



DETERMINATION

Case reference: ADA2661 Great Malvern Primary School, Malvern, Worcestershire

Objector: Worcestershire County Council

Admission Authority: The Academy Trust of Great Malvern Primary School

Date of decision: 20 August 2014

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the academy trust for Great Malvern Primary School, Worcestershire for admissions in September 2015.

I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements in the way set out in this determination.

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.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by the Mainstream Admissions Officer of Worcestershire County Council on behalf of the Council, (the objector), which is the local authority (LA) for the area about the admission arrangements (the arrangements) for Great Malvern Primary School (the school) an academy primary school for pupils aged 3 – 11 for September 2015. The objection is to the priority for admission to the Reception Year (YR) given to children who have attended the school's nursery and to the wording of the priority given to looked after and previously looked after children.

Jurisdiction

2. The terms of the academy agreement between the proprietor and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust which is the

admission authority for the school, on that basis. The objector submitted the objection to these determined arrangements on 4 June 2014. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
 - a. the objector's form of objection dated 4 June 2014 and further letters dated 30 June 2014;
 - b. the school's responses to the objection and to points raised by me dated 13 and 30 June 2014; and 10, 18 and 21 July 2014;
 - c. confirmation of when consultation on the arrangements last took place;
 - d. copies of the minutes of the meeting at which the academy trust determined the arrangements; and
 - e. a copy of the determined arrangements.

The Objection

5. The objection is to:
 - a. the giving of priority for admission to YR to children who have attended the school's nursery which the objector considers may breach the provision of paragraph 14 of the Code that admission arrangements **must** be fair; and
 - b. the fact that the oversubscription criteria do not state explicitly that the highest priority will be given equally to previously looked after children alongside looked after children as required by paragraph 1.7 of the Code.

Other Matters

6. When I reviewed the admission arrangements I considered that they may not conform to the requirement in paragraph 2.16 of the Code that admission authorities **must** make it clear in their arrangements that parents can ask for their child's entry to be deferred until later in the academic year or until the term in which the child reaches compulsory school age and that parents can request that their child takes up their place part-time until the child reaches compulsory school age.

Background

7. The school became an academy in August 2011. On becoming an academy it consulted on new admission arrangements, including the introduction of an element of priority for children who had attended the nursery, which were then first introduced for admissions in September 2013. The school has a published admission number (PAN) of 45 for YR and the nursery has 52 part time places.
8. When I reviewed the school's website in June 2014, I was able to find the arrangements for 2015 and 2014 for YR. For admission to the nursery, the arrangements on the website were headed "Nursery Admissions Policy 2013 – 2-014" and at the time of writing this determination, these remain the arrangements on the website. The oversubscription criteria for YR can be summarised as follows:
 1. Looked After Children.
 2. Siblings.
 3. Children who have attended the School nursery.
 4. Children residing in the school's catchment area.
 5. Other applicants.
9. There is a tie-breaker for distinguishing between applicants should the PAN be reached and exceeded in any of these categories and that is by ballot supervised by a person independent of the school. The arrangements make clear that a child with a statement of special educational needs (SEN) that names the school will be admitted.
10. The admission arrangements for the nursery provide that: *"children will be admitted in chronological age limit unless there is an agreed need because of concerns from one of the caring agencies."* Applications for the nursery can be made after the child's second birthday and children can start the term after their third birthday if a place is available.

Consideration of Factors

Looked After and Previously Looked After Children

11. The Code requires admission authorities to give the highest priority to looked after and previously looked after children. There are some limited exceptions to this requirement, none of which applies to this school. The Code provides clear definitions of looked after and previously looked after children. The LA objected to the school's arrangements saying *"previously looked after children are not included other than in the definition."* The school in its letter of 13 June 2014 in response to the objection said that *"reference to previously looked after children is given in the notes/definitions paragraph which is situated deliberately on the same page as the priority criteria only several lines later and printed in the same size font"*.
12. As the Code makes clear, a previously looked after child is not the

same as a looked after child and the school's saying that they include previously looked after children within their category of looked after children does not change this fact. It is helpful to define previously looked after children as the school does, but this needs to be in addition to the inclusion of previously looked after children in the main body of the oversubscription criteria. I do not understand the school's reluctance to make a very simple change to the wording of its arrangements which would not only mean that they conformed with the Code but were also easier for parents and others to follow. As they stand, the arrangements do not conform with paragraph 1.7 of the Code. I uphold the objection and the Code requires the school to revise them as quickly as possible.

