



DETERMINATION

Case reference: ADA 2591

**Admission Authority: The Governing Body of Gatton Voluntary Aided
Primary School, Wandsworth**

Date of decision: 19 June 2014

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Gatton Voluntary Aided Primary School, Wandsworth for admissions in September 2014 and September 2015. I determine that the arrangements 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 revise its admission arrangements as quickly as possible.

The referral

1. The admission arrangements (the arrangements) of Gatton Voluntary Aided (VA) primary school (the school), a voluntary aided Muslim faith school for children aged four to 11 for September 2014 first came to the attention of the schools adjudicator as a result of a referral of them made by e-mail on 25 February 2014. This concerned the priority afforded within the arrangements to those seeking a place on the basis of membership of, and the engagement in activities associated with, the Balham Mosque or Tooting Islamic Centre.
2. In correspondence resulting from that referral, the school provided me with a copy of an admission policy which it told me had been determined initially for admissions in September 2010 and stated that this policy remained in place for admissions in September 2014, with the addition of the priority for previously looked after children required when the current School Admissions Code (the Code) was introduced in February 2012.
3. I had obtained from the school's website a copy of a document entitled "Admissions Policy 2013/14 onwards" which was the same as that provided by the school and which was also available through the website of the London Borough of Wandsworth, the local authority (the LA), being described there as that for "September 2013 onwards". I raised with the school in a letter dated 18 March 2014 a number of matters contained within these documents which I

considered may not conform with the requirements concerning admission arrangements. However, I also sought confirmation at the same time that the arrangements had been determined in accordance with the requirement that this take place annually, as set out in paragraph 1.46 of the Code.

4. The school replied via its solicitor, who attached to his e-mail a minute of the meeting of the school governors at which the arrangements were determined. This meeting had taken place on 2 March 2012. The Code in paragraph 15b of the Introduction requires that admission authorities determine arrangements “annually”. Paragraph 1.46 says that the determination must be by 15 April each year. My reading of these two requirements is that admission arrangements must be determined each year in the relevant period, and cannot be pre-determined in a previous year. Since no evidence was provided that the arrangements had been determined by the governors in accordance with section 88C of the School Standards and Framework Act 1998 (the Act) in the period 15 April 2012 to 15 April 2013, I came to the conclusion that the school had no determined arrangements for September 2014 and that as a consequence I had no jurisdiction to consider the referral which had been made. I wrote to the parties to that effect on 27 March 2014.

5. The school was asked to provide the schools adjudicator with a copy of the arrangements for 2014 immediately they had been determined, and it e-mailed these on 8 April 2014, together with the school’s arrangements for admissions in September 2015.

6. The arrangements for September 2014 remained unchanged from those which the school believed it had determined previously, but there had been changes introduced into those determined for September 2015. Having looked at these latter arrangements I considered that they may also contain matters which do not conform with the relevant requirements and I therefore wrote to the school on 15 April 2014 saying that I had decided to use the power available to me under section 88I of the Act to consider the arrangements which the school had determined both for September 2014 and for September 2015. I referred to the concerns which had been expressed previously concerning the arrangements for September 2014, and set out those which I had regarding the arrangements for September 2015. I also requested an early meeting with the school. As a matter of courtesy I sent a copy of this letter to the person who had referred the school’s arrangements initially, for information.

7. Following my further request, the minutes of the meeting of the school’s governing body on 3 April 2014, when the arrangements for September 2014 and September 2015 were determined, were provided on 28 April 2014.

Jurisdiction

8. The school’s admission arrangements for September 2014 and for September 2015 were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by its governing body which is the

admission authority for the school.

9. They came to the attention of the adjudicator on 8 April 2014 in the manner described above. I am satisfied that it is within my jurisdiction under section 88I(5) of the Act to consider them.

