 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. As discussed in paragraph 11 above, parents may have been confused by the two different published versions of the admission arrangements. The

oversubscription criteria in the version published in the council's composite prospectus identified a child with a statement of special educational needs at the second priority, whereas the version provided by the school does not mention children with special needs at all. The Code at paragraph 1.6 states *that 'all children whose statement of special educational needs (SEN) names the school **must be admitted**'*. Given the disparity in the two versions of the published arrangements, then for the avoidance of doubt and 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 school's draft revised 2014 arrangements have been amended appropriately to make clear in the introductory paragraph that pupils with a statement of special educational needs where the school is named in the statement will be admitted before the oversubscription criteria may be applied;

c. 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 criterion (a) 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;

d. The third criterion in the school's arrangements identifies a priority for applicants who will have a brother or sister attending the school at the time of admission, and appropriately clarifies that the brother or sister may be natural, step or adopted, which complies with paragraph 1.11 of the Code. However, the second part of this criterion refers to a tie breaker related to the length of time children have been on the waiting list, with priority to the child who has been on the waiting list for the longer time. Paragraph 2.14 makes clear that *'priority **must not** be given to children based on the date their application was received or their name was added to the list'*. Consequently time on a waiting list cannot be used in the oversubscription criteria and so the section which states that *'in the case of two or more children being on the waiting list for classes, where both already have brothers or sisters within the school, the place shall go to the child who has been on the waiting list for the longer time'* should be removed from the third criterion as it contravenes the Code;

e. The fifth priority refers to a tie breaker related to proximity but does not explain how the distance from home to school would be measured, nor does it make clear how the 'home' address will be determined and the point in the school from which all distances would be measured, contrary to the Code at paragraph 1.13. These issues have been addressed in the draft revised 2014 arrangements so that distance will be measured in a straight line from the front door of the child's home address (including flats) to the main entrance of the school, using the council's computerised measuring system; and

f. 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 2014



arrangements now explain that random allocation will be used, and that the process will be independently verified.

## **Conclusion**

24. 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 2 is unfair when compared to the potential disadvantage to local 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 second criterion would be unfair, the 2014 arrangements contravene the Code at paragraphs 14 and 1.8.

25. 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.

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

## **Determination**

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

28. 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