



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3754

Objector: A member of the public

Admission authority: Berlesduna Academy Trust for Whitmore Primary School and Nursery, Merrylands Primary School, The Willows Primary School, Cherry Tree Primary School, Crays Hill Primary School, Felmore Primary School, Fairhouse Community Primary School and St Mary's Church of England Primary School, all in Essex

Date of decision: 12 April 2021

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2022 determined by Berlesduna Academy Trust for Whitmore Primary School and Nursery, Merrylands Primary School, The Willows Primary School, Cherry Tree Primary School, Crays Hill Primary School, Felmore Primary School, Fairhouse Community Primary School and St Mary's Church of England Primary School in Essex.

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 all eight primary schools (the schools) in the Berlesduna Academy Trust (the trust) for September 2022. The objection is

that the arrangements do not conform with paragraphs 2.17 and 2.17A of the School Admissions Code (the Code) with respect to the admission of summer born children.

2. The local authority for the area in which the schools are located is Essex. The local authority is a party to this objection. Other parties to the objection are the objector, the trust, the eight governing boards and the Diocese of Chelmsford (the diocese) which is the religious authority for St Mary's Church of England Primary School (St Mary's).

Jurisdiction

3. The terms of the academy agreement between the multi-academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy schools are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust, which is the admission authority for the schools, on that basis. The objector submitted her objection to these determined arrangements on 12 February 2021. 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. I have also 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 Code.

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

- a. a copy of the minutes of the meeting of the trust at which the arrangements were determined;
- b. a copy of the determined arrangements, including the supplementary information form (SIF) for St Mary's;
- c. the objector's form of objection dated 12 February 2021;
- d. the trust's comments on the objection and the other matters I have raised;
- e. the diocese's comments on the objection and the other matters; and
- f. the Department for Education (DfE) document "Advice on the admission of summer born children For local authorities and school admission authorities" dated September 2020.

6. The local authority and the governing board of each school were invited to comment on the objection and the other matters which I raised; however, they chose not to do so.

The Objection

7. In her objection, the objector referred to paragraphs 2.17 and 2.17A of the Code. These paragraphs concern the admission of children outside of their normal age group. She

also referred to the DfE advice on the admission of summer born children for local authorities and admission authorities published in September 2020 (the DfE advice). She said that some statements in the trust's policy were "fallacious" and discriminatory against summer born children. The objector said that the arrangements confused the roles of parents and the admission authority and did not refer to parents' rights to complain about decisions taken by the admission authority. She referred me to the arrangements for Merrylands Primary School as this was the only school which had put the 2022 arrangements on its website at the time the objection was lodged. The objector also referred to earlier correspondence between herself and the trust on this matter.

Other Matters

8. When I considered the arrangements as a whole, it appeared to me that they did not or may not conform with the Code in the following ways which I list in the order in which they appear in the arrangements:

- a. The use of where child benefit is paid to decide at which address a child is ordinarily resident may not be fair and so not conform with paragraph 14 of the Code.
- b. In the section on admission of children from overseas, there is reference to the ownership of a property in Essex and intended residence in it. This may not conform with *R v Greenwich London Borough Council, ex parte John Ball Primary School* (1989) 88 LGR 589 [1990] Fam Law 469 which held that pupils should not be discriminated against in relation to admission to the school simply because they reside outside the local authority area in which the school is situated.
- c. The catchment areas for the schools may not be clear. No maps or other descriptions of catchment areas are published on the schools' websites apart from St Mary's Church of England Primary School where the catchment area is defined by ecclesiastical parishes.
- d. Paragraph 14 of the Code requires that arrangements are clear. In the section on multiple births there is the phrase "the Local Authority will ensure both twins are offered a place." The arrangements also say: "In the case of triplets or other multiple births, if the majority of children can be offered a place initially, the Local Authority will offer places to the remaining children." The local authority is not the admission authority for the schools and so this part of the arrangements may not be clear.
- e. The section of the arrangements headed "How to Apply" may not be clear.
- f. Paragraph 1.47 of the Code requires that admission arrangements are published once they have been determined. On 9 March 2021 I was unable to find the arrangements for Felmore Primary School on its website.