Procedure

10. In considering this matter I have had regard to all relevant legislation and the Code.

11. The documents I have considered in reaching my decision include:

- a. the e-mail of 25 February 2014 bringing the arrangements to the attention of the schools adjudicator;
- b. the school's e-mail dated 8 April 2014 and the attached admission arrangements for September 2014 and for September 2015;
- c. the school's response of 28 April 2014 to my letter of 15 April 2014, and the attached governing body minute of 3 April 2014;
- d. the LA's response to my letter of 15 April 2014;
- e. information supplied jointly by the school and LA on 9 May 2014, and
- f. evidence of when the school last consulted on the contents of its admission arrangements

I have also taken account of information received during a meeting I convened on 2 May 2014 at the school attended by representatives of the school and LA.

Matters of Concern

12. The matters of potential non-compliance which I raised with the school in my letter of 18 March 2014 and to which I made reference in my letter of 15 April 2014 concerning the determined arrangements for September 2014 were that:

- (i) although admission arrangements could be found on the school's website it was not clear that these were those which applied to admissions in September 2014 and that this therefore breached the requirement of paragraph 1.47 of the Code that arrangements be determined annually and, once determined, published;
- (ii) children with a statement of special educational needs (SEN) appeared not to be referred to in the arrangements. Paragraph 1.6 of the Code states that arrangements must set out how places are to be allocated when a school is

oversubscribed and that all children whose statement of special educational needs names the school must be admitted;

(iii) since the school's arrangements establish two categories of place to which oversubscription criteria are applied if either is oversubscribed, the arrangements did not appear to allow there to be a single waiting list as required by paragraph 2.14 of the Code, but meant there must be two separate lists, one for each category of place. The same issue was raised in my letter dated 15 April 2014 concerning the determined arrangements for September 2015, but in this case with respect to the three categories of place set out there;

(iv) it appeared to be unclear, and therefore contrary to the requirements set out in paragraph 1.8 of the Code, how a person applying for what is described in the arrangements as an "open place" would establish their entitlement to do so, given that the criterion used is that of not belonging to the Muslim faith. The same issue was raised in my letter dated 15 April 2014 concerning the determined arrangements for September 2015;

(v) the requirement of paragraph 2.16 of the Code 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 compulsory school age, and

b) parents can request that their child takes up the place part-time until the child reaches compulsory school age"

did not appear to have been met;

(vi) the requirement that all applicants complete a supplementary information form (SIF) appeared to contravene paragraph 2.4 of the Code which requires only information which is additional to that available through the common application form (CAF) to be sought if this is required for the application of oversubscription criteria. Since applicants not applying on the grounds of faith will have provided all the information necessary on the CAF, they should not be required to complete the school's SIF; and

(vii) it is unclear, and therefore contrary to what the Code requires at paragraph 1.8, how information provided on the SIF is used to assess religious activity since this is not stated.

13. When I wrote to the school on 15 April 2014, as well as the issues which have been mentioned above I also drew attention to my concern in relation to the arrangements for September 2015 that:

(i) although these arrangements contained a statement that children who hold a statement of special educational needs which names the school must be admitted, the phrase “with the agreement of Wandsworth Borough Council” appeared to place a condition on the admission of statemented children and that it therefore did not comply with what the Code requires at paragraph 1.6;

(ii) since these arrangements give priority to some children who live further away from the school than others who might seek a place there, solely on the grounds that they live further away, they appeared not to meet the requirement set out in the Code at paragraph 1.8 that oversubscription criteria are reasonable, and

(iii) the arrangements did not appear to have been published on the school’s website, as required by paragraph 1.47 of the Code.

Background

14. Gatton VA Primary School is popular and heavily oversubscribed. For admissions in September 2014 there were 165 expressions of preference for the school’s available 60 places. The school was inspected by Ofsted in February 2014 and judged to be outstanding in all aspects reported on.

15. The school acquired maintained status as a voluntary aided Muslim faith school in September 2004. Its foundation body is the Al-Risalah Education Trust.

