



Office of
the Schools
Adjudicator

Determination

Case reference: REF3624

Admission authority: Khalsa Education Trust for Khalsa Science Academy,
Leeds

Date of decision: 21 October 2019

Determination

I have considered the admission arrangements for September 2020 for Khalsa Science Academy, Leeds in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that the arrangements do not conform with the requirements.

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 or other date specified by the adjudicator. In this case I set the date by which these arrangements must be reviewed as 28 February 2020.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection was referred to the Office of the Schools Adjudicator (OSA) by a parent (the referrer), about the September 2020 admission arrangements for community and voluntary controlled schools in Leeds. Although it was not a community or voluntary controlled school, this objection referred to Khalsa Science Academy thereby bringing its admission arrangements to my attention. It appeared to me that these arrangements for 2020 did not, or may not, conform with the requirements for admission arrangements.
2. The parties to the case are the Khalsa Education Trust (the Trust) and Leeds City Council (the Council).

Jurisdiction

3. The terms of the academy agreement between the Trust and the Secretary of State for Education require that the admissions policy and arrangements for the free school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined on 8 May 2019 under section 88C of the Act by the Trust, which is the admission authority for the school on that basis. I note that this is later than the date of 28 February 2019 by when the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) require the arrangements to have been determined.

4. When the arrangements were brought to my attention it appeared that the arrangements did not, or might not, conform with the requirements for admission arrangements in many ways. I, therefore, decided to use my power under section 88I(5) of the Act to consider them as a whole.

Procedure

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

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

- a) copies of the minutes of the meeting of the Trust at which the arrangements were determined;
- b) a copy of the determined arrangements;
- c) comments from the Trust on the matters raised and supporting documents;
and
- d) comments from the Council on the matters raised.

7. I have also taken account of information received during a meeting I convened on Friday 11 October 2019 at the school. The meeting was attended by representatives of the Trust and the Council.

Background

8. The school is situated in the north of Leeds, it opened in 2013 as a free school for children aged 4 to 11. It is on the site of a former primary school which closed in 2007. The buildings have benefitted from an almost total rebuild which was completed in 2016. The Trust told me that the school was established to meet the need for primary school places in the area and to offer a curriculum with an emphasis on science within a Sikh ethos.

9. Although it is listed as having a Sikh religious ethos, the school is not listed as having a religious character in accordance with section 124B of the School Standards and

Framework Act 1998 or further to Section 6(8) of the Academies Act 2010 and so paragraph 5(b) of Schedule 11 of the Equality Act 2010 does not apply and the school may not, and does not, use faith-based oversubscription criteria in its admission arrangements.

10. The school has a published admission number of 60 but has never been oversubscribed. At the time of writing this determination there were 148 children on roll.

Consideration of Case

11. The arrangements begin by stating that they were approved in April 2019 and are due for revision in April 2020. The Council told me that it received a copy of the arrangements on 23 April 2019. I was told that after the Council raised concerns about them a revised version was received in May. I was sent minutes of a meeting of the trustees held on 8 May 2019 at which it was recorded that the school had 61 policies and the Chair and the school administrator “*had reviewed these ... removed some and signed off those that needed to be reviewed.*” The admissions policy was listed among those reviewed.

12. It is for the admission authority to decide how the admission arrangements are determined each year in accordance with its own scheme of delegation. After some consideration I am satisfied that Trustees had the opportunity to raise any concerns that they may have had about these arrangements and by not doing so, approved them. The Regulations say by when arrangements must be determined, this is also set out in paragraph 1.46 of the Code and is before 28 February every year. It is clear that this requirement was not met.

13. The Code says in the subsequent paragraph that “*Admission authorities must send a copy of their determined admission arrangements for entry in September 2016 as soon as possible before 1 May 2015, and for all subsequent years, as soon as possible before 15 March in the determination year.*” This requirement was not met.

14. At the meeting the Trustees accepted that the arrangements had not been determined by the required date or sent to the local authority when required, explaining that this was caused by changes in key members of staff.

