



Office of
the Schools
Adjudicator

Determination

Case reference: REF3746

Referrer: Two parents

Admission authority: The trust named Whitecross Hereford for the school named Whitecross Hereford

Date of decision: 6 October 2020

Determination

I have considered the admission arrangements for September 2021 for Whitecross Hereford in Herefordshire 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 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 by 28 February 2021.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Office of Schools Adjudicator (OSA) by two parents, (the referrers), about the admission arrangements for September 2021 (the arrangements) for Whitecross Hereford (the school), the date of the objection was 6 August 2020.
2. The referrers said: "We believe the arrangements contravene the mandatory requirements of the code for the academic year 2021". They then set out concerns about the second oversubscription criterion which gives priority to "Children for whom Whitecross Hereford is the nearest school". This the referrers said was not sufficiently clear and so did not conform with paragraph 14 of the School Admissions Code (the Code). The referrers also said there was no tie-breaker in the arrangements and so the requirements of paragraph 1.8 of the Code were not met. The referrers also commented on how the

arrangements had been applied in a particular case. My jurisdiction, however, is for what is said in the arrangements themselves, not how an admission authority applies them. Complaints about the application of admission arrangements of an academy school should be directed to the governing board, or the Education and Skills Funding Agency if not resolved locally.

3. I received a copy of the arrangements and evidence that the arrangements had been determined by the governing board on behalf of the trust and these were circulated to the parties to the case. Subsequently, the referrers sent an email on 26 August 2020 which said: “our complaint relates to the oversubscription criteria for entry in September 2020.” They also said that the arrangements for 2021 clarified the matter which was the basis of their complaint.

4. The referral was made on a form headed “Objection to School Admission Arrangements for September 2021” and, as quoted above, said it was about the 2021 arrangements. Objections to the admission arrangements for 2020 had to be made on or before 15 May 2019 to be within my jurisdiction under section 88H of the Act. The children who will have been offered places at the school on the basis of those arrangements would have been starting school a matter of days after the referrers clarified their complaint. Although the referrers said they would still like me to consider the 2020 arrangements, I see little purpose in doing so now the relevant year group has started at the school and I have not done so. However, now the arrangements for 2021 had been brought to my attention, it appeared to me that the following matters did not, or might not, conform with the requirements for admission arrangements:

- i) Paragraph 1.8 of the Code requires that oversubscription criteria are clear. The first oversubscription criterion referred to “a resident [sic] order”. Residence orders were replaced with child arrangements orders by the Children and Families Act 2014. Obsolete and incorrect terms can render arrangements unclear.
- ii) In the second oversubscription criterion the term “nearest school” is used. In the context one might read this as “nearest state-funded secondary school”, but other interpretations are possible and so this may not be clear.
- iii) Paragraph 1.8 requires that oversubscription criteria are both clear and fair. It appeared to me that there could be situations where giving priority on the basis of nearest school may not be fair.
- iv) At the top of the second page the arrangements say “If admission of the top two categories can be satisfied but there are insufficient places for all out of area brothers and sisters, priorities will be decided first by reference to criteria [sic] two then according to criteria [sic] five.” This sentence did not appear to be clear.
- v) Paragraph 1.8 of the Code requires an “effective, clear and fair tie-breaker to decide between two applicants that cannot otherwise be separated”. I could find

no such tie-breaker in the arrangements.

- vi) Paragraph 1.13 of the Code requires that admission authorities “clearly set out how home to school distance will be measured”. The arrangements describe the method as “using a road and/or made up footpath from the front door of the child’s address (including flats) to the main entrance of the school using the Local Authority’s computerised digital mapping system.” On the local authority’s website to which the school’s website directed me it says distance is measured between nodes on the transport network which “do not take into account access points and driveways”. These statements are inconsistent and so the method of measuring distance may not be clear.
- vii) Paragraph 1.13 also requires admission authorities to include provision for determining the address to be used for the purposes of school admissions in cases where a child may live at different addresses during the week following a breakdown of their parents’ relationship. This requirement does not appear to have been met.
- viii) The requirements of paragraph 2.14 regarding waiting lists do not appear to have been met.
- ix) The requirements of paragraph 2.17 regarding requests for the admission of children outside of their age group do not appear to have been met.