16. The referral which brought the admission arrangements of the school to the attention of the schools adjudicator was made by a person who did not wish to have their name made known to the school or other parties, and concerned the inclusion in the school’s supplementary information form of questions concerning membership of and activities concerning the Balham Mosque or Tooting Islamic Centre. The referrer had complained that a subscription fee was required for membership of these organisations and that therefore any priority given to applicants on the basis of positive responses to these questions was contrary, amongst other things, to the proscription of paragraph 1.9e of the Code concerning financial contributions.

17. As determined on 3 April 2014, the school’s admission arrangements for September 2014:

(i) set a published admission number (PAN) of 60;

(ii) state in an explanatory note that Muslim faith is attested to by confirmation of a statement set out in the SIF;

(iii) define two categories of school place. These are described as “faith places” which number 51, and “open places” which number nine;

(iv) state in relation to each category that if it is oversubscribed,

oversubscription criteria will be used to determine the order in which places will be offered. Two separate lists of oversubscription criteria are given;

(v) give priority for admission to the former group of places, following that afforded to children of the Muslim faith who are looked after or previously looked after children, using the following oversubscription criteria:

“A2 Children whose families worship at, and are active in the life of either the Balham Mosque or the Tooting Islamic Centre;

A3 Children of other Muslim families with a sibling at the school at the date of admission;

A4 Children of other Muslim families living nearest to the school in order of straight line distance from home to school as measured.....”

(v) state that all applicants must complete the school’s supplementary application form, which includes the following questions

- *Have you ever served on the management committee of the Balham Mosque or TIC?*
- *Are you a member of the Balham Mosque or Tooting Islamic Centre?*
- *Have you done any voluntary work for either the Balham Mosque, TIC or the Al-Risalah Trust?*

18. As determined on the same date, the school’s admission arrangements for September 2015;

(i) set an admission number of 90;

(ii) state in an explanatory note that Muslim faith is attested to by confirmation of a statement set out in the SIF;

(iii) define three categories of school place. These are described as “faith places” which number 60, “open places” which number 10, and “out of Borough Muslim faith places” which number 20;

(iv) state that there are “selection criteria” for each category of place, which are used in each case if there are more applications than places within the category. Three such lists of criteria are given;

(v) give priority for admission to the first group of places as in the arrangements for September 2014, with the addition of a priority, following that given to children of other Muslim families with a sibling at the school, for children of permanent staff employed directly by the school, and

(vi) state that all applicants wishing their application to be considered on the grounds of their Muslim faith must complete the school’s supplementary application form.

19. The school also wrote to me on 28 April 2014 in response to my letter of

15 April 2014 concerning the arrangements for September 2015 by providing what it referred to as “revised admission arrangements for 2015”. This document:

(i) removed the reference to Wandsworth Borough Council concerning children whose statement of special educational needs names the school;

(ii) contained revised wording referring to “one waiting list for all applicants”; and

(iii) stated on the SIF that “Those without the SIF will be considered as ‘open place’ applications”.

Consideration of Factors

20. When the school responded through its solicitor to my letter of 18 March 2014 concerning the arrangements for 2014 it also made reference to the grounds on which they had been referred to the schools adjudicator, saying that the school had not appreciated that there was a compulsory subscription for membership of the Balham Mosque or Tooting Islamic Centre, and that the questions that refer to such membership would be removed from the SIF employed for 2015 admissions, and this has happened. I am grateful to the school for taking this action since any priority afforded to children as a result of their parents answering these questions positively would, given the requirement of a subscription, have been contrary to the prohibition in paragraph 1.9e of the Code which states that admission 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.”