15. Paragraph 14 of the Code says “*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. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*” The arrangements do not appear clear to me in a number of ways which I set out below in the order in which they arise.

16. The arrangements say “*The Chief Executive of Leeds City Council makes the offer of a school place*” and “*Where there are more applicants than places available, places will be offered to children for September Reception entry, by Leeds City Council*”. This is not the case. Paragraph 15 and others in the Code such as 2.3, explain that in the normal admissions round places are offered by the child’s home local authority whether there are

more applications than places or not. Paragraph 14 of the Code requires that admission arrangements are clear and so they should not include misleading information.

17. The first oversubscription criterion is labelled "*Priority 1a*" and, as it must do by paragraph 1.7 of the Code, gives priority to looked after and previously looked after children these are clearly defined.

18. The second oversubscription criterion is labelled "*Priority 1b*" and says "*Pupils without an EHC plan but who have Special Educational Needs, or with exceptional medical or mobility needs, that can only be met at a specific school. (see note3)*" As worded this oversubscription criterion would give priority at the school to a child whose needs could only be met at another specific school. Paragraph 1.8 of the Code says "*Oversubscription criteria must be reasonable, clear, ...*" I do not find this criterion to be clear or reasonable.

19. Note 3 associated with this criterion is 10 paragraphs long and exceeds a side of A4. The note refers to some of the Council's policies and admissions processes for children with special educational needs. It confuses the responsibilities of the Trust as the admission authority for the school with the Council's responsibilities for children with special needs. Terms are used in the note such as "*FFI funding*" which parents may not understand. Reference is also made to a "*SEN SIF*", there is no supplementary information form (SIF) included with the arrangements. I find that Note 3 is unclear.

20. The third oversubscription criterion is labelled "*Priority 2*" and gives priority to siblings of children who will be at the school. Siblings are clearly defined as required by paragraph 1.11 of the Code.

21. The final oversubscription criterion is labelled "*Priority 3*" and says "*We will give priority to parents who choose a Leeds school, which is not their nearest priority school (see note 6)*". On page 40 of the Code it defines conditionality: "*Oversubscription criterion that stipulates conditions which affect the priority given to an application, for example taking account of other preferences or giving priority to families who include in their other preferences a particular type of school (e.g. where other schools are of the same religious denomination). Conditionality is prohibited by this Code.*" This criterion gives priority to families who include a particular type of school, that is "*a Leeds school, which is not their nearest priority school*" in their preferences. This oversubscription criterion therefore does not conform with the Code.

22. The criterion is linked to Note 6 which says "*You can apply for any school but the 'nearest priority' only applies to some Leeds schools. You will receive the nearest priority if our school is your closest school by straight-line distance. Leeds City Council do not include Voluntary Aided / Faith Schools when calculating your nearest priority school.*" Note 6 continues "*If you like [sic] in another local authority and the nearest school to your home in a straight line is our school, Leeds City Council will give you the relevant priority under the admissions policy.*"

23. The final oversubscription criterion and the associated note are not in my view clear as they are required to be by paragraph 1.8 of the Code for the following reasons:

- priority is given to children, not parents;
- parents express preferences for schools, they do not choose them;
- “a Leeds school” is not defined; and
- which Leeds schools nearest priority applies to are not defined.

24. Note 6 assigns functions of the Trust to the Council, a matter which I understand has been raised by the Council with the Trust. It also appears to reference admission arrangements no longer used by the Council for community and voluntary controlled schools in the city.

25. The oversubscription criteria do not offer any priority for children (other than looked after or previously looked after children, or those with special needs or with siblings at the school), whose parents may have expressed preferences for schools other than “a Leeds school which is not their nearest priority school”. This means that the oversubscription criteria could not differentiate between all applicants.

26. After “Priority 3” the arrangements use the term “living in the local area” when giving priority to applications received outside of the normal admissions round. The term “local area” needs to be defined if the requirement of paragraph 14 of the Code for arrangements to be clear and objective is to be met.