5. The parties to the case are the academy trust for the school which is also called Hereford Whitecross (the trust) and Herefordshire Council (the local authority). The referrers also asked to remain as parties to the case.

Jurisdiction

6. 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 academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined under section 88C of the Act by the governing board on behalf of the name of the trust, which is the admission authority for the school on 9 December 2019 on that basis.

7. The referrers submitted an objection to these determined arrangements on 6 August 2020. The Code requires objections to admission arrangements for 2021 to be made to the Office of the Schools Adjudicator by 15 May 2020. As this deadline was missed, the case cannot be treated as an objection. However, as the arrangements have been brought to my attention, I have decided to use the power conferred under section 88I(5) of the Act to consider whether the arrangements conform with the requirements relating to admission arrangements and I am treating the objection as a referral.

Procedure

8. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
9. The documents I have considered in reaching my decision include:
 - a) the referrers' form of objection dated 6 August 2020 and subsequent correspondence;
 - b) copies of the minutes of the meeting of the governing board at which the arrangements were determined;
 - c) a copy of the determined arrangements;
 - d) comments from the admission authority on the matters raised and its responses to my enquiries;
 - e) comments from the local authority on the matters raised; and
 - f) a map of the area identifying relevant schools.

Background

10. The school is situated on the north-western edge of Hereford and the Department for Education database lists four other state-funded secondary schools within five miles of the school. The school serves the 11 to 16 age range and became an academy in January 2013. The school is oversubscribed and has a published admission number of 189. The oversubscription criteria are set out in the arrangements as:

- “1. Looked After Children and children who were looked after, but ceased to be because they were adopted or became subject to a resident [sic] order or special guardianship;
2. Children for whom Whitecross Hereford is the nearest school; * **
3. Children who have an older brother or sister attending the school not only at the time of application but also when the younger child is due to start ;***
4. Children of staff in either or both of the following circumstances: a) where the member of staff has been employed at the school for two or more years at the time at which the application for admission to the school is made, and/or b) the member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage.
5. Children with exceptional medical, social or compassionate grounds for admission and whose parents can show that entry to the school is necessary for the well-being of their child. Parents are required to produce a medical certificate or other appropriate information preferably from an independent source;

6. Children who live nearest to the school by the shortest available walking route.”

The asterisks indicate a definition can be found later in the arrangements including that distance would be measured by the shortest available walking route for criterion 2 as well as for criterion 6.

Consideration of Case

11. When I raised the matters listed above with the school I was told that “As our own admissions authority we determine our own oversubscription criteria but our admissions arrangements are managed on our behalf by the local authority as part of a service level agreement and we use the local authority’s definitions and terms.” The school went on to say: “It is clear to us from your review that this may not be as clear as it could be and we will take urgent steps to address this.” It then went on to respond to the nine matters which I had raised.

12. An academy may employ a local authority or another body to process admissions and adopting the same definitions as other admission authorities in the area (if they conform with the Code) can be helpful to parents’ understanding of admission arrangements. However, the Code makes it clear that the responsibility for these admission arrangements lies with the academy trust of the school. I have grouped the nine matters into sets of related issues in the following discussion.

Definition of previously looked after children

13. In respect of the definition of previously looked after children, the school said that it had followed the local authority’s definition and that it would correct the definition. The local authority acknowledged that its definition was incorrect and that it would revise its own arrangements accordingly. Both admission authorities will wish to check the definition found in paragraph 1.7 of the Code and its footnotes carefully to ensure accuracy.