9. There are further matters concerning the arrangements for St Mary's which has a religious character of Church of England.
- g. 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." The arrangements do not say for how long or when monthly attendance at worship should have been sustained in order to meet the faith-based oversubscription criterion or how this criterion may be met when places of worship have been closed due to Covid-19 restrictions.
 - h. The arrangements refer to "Parents actively involved ..." The use of a plural could suggest that both parents are required to worship. This may be either unclear or unfair.
 - i. The sixth oversubscription criterion refers to "Children who would be best educated at this school". Paragraph 1.8 of the Code requires that oversubscription criteria are clear and objective. It may not clear what "best educated" may mean and how it is objectively decided. The note attached to this criterion does not appear to clarify this or meet the requirements of paragraph 1.16 in the Code.
 - j. The arrangements do not say what constitutes another faith and so this may not be clear.
 - k. The arrangements say that a SIF is required for applications to be considered under criteria 2 and 4. Criterion 2 is for siblings and Criterion 4 is for applicants whose parents are actively involved in two named churches. It is not clear if the SIF is also required to show that criteria 5 and 7 are met for children whose parents worship at other churches or in another faith.
 - l. The trust did not provide me with a copy of the SIF; however, one is available on the website for St Mary's. The requirements for SIFs are set out in paragraph 2.4 of the Code. It appeared that the SIF may not conform with these requirements.

Background

10. The eight primary schools in the trust are found in Basildon, Billericay and Woodham Ferrers in the south of Essex. The schools joined the trust at various times from October 2016 to July 2020. The arrangements were determined by the trust board on 28 January 2021. The arrangements for seven of the schools are identical other than showing the different published admission numbers (PANs) for the schools and the different catchment areas (notwithstanding my concerns about the clarity of the catchment areas). The arrangements for St Mary's are different to those of the others, reflecting its religious character.

11. The arrangements begin with four pages of definitions before stating the PAN for each school and the oversubscription criteria. For the seven schools the oversubscription criteria can be summarised as:

1. Looked after and previously looked after children
2. Children with siblings at the school
3. Children living in the priority admission area [that is the catchment area]
4. Children of staff
5. Other children

Children living closest to the school have priority in each category with lots being drawn if it is necessary as a final tie-breaker.

12. The oversubscription criteria for St Mary's can be summarised as:

1. Looked after and previously looked after children
2. Children with siblings at the school
3. Children living in the priority admission area
4. Parents "actively involved" at named churches
5. Parents "actively involved" in other churches
6. Children "best educated" at the school because of pastoral, medical or social reasons
7. Parents worshipping in another faith
8. Children of staff
9. Other children

Consideration of Case

13. The objector referred to paragraphs 2.17 and 2.17A in the Code. These say:

"2.17 Parents may seek a place for their child outside of their normal age group, for example, if the child is gifted and talented or has experienced problems such as ill health. In addition, the parents of a summer born child may choose not to send that child to school until the September following their fifth birthday and may request that they are admitted out of their normal age group – to reception rather than year 1. Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.

2.17A Admission authorities **must** make decisions on the basis of the circumstances of each case and in the best interests of the child concerned. This will include taking account of the parent's views; information about the child's academic, social and emotional development; where relevant, their medical history and the views of a medical professional; whether they have previously been educated out of their normal age group; and whether they may naturally have fallen into a lower age group if it were not for being born prematurely. They **must** also take into account the views of the head teacher of the school concerned. When informing a parent of their decision on the year group the child should be admitted to, the admission authority **must** set out clearly the reasons for their decision."

14. The normal age group for a child is the group of children born during the same school year from 1 September to 31 August. Summer born children are defined as those born between 1 April and 31 August. These children do not reach compulsory school age until the beginning of the term following their fifth birthday which is when the children in their same age group will be starting Year 1. Paragraph 2.16 of the Code explains that:

"Admission authorities **must** provide for the admission of all children in the September following their fourth birthday. The authority **must** make it clear in their arrangements that, where they have offered a child a place at a school: a) that child is entitled to a full-time place in the September following their fourth birthday; b) the child's parents can defer the date their child is admitted to the school until later in the school year but not beyond the point at which they reach compulsory school age and not beyond the beginning of the final term of the school year for which it was made; and c) where the parents wish, children may attend part-time until later in the school year but not beyond the point at which they reach compulsory school age."

