



Office of
the Schools
Adjudicator

Determination

Case reference: REF3632

Referrer: The Office of the Schools Adjudicator

Admission authority: The Governing Board of Austwick Church of England Primary School, North Yorkshire

Date of decision: 14 April 2020

Determination

I have considered the admission arrangements for September 2020 for Austwick Church of England Primary School, North Yorkshire in accordance with section 88I(5) of the School Standards and Framework Act 1998 (the Act). I find that there are 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. The admission arrangements (the arrangements) for September 2020 for Austwick Church of England Primary School, (the school), a voluntary aided school for children aged 3 to 11, have come to the attention of the adjudicator.
2. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 by the school's governing board, which is the admission authority for the school, on 4 October 2019. When the arrangements were brought to my attention it appeared that they did not, or might not, conform with the requirements relating to admission arrangements in the ways set out in this determination. I have decided to use my powers under section 88I(5) to consider them as a whole.

3. The parties to the case are the governing board of the school, the Diocese of Leeds, which is the religious authority for the school, and North Yorkshire County Council, the local authority area in which the school is located.

Jurisdiction

4. These arrangements were determined under section 88C of the Act by the school's governing board, which is the admission authority for the school on 4 October 2019. When they were brought to my attention it appeared that the arrangements did not, or might not, conform with the requirements for admission arrangements. I therefore decided to use my power under section 88I(5) of the Act to consider them as a whole. The arrangements were determined many months after the statutory deadline for this, which was 28 February 2019. The late determination does not affect the status of the arrangements or my jurisdiction to consider them.

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) a copy of the minutes of the meeting of the governing board on 4 October 2019 at which the arrangements were determined for 2020, and a copy of the determined arrangements;
- b) a copy of the minutes of the meeting of the governing board on 28 February 2020 at which the arrangements were revised, and a copy of the revised arrangements;
- c) comments from the school on the issues raised; and
- d) comments from the Diocese of Leeds on the matters raised and supporting documents.

Background

7. Austwick Church of England Primary School is a small school with a Published Admission Number (PAN) of 10. It is located in the village of Austwick in a rural part of Yorkshire.

8. The governing board failed to meet the statutory requirement to determine by 28 February 2019 the arrangements for September 2020. The governing board determined the 2020 arrangements on 4 October 2019. When it published these arrangements on its website, these included track changes from those which applied for 2019 with the changes still visible.

9. The Director of Education at the Diocese of Leeds told me that the diocese offered guidance to schools on admission arrangements and that schools had to have regard to the “*Admissions: Guidance for Governors*” document produced by the diocese. The diocese also provided sample policy examples as guidance for schools. The Director of Education offered to provide support to the school to address the issues I had raised.

10. Following the determination of the arrangements, and having received correspondence from the OSA on my behalf setting out my concerns about the arrangements, the governors agreed at their meeting on 28 February 2020 a number of changes to the arrangements for 2020. These included in particular the removal of the school’s faith-based oversubscription criteria and their replacement with an oversubscription criterion giving priority to children who live in two named parishes. The arrangements as varied thus now give priority based in the main on where children live. I have more to say about the process by which these changes were made later in this determination.

Consideration of Case

11. When I first considered the arrangements, I noted a number of ways in which they appeared not to conform with requirements relating to admissions. I think it is important that I begin this section by noting that this small school has been keen to respond to the concerns I have raised and to determine arrangements that conform with all the relevant requirements. I should also say that while, as my determination will explain, the arrangements did contain many breaches of these requirements and, indeed, some remain, the school has been able to accommodate all those who wanted a place there. I do not consider that any child has suffered any detriment as a result of the previous arrangements.

12. The arrangements when first determined included the provisions outlined below which I considered did not conform with the requirements relating to admissions. All of these matters have been rectified in the varied arrangements.

- a. The introduction to the school’s admission arrangements states “*Parents must complete a common preference form and return it directly to the Local Authority. The LA will then provide VA schools and foundation schools with the list of those who have listed Austwick as one of their preferences.*” Paragraph 2.1 of the Code sets out that local authorities must “*provide a common application form (CAF) that enables parents to express their preference.....*”. The use of a different term (preference rather than application) may make the arrangements unclear in breach of paragraph 14 of the Code.
- b. The arrangements state “*The school provides places for a total of not more than 10 children in each year group.*” Paragraph 1.2 of the Code sets out “*As part of determining their admission arrangements, all admission authorities **must** set an admission number for each relevant year group.*” The footnote makes clear that the PAN applies only to the age group at which pupils are normally admitted to the school, in this case Reception Year (YR). The arrangements are required to state clearly what the PAN for YR is.
- c. In the section of the arrangements dealing with looked after and previously

looked after children, the arrangements referred to children “*whom the local authority wishes to place in the school.*” The local authority will be responsible for making an application only for some looked after children (those in public care). Applications for school places for looked after children who are accommodated and for all previously looked after children are made by the children’s parents (including adoptive parents of course), guardians or carers with parental responsibility. But all of these children are entitled to the highest level of priority in admission arrangements. The wording suggests that they are not and thus is both unclear and in breach of the requirements of paragraph 1.7 of the Code.