Priority in YR for children who have attended the nursery

13. The school set out its rationale for giving priority for admission to YR to children who have attended its nursery in its letter of 13 June 2014. It is clear that the school has considered its approach carefully. The letter explains that the school serves a highly disadvantaged area and provides evidence to support this. This is corroborated by the school's most recent Ofsted report in February 2014 which found a much higher than average proportion of pupils to be eligible for the pupil premium and states that pupils at the school typically begin the Early Years and Foundation stage with skills and abilities well below those typical of their age. Against this background, the school believes that by giving pupils who have attended the nursery priority for places at YR this encourages families to start their children's education at the school earlier than they might otherwise do and this in turn means that children move to YR "school ready".

14. I have found the school's accounts of the details of its nursery provision and its future intentions in terms of its admission arrangements a little unclear. In the letter of 13 June 2014, the school said that its nursery provision is free to parents. However, the nursery arrangements themselves provide that "*hourly charges might be applicable if the child in question attends other playgroups/nurseries*". In its letter of 30 June 2014, the school stated that the nursery provision offered was "*totally free to parents and the comment regarding charging was placed on the policy when the funding arrangements were changed*". Then in its letter of 21 July 2014 the school said both that if a parent chooses to use their early years entitlement 15 hours elsewhere and also to attend Great Malvern Primary School nursery they would be able to do so and that was the reason for the statement about charges in the nursery arrangements and that there was no provision for parents to buy nursery provision in addition to the 15 hours funded by the government from the school. It seems to me that if a parent were to use their government funded provision at a different nursery and then buy further hours of provision at Great Malvern, they would be buying nursery provision in addition to the 15 hours funded by the Government from the school. The school has explained also that its preference is not to offer "split places" where parents use some of their entitlement to

government funded provision at the school's nursery and some at another, but it accepts that parents have the right to do this.

15. I am clear that the nursery operates during term time only and provides a maximum of 15 hours free care (which is the amount of government funded provision which is free to parents) offered as either morning or afternoon sessions. It seems that it might also be willing and able to offer paid for provision in certain circumstances where parents choose to use another provider for their free entitlement. The school has told me that so far as it knows it has been able to accommodate all requests for places in the nursery and that this has certainly been the case over the past few years. There are no arrangements for appeals should a parent not secure a place in the nursery.
16. In its email of 18 July 2014, the school said that the governing body *"have agreed to remove the clause regarding the nursery attendance from the Admissions Policy 2015 – 2016 and will send a revised copy of this before the end of the school term."* The Office of the Schools Adjudicator has not received a revised admission policy and, at the time of writing this determination, the arrangements as published on the website are as outlined above. Moreover, the school's letter of 21 July 2014 did not refer to this proposed change. I am accordingly making my determination on the basis that the arrangements include an element of priority for admission to YR to children who have attended its nursery.
17. Primary schools in the part of Worcestershire where the school is located have catchment areas. Great Malvern Primary shares part of its catchment area with Malvern Parish Church of England Primary School. Over the past few years at least, the school has been able to accommodate all children who would like a place in the nursery. It has also been able to accommodate all those in YR who have applied on time and so has not had to apply its oversubscription criteria. However, some children who live in the school's catchment area and who have applied late have not been able to secure a place in 2013 and 2014. In 2013 the school admitted 35 pupils who had been at its nursery to YR, 26 of whom lived in the catchment area and 9 of whom did not. The corresponding figures for 2014 are 34, 23 and 11. The LA in its letter of LA letter of 30 June 2014 recognises that the school has not to date had to turn away any in catchment on time applicants for places in YR. However, the LA says that it is concerned that as numbers living in the school's catchment area are growing, its practice of giving priority to those who have attended its nursery above children from its catchment area may mean that in future not all catchment area applicants will be able to be accommodated. The LA adds that there are 107 children currently living in the catchment area for Great Malvern, including the area shared with Malvern Parish Church of England School, who are due to begin YR in 2016. There is in addition some new housing being built in the area which may further increase the number of children living there. Malvern Parish Church of England School has PAN of 30 of which 16 are allocated on faith basis. Some of these children may, of course, also live in the catchment area. In addition, some of the

children who may be offered places at Great Malvern because they attend the nursery may, as the figures above suggest, also live in the catchment area.