21. The school also provided information concerning consultation on the contents of its admission arrangements following the initial referral. It did so by providing e-mail trails of correspondence between itself and the LA which dealt with consultation on the proposed arrangements for September 2010, and on those proposed for September 2015. It is clear from this correspondence that the school relied on each occasion on the LA to carry out on its behalf a consultation with local schools and neighbouring authorities. The school also provided me with correspondence between itself and a parent which refers to meetings with parents of children at the school which were consultation meetings concerning both the proposed expansion of the school and concerning proposed changes to the admission arrangements for September 2015. The LA expressed a concern regarding the school’s consultation with the wider community in February 2014. The school has not provided me with any evidence that it has met the requirement of paragraph 1.44a of the Code that parents between the ages of 2 and eighteen were consulted prior to its determination of the arrangements for either 2014 or 2015.

22. When I met representatives of the school and LA on 2 May 2014, I established that the school’s governing body had not determined the “revised”

admission arrangements for September 2015 which the school has sent to me on 28 April 2014, and that the arrangements therefore remained those determined by it on 3 April 2014.

23. However, I am grateful to the school for the willingness it has demonstrated in the contents of its letter to me of 28 April 2014 to seek to provide an early response:

(i) to my concern regarding the failure of the arrangements for September 2014 to state the position regarding children whose statement of special educational needs names the school, and to the inclusion in the wording of the arrangements for September 2015 of a condition referring to Wandsworth Borough Council which meant that both sets of arrangements did not comply with what paragraph 1.6 of the Code requires, and

(ii) to matters related to the designation of categories of place to which oversubscription criteria are applied independently and without reference to whether the school is oversubscribed overall. These matters are discussed below.

24. The arrangements which the school has determined for September 2015 made the following improvements concerning matters on which I had raised a concern regarding the arrangements for September 2014:

(i) the inclusion of a statement regarding the right of parents to request that the entry of their child to the school be deferred;

(ii) the removal of the requirement for all applicants to complete the school's SIF, and

(iii) the inclusion of a statement saying how information provided on the SIF is used in relation to the stated oversubscription criteria.

25. These are matters which the school has accepted would have failed to meet the requirements set out in the Code, respectively, in paragraphs 2.16, 2.4 and 1.8 (concerning the clarity of the arrangements) had they been included in the arrangements for 2015. They nevertheless remain features of the school's arrangements for September 2014, which are therefore deficient in these respects. They need to be amended as they apply to late applications and to the waiting list.

26. The Code requires there to be a single PAN (paragraph 1.2) to which oversubscription criteria are applied in sequence (paragraphs 1.6 and 1.7) if a school is oversubscribed overall (paragraph 1.6). The school's arrangements, both those for September 2014 and those for September 2015, establish categories of place and state that oversubscription criteria are applied if the category is oversubscribed. However it is possible that there may be more applicants eligible to be considered for a place in one of the defined categories than the number of places, but without the school being oversubscribed overall. In such circumstances, oversubscription criteria may not be used at all, and all applicants must be admitted. The school's arrangements are therefore not in accord with the arrangements set out in the

Code in paragraph 1.6 for the use of oversubscription criteria.

27. It is also possible that a school could be oversubscribed, but not by those who have priority for admission to some of the places. That is, arrangements which give priority to some children for part, or all, of the places need also to allow for the admission of other children, without reference to the matter, or matters, on which priority has been afforded for a given number of the places, through a further oversubscription criterion. Paragraph 1.36 of the Code makes it clear that faith schools must make admissions on such a basis if there are places available. The school's arrangements, both those for September 2014 and those for September 2015, do not do this, and fail in my view as a result to meet the requirements of paragraphs 1.6 and 1.7 of the Code concerning oversubscription criteria.

28. Paragraph 2.14 of the Code states that "each admission authority **must** maintain a clear, fair and objective waiting list..... stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria." The school's arrangements mean that a priority order for each category of place is produced. The school states in the arrangements for September 2015 that "There will be one waiting list for all applicants", and goes on to say that offers of places will be "made by the category in which a vacancy has become available". In other words, the child who will be admitted when a vacancy next occurs is determined by the category under which the child who leaves to create the vacancy was themselves admitted, as well as by the oversubscription criteria used by the school. The child at the top of the list in the same category as that child will be admitted. So there is a single waiting list, but it does not consist of a single list of children. However, paragraph 2.14 of the Code does not state, in terms, that the single waiting list which it requires must be in the form of a single list of children.