The nearest school criterion and measurements of distance

14. The school also accepted, as did the local authority, that the term “nearest school” should be defined to mean “nearest state-funded secondary school” to prevent any other interpretation. This is the meaning I will use in the rest of this determination

15. I put it to the school that the second oversubscription criterion may not be fair to a child whose closest state-funded secondary school gave priority for admission to children on the basis of faith or ability, criteria which a child may not be able to meet. A similar situation may arise if a child’s nearest state-funded secondary school only provided places for children of the opposite sex or was simply not large enough to accommodate all children for whom it was the closest. As well as having low priority for their nearest school, these children would also have low priority for this school which could be their next closest school.

16. In response the school said that it had taken careful consideration of other local schools to ensure that the scenarios that I had described would not arise and there were no

faith schools or single sex schools “adjoining our catchment”. I was told that “there are no areas where we might not be the nearest school and yet a child might be outside the catchment area of another secondary school.” The school pointed out that where catchment areas are used it is possible for children living in the catchment area of a school not be offered a place at their catchment area school and consequently have difficulty in finding places at other schools. It referred to previously having had a “defined catchment area” and I inferred from this that it considered it no longer had such a catchment area. I explain below my concerns which this prompted.

17. In the Code a catchment area is defined as: “A geographic area, from which children may be afforded priority for admission to a particular school.” Paragraph 1.14 of the Code requires: “Catchment areas **must** be designed so they are reasonable and clearly defined.” They must also meet the general requirements of fairness and clarity set out elsewhere in the Code. In my view, the second oversubscription criterion used by the school does in fact define a catchment area. Any given address is either closer to the school than it is to any other school, or it is not. Taking all addresses which are closer to the school than they are to any other school and plotting these addresses on a map will define a geographical area. As living in the area concerned affords priority for a place at the school it is a catchment area for the purposes of the Code. The school was not able to supply me with such a map, but this does not change the nature of the arrangements, although not having a map (or an alternative such as a list of postcodes) may make it harder for parents to understand whether or not they live in the catchment area.

18. Basing a catchment area on addresses for which the school is the nearest school by shortest walking distance from the child’s home is reasonable in the sense that there is a rationale for an address being inside or outside of it. It may also be fair in the local context, a matter I will return to later. The original referral concerned whether the criterion was clear.

19. When I raised these issues with the school, it (and the local authority) agreed that the criterion did define a catchment area. The school said that the catchment area used by the school until 2016 “was illogical and unfair, excluding families for whom we were their nearest school, forcing them to make long and, since changes to local transport policy, often prohibitively expensive journeys to other schools”. It said that other schools in Hereford use catchment areas based on historic parish boundaries which bear no relation to current demographics and that the nearest school criterion was fairer than using “archaic” boundaries.

20. The school has said that it has made it straightforward for parents to find out if it is their nearest school by putting a link to the local authority’s website where distances can be calculated and that it would review the wording of this link.

21. The arrangements which were sent to me said “Distance will be measured by the shortest available walking route using a road and/or made up footpath from the front door of the child’s address (including flats) to the main entrance of the school, using the Local Authority’s computerised digital map measuring system.” There was no link in this document, however, there is a hyperlink on the admissions page of the school website

which takes the reader to a page on the local authority's website which explains the way in which the software calculates the shortest route, it does not take the reader to the page where distances can be calculated.

22. The description on the local authority's website of how distances are calculated by the software does not say that these are walking routes and refers to distances being measured between nodes on the transport network and says the method did "not take into account access points and driveways". This is not consistent with what is said in the arrangements which is that the measured distance is "from the front door of the child's address (including flats) to the main entrance of the school". The arrangements therefore do not conform with paragraph 1.13 of the Code: "Admission authorities **must** clearly set out how distance from home to school will be measured".

23. Further exploration of the local authority website is required to find a page where the distance from an address to a school can be found. On that page the distance to the five closest schools to an address can be displayed but it is not possible to get an overview of the area which is closest to the school by shortest walking route although maps of catchment areas of other schools can be found. The local authority has provided more precise links to the distance finder for the school to use in its arrangements.