18. The Code does not say whether schools may or may not give priority for admission to YR to children who have attended their nursery. I must therefore consider the objection against the key requirements in paragraph 14 and 1.8 of the Code that admission arrangements must be fair, clear and objective. At this school, the arrangements giving an element of priority to children from the school's nursery are clear and they are objective. I have considered carefully whether they are fair.
19. The nursery can cater for up to 52 children which is more than the school's PAN of 45. This means that if the nursery were full and all those attending wished to move onto YR, the school would not be able to admit them all, even without taking account of the requirements for it to admit any children with statements of SEN that named the school, and the higher priority it must give to looked after and previously looked after children and it chooses to give to siblings. There would be very little or no scope for other children who had not attended the nursery to gain a place. In the context, I accept the LA's argument that the increasing numbers of children living in the school's catchment area are likely to mean some catchment area children who do not attend the nursery may well not be able to secure a place in YR at the school.
20. The arrangements for admission to nursery are not governed by the Code and the school is entitled to use the arrangements it has for the nursery. However, these would not be acceptable for YR as they do not provide for an independent appeal should a child be refused a place; there is no tie-breaker to separate those who are equally qualified for a place and it would not be permitted to base consideration of applications on age – this would be unfair to those born later in the year. Nursery provision is optional and some parents may want to keep their children at home. Other parents may want nursery provision but find the hours offered by the school are not compatible with their wider family circumstances, such as working or caring commitments and they may find alternative provision that does suit their requirements. It is not fair that a parent who cannot or chooses not to use the nursery provision made by the school might find that they have a much reduced chance of securing a place at their catchment area school. It is also unfair that arrangements which would not be permitted for YR and which include no appeal arrangements should in effect allow children to gain a place in YR. This undermines the statutory Code.
21. I consider that the school has adopted its practice of giving priority for YR to children who have attended the nursery for good pedagogical reasons. This has been recognised in its Ofsted report. However, that does not stop its arrangements being unfair to other parents who cannot or legitimately choose not to make use of the school's nursery but would still like to send their children to the school in YR. In addition, the school's arrangements provide for parents to pay for some aspects of nursery provision which is not government funded. Paragraph 1.9e

prohibits the giving of priority to children on the basis of any practical or financial support parents may give to the school. Any provision funded by charges made directly to parents which they meet themselves would breach 1.9e. The nursery arrangements would not be lawful for YR which in turn means that it is unfair for those in the nursery to be given priority for YR. I uphold the objection. The Code requires the school to revise its arrangements as quickly as possible.

Deferred entry

22. Paragraph 2.16 of the Code deals with the admission of children below compulsory school age and deferred entry to school. Children in England reach compulsory school age at the beginning of the term after the term in which they reach the age of five. For example, a child who is five in November 2014 will reach compulsory school age and must be in full time education from the term which begins in January 2015. The Code says that:

*“admission authorities **must** make it clear in their arrangements 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 school age, and*
- b. Parents can request that their child takes up the place part-time until the child reaches compulsory school age.”*

23. The school’s arrangements say:

*“At Great Malvern Primary School we have only one intake date – September. **All** children eligible to start school during the following year will start in September in order that their learning and socialising will not be compromised.*

Please contact the Headteacher if you are considering deferring your child’s start or wanting a part time start for your child.

When a child reaches compulsory school age they are required to be in school full time.”

24. The school’s letters of 30 June 2014 and 21 July 2014 explain their belief that it is children’s best interests to start school in the September following their fourth birthday and that where a child in YR has developmental needs these are provided for in a special nurture class. They confirm that where parents or carers have requested that their children’s entry is deferred or that they attend part time they have always been willing and able to accommodate this and they stress their commitment to working with families.

25. I accept all these points and, in particular, appreciate the school’s desire to support the development of its pupils – many of whom start school with skills and abilities below those typical of their age. However, this does not mean that the school can breach mandatory

provisions of the Code. The school's arrangements do not make parents' rights to request deferred entry or part-time provision until their children reach compulsory school age clear as required by paragraph 2.16 of the Code. The wording chosen suggests in fact the opposite and the later wording which suggests that parents contact the headteacher if they want to defer entry or their child to attend part time is not adequate. The arrangements do not conform to the Code and the Code requires the school to revise its arrangements as quickly as possible.

Conclusion

26. For the reasons given in this determination I uphold the objection to the priority given in the arrangements for YR for children who have attended the school's nursery and the objection to the wording of the oversubscription criterion relating to looked after children. I have also concluded for the reasons given that the arrangements do not conform to the requirements of the Code in relation to deferred entry and part-time provision for parents whose children are below school age.

Determination

27. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the academy trust for Great Malvern Primary School, Worcestershire for admissions in September 2015.

28. I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements as set out in this determination.

29. 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.

Dated: 20 August 2014

Signed:

Schools Adjudicator: Ms Shan Scott