Office of the Schools Adjudicator

DETERMINATION

Case reference: **ADA3283**

Referrer: **A member of the public**

Admission Authority: **The Isle of Wight Council for community and voluntary primary schools**

Date of decision: **27 September 2017**

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 Isle of Wight Council for community and voluntary controlled primary schools.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways 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 within two months of the date of the determination.

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 a member of the public (the objector) about the admission arrangements (the arrangements) for admissions in September 2018 for all community and voluntary controlled primary schools (the schools) for which the admission authority is the Isle of Wight Council (the local authority). This objection was to the presence in the arrangements of what the objector considered to be a redundant final oversubscription criterion.

2. The objector and the local authority are parties to the objection. The

other party to the objection is The Church of England Diocese of Portsmouth (the diocese) which is the designated religious authority for a number of the schools which are voluntary controlled schools with a Church of England religious character.

Jurisdiction

3. These arrangements were determined under section 88C of the Act by the local authority, which is the admission authority for the schools. The objector submitted his objection to these determined arrangements on 13 April 2017. The objector has asked to have his identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of his name and address to me. 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. Having looked at these same arrangements, I considered that there may be matters which did not comply with the Code and so decided to consider them further. I have used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

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

a. the referrer's form of objection dated 7 May 2017;

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

c. a copy of the minutes of the meeting at which the arrangements were determined;

d. the comments of the diocese; and

e. a copy of the determined arrangements.

The Objection

6. The objector stated that the final oversubscription criterion in the arrangements determined by the local authority was unnecessary because it was preceded by an oversubscription criterion that allowed all remaining applications to be dealt with. The objector was concerned that the arrangements were unclear as a result and that this contravened paragraph 1.8 of the School Admissions Code (the Code) and possibly other provisions of the Code..

Other Matters

7. When I looked at the arrangements, it appeared to me that they may contravene various requirements concerning admission arrangements, and I therefore sought the comments of the local authority about the following matters of concern, citing the relevant paragraphs of the Code (set out here in brackets):

(i) there was no adequate statement concerning the admission of children to Reception Year (Year R) on a part-time basis (paragraph 2.16c));

(ii) there was no statement making clear the process for parents to request admission of their child outside the normal age-group (paragraph 2.17);

(iii) that on the basis of what the local authority had previously stated was the purpose of the final oversubscription criterion within the arrangements, there appeared to be no provision for some children (those for whom their preferred school was not the nearest to their home) to be admitted, since no further criterion was provided. This appeared to me to result in the arrangements being unfair (paragraph 14);

(iv) that the provision within the arrangements which refers to priority for admission to voluntary controlled schools based on “church” attendance did not say what “church” meant and so it would not be easy for parents to understand how this faith-based oversubscription criterion would be reasonably satisfied (paragraph 1.37). I reminded the local authority that in constructing such a criterion, the admission authority for a school with a religious character must have regard to any guidance concerning this which is given to it by the person representing the religion or religious denomination (paragraph 1.38);

(v) that the consultation process which the local authority had carried out prior to the determination of the arrangements may have been defective because it failed to set out the details of proposed changes for both consultees and decision-makers (paragraphs 1.42 to 1.45).

Background

8. Prior to the determination of the admission arrangements for community and voluntary controlled primary schools for September 2018, the local authority carried out a consultation exercise which lasted for six weeks, ending on 9 January 2017. The consultation response was reported to the local authority’s Executive Committee on 9 February 2017, which determined the arrangements. The oversubscription criteria in these arrangements are:

(i) Looked after and previously looked after children (as defined);

(ii) Pupils with a specific medical condition making the named school the most appropriate;

(iii) Children with an older sibling (as defined) at the school;

(iv) Children of staff employed at the school (as defined);

(v) Children who live closest to the preferred school from their home address;

(vi) For Church of England voluntary controlled schools: children who do not live closest to the preferred school but whose parents ask for a place for religious reasons. *"(Any application for a place at a particular school for religious reasons must be supported by a letter from your church minister ……confirming that your family attends church at least once a month and has done so for six months or more before you made the application.)"*

9. A tie-breaker is provided which states that if there are more applicants than remaining places *"within any of the above criteria"*, those living closest to the school will be given priority, followed if necessary by random allocation.