24. It seems to me that defining a catchment on the basis of a single factor risks introducing some unfairness. However, there is no concern over fairness in the referral and the local authority did not raise any concerns that unfairness could arise in this situation. Without a map of the area defined as closest to the school by the local authority's methodology I cannot identify any possible anomaly. I cannot, therefore, make a finding on the fairness of the criterion. I am left unsure about whether the trust has a detailed knowledge of the area which is covered by the second oversubscription criterion which it determined as it could not provide a map.

25. I find that the second oversubscription criterion is not clear and so does not conform with paragraphs 1.8, 1.13 and 1.14 of the Code. From the arrangements themselves it is not possible for a parent to know whether they live in the catchment area defined by the criterion. I think that it is acceptable for arrangements to contain links to other websites where information can be found which is required, as the Code puts it, to understand easily how places at the school will be allocated. However, those links should be direct links and not require further exploration of the other website to find the information. The information on the other party's website must be consistent with what is said elsewhere in the arrangements. I find that the arrangements are unclear in these regards and do not conform with paragraph 14 of the Code.

Tie-breaker

26. The arrangements contain the sentence "If admission of the top two categories can be satisfied but there are insufficient places for all out of area brothers and sisters, priorities will be decided first by reference to criteria [sic] two then according to criteria [sic] five."

There are a number of ways in which this sentence is unclear and does not conform with the Code.

27. Criterion two is the nearest school criterion and criterion five is for children with exceptional medical, social or compassionate grounds for admission. Paragraph 1.7 of the Code requires that oversubscription criteria must be applied in the order set out in the arrangements. Brothers and sisters are given priority in criterion three; this third criterion will only come into play if every child for whom the school is the nearest has been offered a place under criterion two. Logically criterion two cannot be used to prioritise children in a lower category since no children who meet it remain to be prioritised under criterion three.

28. It is legitimate to give priority to siblings with exceptional medical, social or compassionate grounds for admission priority over other siblings, but the arrangements are required to make this clear if that is the intention. The other point which is unclear in this sentence is the term “out of area”. Following the discussion in the previous section, this may be a vestige of previous arrangements when the term catchment area was used. It may also refer to the area which is nearer to this than other schools, the current catchment area discussed above. Whichever, the school accepted that the sentence was unclear and said it would make necessary alterations. I note that the revised wording suggested by the local authority does not address these issues.

29. Paragraph 1.8 of the Code requires that admission arrangements include a tie-breaker for when two or more children cannot be separated by the oversubscription criteria. It appeared to me that the sentence described above might have been intended to serve such a purpose for the third criterion but would not do so. A partial tie-breaker for criterion 2 is included in the arrangements which gives priority to those children living closest to the school if oversubscribed at this point. There is no tie-breaker for any of the other criteria (except possibly the flawed sentence discussed above), or for situations which could arise when applying the second criterion where two children may live the same distance from the school, for example in the same block of flats, or possibly siblings in the same house. The school has recognised this omission and is proposing to use a lottery as a final tie-breaker.

Omissions from the arrangements

30. Paragraph 1.14 of the Code requires that admission authorities must make it clear how a child’s home address will be determined. This should include provision for when parents have shared responsibility for a child and the child lives for part of the week with each parent. There is no such provision in the arrangements.

31. The school acknowledged this and said that it used the “council’s protocol in such cases”. The council described to me its protocol for when separated parents cannot agree which schools to apply for. This protocol delays processing an application until the dispute is resolved, by the courts if necessary. In the normal admissions round it is the local authority’s role to provide a common application form (CAF) and receive applications on the CAF. The protocol described concerns disputes about the preferences made on the CAF.

The requirement of paragraph 1.14 concern addresses, not preferences and is relevant during the processing of properly made applications, not the making of applications.