15. This means that a child born between, say, 1 April and 31 August 2018 is entitled to a place in Reception (Year R) from 1 September 2022 when they are four-years old. That place may be part-time if their parents wish. Parents of summer born children may, if they wish, defer when their child starts in Year R until the beginning of the summer term. However, it is not possible to defer until the beginning of the autumn term in when the child will be five-years old and of statutory school age. If parents do not wish their summer born child to start school until they are of statutory school age in the September after their fifth birthday, they can either apply for a place in Year 1 which is their normal age group at that time or request a place out of the normal age group in Year R when the provisions of paragraph 2.17 and 2.17A will apply.

16. The objector said: "the trust acknowledges the right to request for out of cohort admission but state that summer born request **MUST** [the objector's emphasis] be accompanied by medical evidence (page 2) – This is fallacious". She then quoted the part of the arrangements where this was found.

"Where the parent of a 'summer born child' (1st April – 31st August) wishes their child to start school in the autumn term following their fifth birthday, they will need to apply for a place at the correct time for the normal admission round for the following

academic year. Supporting evidence from relevant professionals working with the child and family stating why the child must be placed outside their normal age appropriate cohort must be submitted.”

17. The objector compared this with a later statement in the arrangements under the heading “Admission Outside of the ‘Normal Age Group’” which says:

“Parents may seek a place at a school outside of a child’s normal age group, for example if the child is gifted and talented or has experienced problems such as ill health. Any such request must be made in writing with an application setting out clearly the reasons with any supporting evidence from relevant professionals such as teachers or doctors.”

The objector considered that this showed a different level of evidence was being requested to support out of age group admission to other year groups and this discriminated against summer born requests.

18. The next part of the objection stemmed from the wording in the arrangements which says:

“The admissions authority will decide whether the application for a Reception place will be accepted or whether it will be treated as an application for a Year 1 place, the child’s normal age appropriate cohort.”

The objector said that it was not for the admission authority to decide whether the application for out of age admission to Year R was treated as being for Year 1 and referred page 6 of the DfE publication “Advice on the admission of summer born children for local authorities and school admission authorities”. This says:

“It is then the parent’s decision whether to delay their child starting school until the September after they turn five. The parent may also request that the child is then admitted outside their normal age group – to reception rather than year 1.”

19. The final part of the objection is that “the trust have not included that parents have the right to complain about these decisions.” This is based on the statement in the arrangements that “If the application for a Reception place is not accepted this does not constitute a refusal of the place and there is no right to an independent statutory appeal.”

20. In its response to the objection, the trust said that the objector had not applied for a place for an out of age child at any of the schools. Paragraph 3.3 of the Code says:

“Any person or body who considers that any maintained school or Academy’s arrangements are unlawful, or not in compliance with the Code or relevant law relating to admissions, can make an objection to the Schools Adjudicator.”

Whether or not the objector is personally affected by part of admission arrangement on which they are objecting is immaterial.

21. The trust said:

“We are fully conversant with the School Admissions Code and 2.17 of the Code is very clear in stating that Admission Authorities must make clear in their admission arrangements the process for requesting admission out of normal age group which, as a Trust, we believe we do. Paragraph 2.17 does not, however, stipulate what admission authorities must ask for.”

22. The trust continued by quoting paragraph 2.17A of the Code and saying: “We believe our admission policies to be clear in how we approach this matter.” It told me that “each request is considered on the basis of the circumstances of each case and in the best interests of the child concerned.” It described its view on when the education of children in their own age group may be appropriate and the process used to make these decisions in the schools.

23. The trust suggested that the objector may have misinterpreted some of the wording in the arrangements about whether decisions fell to the parent or to the trust. It also suggested that the objector was confused between the process of appealing against a decision not to offer a place in a year group and making a complaint against a decision not to agree to an out of age group application. Reference was also made to the contents of local authority’s booklet about admission to primary schools.