10. The consultation documentation set out these oversubscription criteria as proposals, and requested comments on the inclusion of the oversubscription criteria for children of staff of the school, since this was to be an addition to the oversubscription criteria from those used in the previous year. When I looked at the local authority's admission arrangements for September 2017, it was apparent that there were further changes intended in the proposed 2018 arrangements. This was associated with the wording of the penultimate oversubscription criterion (that given as (v) above). In the arrangements for 2017 this had been:

"Children for whom the school is the nearest primary school to their home address at the time of application"

and there had also been a final oversubscription criterion, following that which gives priority to some children for places at Church of England voluntary controlled schools, which was:

"Children for whom the school is not the nearest primary school to their home address at the time of application."

As set out above, the arrangements proposed for 2018 contained different wording for the penultimate oversubscription criterion, and the final criterion used in the 2017 arrangements had been removed. However, these changes, although included in the proposed arrangements in the consultation documentation were not mentioned as changes which were being consulted upon, and were not referred to in the report to the LA's Executive Committee. The results of the consultation which were reported to the Executive Committee made no mention of any comments having been received concerning them.

Consideration of Case

11. When the local authority responded to the objection, it said that it did not agree with what the objector said. Its view was that the criterion giving priority to children based on the distance from their home to the school gives *"priority to a child for whom the applied for school is nearest to their home"* . It added that since the final criterion which concerns Church of England voluntary controlled schools gives priority among those for whom the school is not their nearest to those having a faith basis for their application, *"the priority arising from criterion [sic] 1 to 4* [(i) to (iv) above] *cannot be confused with that intended in criterion 6* [(vi) above]*"* [My parentheses].

12. It had not been my understanding that this was the substance of the objection, but rather that the arrangements appeared not to permit any children to be admitted under the final criterion since all would have been admitted under the criterion which preceded it. Responding to the local authority's comments, the objector pointed out the difference between "children who live closest to the preferred school from their home address" and "a child for whom the applied for school is nearest to their home". The objector argued that:

    a. "children who live closest to the preferred school from their home address" (which appears in the determined arrangements for 2018), means <u>all</u> children who have applied in order of distance from the school using the determined tie-breaker;

    b. "a child for whom the applied for school is nearest their home" (used in the 2017 arrangements) means the children for whom the school concerned is the nearest school. This will not necessarily include all children who have applied for a place there and will require taking into account distances to other schools.

13. The local authority argued that the phrase "children who live closest to the preferred school from their home address" had the same meaning as "a child for whom the applied for school is nearest to their home". These sentiments seem to me to point out the lack of clarity that had been introduced into the arrangements by the changed wording and the removal of the final criterion which had been present in the arrangements for 2017. The objector had chosen to express this concern in his original objection by saying that the form of words used in the 2018 arrangements meant that the criterion giving priority on the basis of home to school distances was no longer a "Boolian" criterion, meaning one which separated applicants into more than one group. Rather, it was (as noted above) one under which all applicants could be considered. My own reading of the wording in the determined arrangements is that I would have taken them to mean what the objector has taken them to mean.

14. Following further correspondence, the local authority has acknowledged that *"there could be clearer wording to help parents understand the process that is being followed"* and has suggested amended wording which would reintroduce that used in the arrangements for 2017 concerning priority on the basis of distance, and add a new final criterion of *"all other children"*. This is obviously helpful, but it remains the case that in the form in which they were determined on 9 February 2017, the arrangements would, in my view, be likely to be read as having the meaning which the objector and I have read into them. The local authority says it intended the meaning to be that which I think would now be achieved by its proposed rewording. Since different readings of the wording in the determined arrangements is clearly possible (that of the local authority, and that of the objector and myself) the determined arrangements are inherently unclear in my view, and so cause a breach of paragraph 14 of the Code. They also contain an unclear oversubscription criterion, which is a breach of paragraph 1.8 of the Code. I uphold the objection which has been made to the arrangements on these grounds.