32. This local authority protocol does not address the same issue that paragraph 1.14 requires to be addressed. The local authority is required to conform with the Code and so should have an appropriate provision to meet the requirements of paragraph 1.14 in its arrangements; if that is a lawful provision, the school may adopt it. I am not, however, considering the local authority's arrangements. The school is required to conform with paragraph 1.14 and include the provision in its arrangements. If there is no local authority protocol to adopt, there are many examples of good practice used by admission authorities across the country.

33. The requirements for waiting lists are set out in paragraph 2.14 of the Code: "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." The arrangements say: "Herefordshire council will maintain a waiting list for Whitecross Hereford until the end of the 2021 Autumn term (31 December 2021). Whitecross Hereford does not maintain a waiting list. Should an application for a place be made during the school year and there is a space then a place will usually be offered subject to the terms of the admissions code. If a place becomes available then consideration will be given to any current enquiries. Should there be more than one current enquiry then the oversubscription criteria will be applied."

34. The requirements of the Code are for the admission authority to maintain the waiting list until the prescribed date, the waiting list can be administered by the local authority, but responsibility for it rests with the admission authority. The arrangements must state the things prescribed in paragraph 2.14 which they do not. It is the admissions authority's responsibility to ensure they do so.

35. Paragraph 2.17 requires "Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group." Acknowledging that this was an omission from the arrangements, the school said it would make it clear that it followed the local authority's arrangements. The local authority provided a link to its guidance on education outside of a child's year group. This guidance does not, as the Code requires, make clear the process of requesting admission outside of the normal age group. Again, the local authority's admission arrangements must include this provision and the school could adopt the same process, however, the process of requesting admission out of the normal age group **must** be stated in the arrangements determined by the trust.

General comments

36. I am concerned that there appears to be confusion between the school as its own admission authority and the local authority over the responsibility for the content of these

admission arrangements. The Code makes it clear that admission authorities are responsible for their arrangement's conformity with the Code. Where a school's admission authority adopts local authority policy or employs it to administer its arrangements, it is the admission authority's responsibility to ensure consistency between what is said in its arrangements and what the local authority actually does. It is also the admission authority's responsibility to satisfy itself that any policy adopted from the local authority conforms with the Code. If mandatory requirements of the Code are omitted from the local authority's arrangements, this does not absolve the school from including them in its arrangements.

37. For the avoidance of doubt, paragraph 3.1 of the Code requires the admission authority to revise its arrangements to address the matters set out above. Normally, admission authorities must do so with two months of the determination or by 28 February following the determination whichever is sooner unless the adjudicator specifies a different date.

38. Because, I am making this determination shortly before the closing date for applications and because most of my findings concern the clarity of the arrangements and will not affect which children are offered places in September 2021, I have decided to allow until 28 February 2021 for the arrangements to be revised in parallel with the determination of the arrangements for 2022.

Summary of Findings

39. As set out above, I find that there are a number of ways in which these arrangements are unclear and omit details which are mandatory requirements of the Code. Most significant is the way in which home to school distance is measured. From the arrangements, parents would be unable to tell if their address was closer to the school than to any other school and so would not know if they met the second oversubscription criterion. To find out requires an exploration of the local authority's website as the hyperlink provided on the school's website (not in the arrangements themselves) tells the reader how the measurement is made, not the outcome of it.

40. The second oversubscription criterion effectively creates a catchment area. Basing a catchment area on just one factor risks introducing unfairness. In the absence of any suggestion of unfairness or map on which any anomaly could be seen I make no finding on this.

41. The admission authority appears to have relied on the local authority to define and provide policy to meet mandatory requirements of the Code. While local consistency is helpful to parents, it is for the admission authority to be sure that the definition or policy on the matter exists and conforms with the Code; then it must be included in the arrangements.

Determination

42. I have considered the admission arrangements for September 2021 for Whitecross Hereford in Herefordshire 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 relating to admission arrangements in the ways set out in this determination

43. 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 by 28 February 2021.

Dated: 6 October 2020

Signed:

Schools Adjudicator: Phil Whiffing