29. While I do not take the view that the Code prohibits admission authorities from deciding within their admission arrangements to give priority on a particular basis for admission to a stated number of the available places, they need to do so in a manner that conforms to what the Code does require. So, any oversubscription criterion which results in such a priority must be clear, as required in paragraph 1.8 of the Code, as must any other oversubscription criterion which is intended to give priority on a different basis for admission to a further group of places.

30. In the school's arrangements, both those for September 2014 and those for September 2015, a group of places is defined as "open" places and these are described as being for "children of non-Muslim families" and also as being for "children of non-Islamic faith". If an eligibility criterion is to distinguish between one applicant and another, it must be clear enough to allow for proof of this entitlement, in my view. As described, eligibility for priority in relation to this group of places is on the basis of not being of the Muslim faith, but I do not know what evidence could establish that someone was not of this faith, or not of any given faith. No other faith group is given priority by the school and so places for which priority is not given to those of the Muslim faith are in fact allocated to other children. However, the arrangements fail in my view to state this with the clarity required by paragraph 1.8 of the Code.

31. The school's arrangements for September 2015 introduce a third category of place, priority for admission to which is given to "Muslim children residing out of the Borough". The school has increased the number of places it provides from 60 to 90 from this date, and has carried out consultations concerning both the expansion and the proposal to include the new category of school place. I have already expressed my concerns regarding the extent to which this latter consultation met the relevant requirements. The school has told me that its intention is to respond to the demand for places at the school, particularly from Muslim families from the surrounding area, but not to put pressure on other local schools by increasing the number of places in its immediate vicinity. I have considered very carefully whether or not the means by which the school seeks to achieve this end is through the use of oversubscription criteria which can be said to be reasonable, as required by paragraph 1.8 of the Code, and whether it conforms to other requirements.

32. The school and the LA have responded to my request for information about expressed preferences for places at the school in September 2014 and the initial offers which were made as a result. These figures confirm that the school is heavily oversubscribed in general, with 165 preferences (of which 99 were first preferences) for the 60 available places. 103 preferences were received from Muslim families, 88 as first preferences. Of these 79 preferences and 72 first preferences were received from Muslim families who live within the borough of Wandsworth. Three offers of places were made to children of Muslim families whose parents did not worship at the Balham Mosque or Tooting Islamic Centre but who had an older sibling already at the school, and eight families who were offered a place lived at a distance of more than three kilometres from the school. That is, while it has been possible in the present admission round for Muslim parents other than those who worship at the Balham Mosque or the Tooting Islamic Centre and also for those living at some distance from the school to secure a place without the addition of a third category of place, there is still unsatisfied demand from Muslim families who live in Wandsworth. I have no reason to believe that the pattern of demand for places at the school is likely to be significantly different in 2015 and if so, the addition of the third category of place will almost certainly have the effect, in spite of the increase in the number of places, of giving preference to some Muslim children who live further away from the school than others who will not be able to secure a place there.

33. While the Code places no requirement on admission authorities to give preference to those living nearest to a school, there are nevertheless very good reasons in terms of travel times or walking distances and ease of parental engagement, especially for a primary school, why this can be seen to be in the general interests of children's education, and so a reasonable approach. It seems to me that to give preference on the basis that a child does not reside in the borough in which the school is located, in the context of unsatisfied demand for places which is likely to be more local, will have effects that are likely to run counter to that which would normally be regarded as beneficial, and that this approach therefore fails to meet this test of reasonableness. It therefore contravenes the requirement of paragraph 1.8 of the Code that oversubscription criteria should be reasonable.