15. I turn now to the matters which I have raised with the school. Paragraph 2.16c) of the Code says that in relation to a child under compulsory school age to which an admission authority has offered a place at a school, the authority **must** make it clear in their admission arrangements that:

"where the parents wish, children may attend part-time until late in the school year but not beyond the point at which they reach compulsory school age."

The local authority has agreed that its arrangements contain no statement that satisfies the requirement of paragraph 2.16c), saying that *"we have missed this advice from our published arrangements and we will add this information".*

16. Paragraph 2.16c) is not advice, of course, but is a provision which conveys to parents the right to determine whether their child attends school on a full-time or part-time basis when doing so prior to reaching compulsory school age. It is helpful that the local authority has recognised its need to rectify the omission which it has made, but as determined the arrangements fail to meet the requirements of the Code.

17. Paragraph 2.17 of the Code says that:

*"Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group."*

The local authority has again been helpful in accepting that its arrangements do not meet this requirement, since they say no more than that:

"There is no statutory barrier to children being admitted out of their normal

year group" and that:

"It is recommended that you speak to the Headteacher of the school you are hoping your child will attend."

18. I have set out above my consideration of the objection, which concerned the lack of clarity in the arrangements which resulted from the wording which they contain regarding the use of distance to give priority to applications. The local authority told me that the intended reading of the oversubscription criterion *"Children who live closest to the preferred school from their home address"* was *"children for whom the applied for school was nearest to their home".* If this were the case, the criterion would indeed act to divide the remaining applicants at this point of applying the arrangements into two groups of children. However, no further children could be admitted as no further group is mentioned in the arrangements (other than those given priority on the grounds of faith in the case of the voluntary controlled Church of England schools). So it is my view that the local authority had determined arrangements which, based on its own understanding of their meaning, were unfair. They therefore breached paragraph 14 of the Code. Although I have not raised this with the local authority, using this same understanding, the arrangements were not capable of allowing all applicants for places to be ranked and so breached paragraph 1.7 of the Code which says that :

*"Oversubscription criteria **must** then be applied <u>to all other applicants</u> in the order set out in the arrangements"* (my underlining).

19. There are six voluntary controlled primary schools on the Isle of Wight with a designated religious character of Church of England. The local authority is the admission authority for these schools, and it is permitted to give priority on the grounds of faith if there is oversubscription. The body representing the religious denomination is the diocese, and the local authority must have regard to any guidance provided by it when constructing any faith-based oversubscription criteria. When it responded to my initial expression of concern about the wording of the oversubscription criterion which it includes in its admission arrangements, the local authority had contacted the diocese and had received from it advice which contained the following: *"The expectation that an authorised minister would be able to verify that a family have attended church for a minimum of once per month over the six months prior to the application is a baseline measure which we support."*

20. Since the diocese had repeated the wording contained in the arrangements which was the cause of my disquiet, I wrote to it to elaborate why I was concerned, and to seek any further comments which it may wish to make. In this letter, I explained that:

(i) the arrangements give priority to those having a "religious reason", but

they do not say to which religion or religions this refers. The arrangements include a test of eligibility of “church” attendance, and so imply that this refers to members of the Christian faith, but this is not made clear. My concern was therefore that parents of faiths other than Christian would not be able to look at the arrangements and know whether or not evidence of their own religious practice would result in any application which they made for a place at the school receiving priority under the oversubscription criterion.