- d. The arrangements included sections titled “*Admission of children below compulsory school age*” and “*Deferred Admission*”. The content of these sections suggested that deferred entry until the beginning of the summer term for children who have not reached compulsory school age is at the discretion of the school. In fact, as paragraph 2.16 of the Code makes clear, this is an absolute entitlement for parents as is the right for such children to attend part-time. In addition, the arrangements do not appear to include information about the admission of children outside their normal age group. Paragraph 2.17 of the Code sets out that admission authorities must make clear in their admission arrangements the process for requesting admission out of the normal age group.
- e. There was no reference in the arrangements to how the home address will be determined in cases where parents who do not live together have shared responsibility for a child who lives part of the week with each parent. Paragraph 14 requires that admission arrangements be clear and paragraph 1.13 of the Code states that arrangements should make clear how the home address will be determined in such circumstances.
- f. The school’s admission arrangements included faith-based oversubscription criteria. While this is permissible, as the school is designated by the Secretary of State as a school with a religious character, any such criteria must comply with the Code’s requirements including paragraphs 1.37 and 1.38 of the Code which set out specific requirements for faith-based criteria. The school’s arrangements included the following:

“OS3 [oversubscription criterion 3]: Parental attachment to the churches of Austwick, Eldroth, Horton-in-Ribblesdale and Stainforth or any of the parishes normally served by the school (see definitions). A request for priority under this criterion must be supported in writing by the recognised leader of Austwick and Eldroth parish churches. The local vicar is responsible for this. We recommend that it is a parental responsibility to obtain the reference letter and ensure that it is received by the school by a 14 day deadline.

OS5: Parental attachment to the churches of another parish, which, may be served by a non-church school. A request for priority under this criterion must be supported in writing by the recognised leader of the relevant parish church. (see definitions). See 3 above.

OS6: Parental attachment to another Christian Church which is a member of the Council of Churches for Britain and Ireland. A request for priority under this criterion must be supported in writing by the recognised leader of the place of worship. (see definitions) See 3 above.”

The definitions in the arrangements set out the meaning of ‘parental attachment’ in terms of attendance at monthly or church parade services for a period of at least two years prior to the date of application. However, the expression “*regularly involved in a weekday church activity that involves an element of worship*” was not clear. This is because there was no definition of what church activities would or would not count. There was also a risk that this could result in priority being given for activities in breach of paragraph 1.9e) of the Code which prohibits priority on the “*basis of any practical or financial support parents may give to the school or any associated organisation, including any religious authority*”. In addition, priority may only be given on the basis of participation in religious activities where those activities have been laid out in guidance provided by the school’s religious authority. This is made clear in paragraph 1.9i) of the Code. The diocese provides information on admission arrangements in their booklet “*Admissions: Guidance for Governors*”.

Oversubscription 5 is not clear about which other parishes are eligible or if this applies to all other parishes.

In addition, all three criteria could only be satisfied by a letter of support. Such a letter could include information over and above attendance and be perceived as subjective and, therefore, not clear to parents. This compares with the use of a straightforward supplementary information form which asks the relevant clergy member to indicate whether or not a clearly expressed requirement relating to attendance at church had or had not been met.

- g. The arrangements state “*The Governing body will form a committee to go through all applications for the school.....*”. The arrangements then go on to explain that parents who are not offered a place have a right of appeal. However, the arrangements are not clear that the appeals panel must be independent of the school as required by paragraph 15f) of the Code which sets out that the admission authority “***must** establish an independent appeals panel.*” The wording in the arrangements does not make clear that the panel must be independent. The arrangements could be read as meaning that appeals take place before offers are sent out on national offer day which is not the case.

13. The issues I raised about the common application form, the PAN, deferred and part-time education, the home address for separated parents and the right of appeal have been addressed and set out more clearly in the varied arrangements. My concerns about the faith-based oversubscription criteria have also been addressed as the governing board has removed those criteria in the varied arrangements. All of these changes fall squarely within what is permitted by paragraph 3.6 of the Code which allows admission arrangement to be varied in order to “*...give effect to a mandatory requirement of [the] Code, admissions law...*”.

14. However, I continue to have some concerns about the varied arrangements. The arrangements are headed “*Admission Policy Statement 2020/21*” but refer later in the text to the closing date for applications as 15 January 2021. That date relates to the admissions process for the academic year beginning in September 2021 not that which will begin in September 2020. The school has posted the varied arrangements on their website but as I say above, the date is incorrect. I should also point out that waiting lists must be maintained until at least 31 December of each school year of admission (paragraph 2.14 of the Code)

and not the end of the autumn term (which will invariably be earlier) as set out in the arrangements. In these ways, the arrangements continue not to conform with the requirements relating to admissions and the Code requires that they be varied to rectify these matters. Paragraph 3.6 of the Code states that admission authorities can revise their arrangements to give effect to a mandatory requirement of the Code, admission law or a determination of the adjudicator. In this case I determine that the governing board should revise their arrangements for 2020 with two months of this determination.

15. I wish to make one final point. The governors have introduced a new oversubscription criterion to give priority to children who have a medical or social need to attend the school. The Code makes clear at paragraph 1.16 that this may be used as an oversubscription criterion. However, it was not necessary for this change to be made in order to remedy the breaches in the arrangements and the change accordingly goes beyond what is sanctioned by the Code. This is no mere administrative nicety. Changes to admission arrangements (other than those specifically provided for in paragraph 3.6 and in some other limited circumstances not relevant here) require consultation before they can be made. There has been no such consultation here.

16. It is unfortunate that a new oversubscription criterion giving priority on medical and social grounds has been introduced without consultation. It is, however, not within my jurisdiction to require any change to be made.

Determination

17. I have considered the admission arrangements for September 2020 for Austwick Church of England Primary School, North Yorkshire in accordance with section 88I(5) of the School Standards and Framework Act 1998. I find that there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

18. 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: 14 April 2020

Signed:

Schools Adjudicator: Lorraine Chapman