34. I have also considered the priority given to Muslim families living outside

the Borough in the context of the Greenwich Judgement of 1989. This held that a proposed policy to give priority for places at an oversubscribed school to those resident in Greenwich over those resident outside the Borough was invalid, and established that a parent has an equal claim to a school place whether he or she lives in the particular LA's area or not. That is to say, the judgement made it clear that it is unlawful to use residency within or outside the area of the LA to distinguish between those expressing a preference for a school place. That is what the school's arrangements do, by giving priority to some applicants because they live outside the Borough of Wandsworth. That is to say, places are held back from being allocated in order that they may be allocated to children living in another borough than the one in which the school is situated. Parents are not treated equally solely on the basis of which side of the borough boundary they live on and so in my view the arrangements would be vulnerable to a challenge that they offend against the principle set out in the Greenwich judgement.

35 When I met representatives of the school and the LA on 2 May 2014, I also drew attention to the statement in the school's prospectus on its website that a charge of £275 is made per student per year to cover the costs of the non-optional additional curriculum provided by the school. As well as apparently being in contravention of the relevant provisions concerning those matters for which a school may make charges, this statement is in my view likely to discourage some parents from applying for a place at the school. This is something which paragraph 1.8 of the Code makes clear admission authorities **must** avoid in the setting of school policies.

36. The admission arrangements for September 2014 and for September 2015, both of which were determined on 3 April 2014, have been published on the school's website.

Conclusion

37. I have set out in the previous section the view I have taken about each of the matters of potential non-compliance which have been raised with the school concerning its admission arrangements for September 2014 and September 2015.

38. For the reasons set out there, I am of the view that the arrangements for September 2014 are in breach of what the Code requires:

- (i) in paragraph 1.9e concerning financial contributions;
- (ii) in paragraph 1.44a concerning consultation;
- (iii) in paragraph 1.6 concerning children whose statement of special educational needs names the school;
- (iv) in paragraph 2.16 concerning deferred entry;
- (v) in paragraph 2.4 concerning the requirement to complete the school's SIF;

(vi) in paragraph 1.8 concerning the clarity of the arrangements with regard to the use made of information provided on the SIF;

(vii) in paragraph 1.6 concerning the circumstances in which oversubscription criteria are to be used;

(viii) in paragraph 1.8 concerning the clarity of the definition of priority groups in the oversubscription criteria;

(ix) in paragraphs 1.6 and 1.7 concerning the inclusion of appropriate oversubscription criteria; and

(x) in paragraph 1.8 concerning the nature of other school policies.

39. For the reasons also set out above, I am of the view that the school's admission arrangements for September 2015 are in breach of what the Code requires:

(i) in paragraph 1.44a concerning consultation;

(ii) in paragraph 1.6 concerning children whose statement of special educational needs names the school;

(iii) in paragraph 1.6 concerning the circumstances in which oversubscription criteria are to be used;

(iv) in paragraph 1.8 concerning the clarity of the definition of priority groups in the oversubscription criteria;

(v) in paragraphs 1.6 and 1.7 concerning the inclusion of appropriate oversubscription criteria;

(vi) in paragraph 1.8 concerning the reasonableness of the oversubscription criterion giving preference to Muslim children living outside the borough of Wandsworth; and

(vii) in paragraph 1.8 concerning the nature of other school policies.

40. I have set out above the reasons that have also led me to conclude that the school's admission arrangements for September 2015 may contravene the Greenwich Judgement of 1989, which is referred to in paragraph 1.14 of the Code.

Determination

41. In accordance with section 88(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Gatton VA primary school, Wandsworth for admissions in September 2014 and September 2015. I determine that the arrangements do not conform with the requirements relating to admission arrangements.

42. 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 revise its admission arrangements as quickly as possible.

Dated: 19 June 2014

Signed:

Schools Adjudicator: Dr Bryan Slater