27. Under the heading “Tie Break” the arrangements say “If Leeds City Council have more applications which meet one of these priorities than there are places available, they will offer places first to children living nearest the school, measured in a straight line. (see note 5).” Note 5 explains how the Council measures distances and decides how to separate applicants living equidistant from schools. The Trust is the admission authority and while it may copy some or all aspects of the Council’s admission arrangements and may commission the Council to undertake some of the processing of applications, it is the Trust’s responsibility to set a tie break. This responsibility is not reflected in this part of the arrangements and so the arrangements are not clear.

28. The next heading in the arrangements is “Note 1” which says “If they cannot offer parents or carers a place for their child at any school they put on their preference form, they will offer their child a place at the closest school (or within the applicable catchment area) that has places available (this may include voluntary-aided and foundation schools or academies).” There is no reference to “Note 1” anywhere else in the arrangements, it is therefore even more unclear who “they” may be. The content and purpose of the note is unclear and adds to the lack of clarity in the arrangements overall.

29. Section 86 of the Act says that admission authorities may only refuse to offer a school place if admitting the child would prejudice the efficient provision of education or the

efficient use of resources. The statement about in-year transfers in the arrangements does not meet this requirement because it says that “*School Senior Leadership ... will make an offer based on the priorities outlined in this policy.*” Paragraph 2.7 says “*a decision to offer or refuse admission **must not** be made by one individual in an admission authority.*”

30. Paragraph 2.14 of the Code requires “*Each admission authority must maintain a clear, fair and objective waiting list until at least 31 December of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria. Priority must not be given to children based on the date their application was received or their name was added to the list. Looked after children, previously looked after children, and those allocated a place at the school in accordance with a Fair Access Protocol, must take precedence over those on a waiting list.*” Information about waiting lists must also be clear as required by paragraph 14 of the Code.

31. The section on the waiting list in the arrangements says “*After offers have been made in April, parents can ask to go on the waiting list for any school. The list is prioritised following the Council’s admissions priority areas (see above) rather than on a ‘first come first served’. That means that your place on a waiting list could possible [sic] go down as someone ranking higher is added (for example a child in foster care). Outside of the Reception admissions round, schools can hold waiting lists for specific classes and/or year groups. These are ranked following the same process. All waiting lists will be held in criteria order of the admission policy and will close at the end of academic year (July 2021).*”

32. The waiting list must be prioritised according to the school’s oversubscription criteria, not “*following the Council’s admissions priority areas*” even if they were defined above, which they are not. This statement says that schools may hold waiting lists for other years, but does not say what this school does.

33. At the meeting the Trustees accepted that the arrangements did not conform with the Code. Much of the arrangements were said to have been cut and pasted from the local authority’s arrangements at the time the school was established. Because the school has never been oversubscribed the inoperability of the oversubscription criteria has not become apparent. I was told that it is planned to consult on the admission arrangements for 2021 under the seven year rule found in paragraph 1.42 of the Code.

34. I note that because the school is undersubscribed, no child has ever been disadvantaged by these arrangements. Neither the school nor the local authority expects the school to be oversubscribed for September 2020 and so no child will miss out on a place at the school due to these arrangements in that year either. For this reason I have decided not to set the normal two month period for these arrangements to be revised by the Trust, but to allow the Trust until 28 February 2020 to do so. This will enable the Trust to take the findings of this determination into account when consulting on and determining admission arrangements for 2021.

Summary of Findings

35. I find that the school did not meet the requirements of paragraphs 1.46 and 1.47 of the Code relating to the determination and notification of the arrangements.

36. I find that the arrangements are not clear as they are required to be by paragraph 14 of the Code. The oversubscription criteria themselves are not clear as required by paragraph 1.8 of the Code and would not be capable of ranking all applicants for the school as some children would not meet any of the criteria. The arrangements do not conform with the Code in the other ways set out above.

Determination

37. I have considered the admission arrangements for September 2020 for Khalsa Science Academy, Leeds in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that the arrangements do not conform with the requirements.

38. 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 or other date specified by the adjudicator. In this case I set the date by which these arrangements must be reviewed as 28 February 2020.

Dated: 21 October 2019

Signed:

Schools Adjudicator: Phil Whiffing