(ii) secondly, I explained, since the term “church” was also not defined, the arrangements seemed to me to be unclear as to which Christian denomination or denominations are prioritised (assuming priority was being given to Christians).

21. I asked the diocese if it could provide me with a definitive statement of any guidance which it had given to the local authority on this matter. It replied to my letter by saying that it had no record of any guidance that had been issued, but that it was the intention of the diocese that priority was given only to those of the Christian faith, and that it intended to provide “specific statements” to the local authority in the future. So I do not think that the local authority has failed to have regard to guidance from the diocese, as required by paragraph 1.38 of the Code.

22. However, paragraph 1.37 of the Code says:

*“Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.”*

Paragraph 14 requires that admission arrangements as a whole are clear, and paragraph 1.8 that oversubscription criteria are clear. For the reasons set out above, I have come to the view that the arrangements fail to comply with each of these requirements.

23. When the local authority responded to my expressions of concern, it told me that it accepted that the wording of the arrangements concerning the priority given to children based on distance from their home to their preferred school could be made clearer *“to help parents understand the process that is being followed. This will not change the determined policy, but will clarify it for parents.”* As I have already said, it told me that it suggested changing this wording so that, in effect that used in the arrangements for 2017 would be re-instated. In other words, the local authority did not believe that it was changing the effect of the relevant oversubscription criteria in the change made between 2017 and 2018. It has confirmed that this is its position in further correspondence resulting from concerns expressed by the objector about the application of distance measures in some coastal locations. In passing, I point out that these latter are not, I believe matters for me, since they concern the application of the arrangements to individual children rather than their content.

24. When it carried out the consultation which preceded the determination of the arrangements for 2018, the local authority did not mention the changed wording concerning the use of distance to give priority, evidently because it did not consider that it was proposing to change the meaning of its arrangements. As I have set out above, my view is that the determined arrangements do not have the meaning which the local authority intended them to have, and for this reason I have upheld the objection concerning their clarity. Whatever the local authority believed was the case concerning the meaning of the arrangements, there was clearly a significant change to how they were worded. The Code requires at paragraph 1.42 that:

*"When changes are proposed to admission arrangements, all admission authorities **must** consult on their admission arrangements that will apply for admission applications in the following year."*

25. My view is that any change in the wording of arrangements constitutes a change which the Code requires to be the subject of consultation. One obvious reason for this is that the wording of admission arrangements has to be precise and, as a result, any change can have unintended consequences. These are likely to be exposed through consultation, before the change is adopted. Consultation also consists of more than setting out the proposed arrangements, but must go further and draw to the attention of consultees any changes which they contain. In this case, the only aspects of the proposed arrangements which was highlighted to consultees and on which comments were sought was the proposal to include a priority for children of members of staff at a school. My view is that the consultation was defective as a result, and that it failed to meet the requirement set out in paragraph 1.42 of the Code.

Summary of Findings

26. I have decided, for the reasons which I have given above, that I uphold the objection that the arrangements fail to comply with paragraphs 14 and 1.8 of the Code in being unclear.

27. I have also explained why I have come to the view that the arrangements also fail to comply with the requirements set out in the Code:

(i) in paragraphs 2.16c) and 2.17 because they do not contain statements concerning part-time admission prior to the age of compulsory schooling or concerning admission outside a child's normal age-group;

(ii) in paragraph 14 and 1.7 because, as the local authority intended the arrangements to be understood when it determined them, they were unfair and did not permit all applicants to be ranked;

(iii) in paragraphs 1.37,14 and 1.8 concerning the description of those to whom priority will be given on the grounds of faith when applying for a place at a voluntary controlled school; and

(iv) in paragraph 1.42 concerning the consultation carried out prior to the determination of the arrangements.

Determination

28. 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 Isle of Wight Council for community and voluntary controlled primary schools.

29. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

30. 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 within two months of the date of the determination.

Dated: 27 September 2017

Signed:

Schools Adjudicator: Dr Bryan Slater