24. The admission of a summer born child into the reception year group in the September after their fifth birthday is one example of a child being admitted outside of their normal age group. The Code requires that the trust makes clear in its admission arrangements the process for requesting admission out of the normal year group. It does not, however, prescribe a particular process that must be used. The trust has to make two decisions; the first is what age group should a child be considered for admission into and the second is would admitting the child prejudice the provision of efficient education or the efficient use of resources. For admission into the ‘relevant age group’, that is the age group at which pupils are or will normally be admitted to the school, the prejudice decision is initially based on the PAN and the oversubscription criteria. This is explained on page 8 of the DfE Advice which continues “This process should be set out clearly for parents including what information and evidence the parents should provide and when.” The DfE Advice also says:

“It is reasonable for admission authorities to expect parents to provide them with information in support of their request – since without it they are unlikely to be able to make a decision on the basis of the circumstances of the case. This should demonstrate why it would be in the child’s interests to be admitted to reception rather than year one.”

25. The first part of the objection is that the arrangements say that evidence stating why the child must be placed outside their normal age group “must” be provided. This is found early in the arrangements, under the heading “Age of Admission”.

“Supporting evidence from relevant professionals working with the child and family stating why the child must be placed outside their normal age appropriate cohort must be submitted.”

I think it would be excessively pedantic of me to uphold this part of the objection solely on the grounds that the trust uses the word “must” to describe a reasonable expectation that information is provided so that it can make an informed decision on whether it would be in the child’s interests to be admitted to reception rather than year one. However, the arrangements as the objector notes go beyond asking for available information and stipulate that there must be evidence submitted from professionals working with the child and family. In this way the arrangements go beyond what is said in paragraph 2.17A of the Code and the DfE guidance by requiring evidence rather than information and by requiring it to be from “relevant professionals”. The only professional whose views the admission authority **must** take into account is the head teacher of the school concerned. The DfE Advice says:

“there should be no expectation that parents will obtain professional evidence that they do not already have. Admission authorities must still consider requests that are not accompanied by professional evidence.”

26. The objector contrasts the use of “must” twice when discussing the admission of summer born children to the reception year with what is said on the seventh page of the arrangements under the heading “Admission Outside of the ‘Normal Age Group’” where “must” is used once.

“Any such request must be made in writing with an application setting out clearly the reasons with any supporting evidence from relevant professionals such as teachers or doctors.”

The objector said that the above wording discriminated against summer born children saying: “They have seemingly separated the summer born request from that of others”. She implied that the level of evidence required to support requests for summer born children to be admitted to the reception year in the September after their fifth birthday was higher than required to support requests for out of age admission at other times.

27. There is nothing in the section “Admission Outside of the ‘Normal Age Group’” to suggest that it does not apply to summer born admission to reception as well as other year groups. Whether “must” is used once or twice in a sentence to describe the need for there to be evidence, it is clear to me that evidence is requested from both sentences. It would be clearer if the two parts of the arrangements were consistent in their wording or avoided the use of “must” altogether and explained that without supporting information decisions could not be made in the best interests of children and that while any existing evidence from relevant would be helpful there could be no requirement to secure such evidence.

28. The next part of the objection was that the arrangements say:

“The admissions [sic] authority will decide whether the application for a Reception place will be accepted or whether it will be treated as an application for a Year 1 place, the child’s normal age appropriate cohort.”

The objector said the decision to treat an out of age application for a reception place as an application for a Year 1 place was not for the admission authority. The trust suggested that the objector had misinterpreted this part of the arrangements saying:

“It is indeed for the Parent to decide - whether to accept that an out of age cohort consideration request has not been supported and therefore they need to either apply for a current Reception place, or whether to apply for their child to start school when compulsory school age is reached but in Year 1 (their age appropriate cohort) (also possibly considering that any such school of preference may be fully subscribed to their published admission number at this time by children who started school in the Reception year and have progressed forward to Year 1).”

29. That it is possible for such misinterpretations to occur suggests that the arrangements may not be clear. The arrangements do say “The admissions [sic] authority will decide whether the application for a Reception place will be accepted or whether it will be treated as an application for a Year 1 place”. The trust’s response is that it is for the parent to make that decision. The arrangements do not describe the trust’s position and so are not clear.

30. The trust referred to what is said in the local authority booklet on primary school admissions about these issues. What is said in a booklet that does not have to be published until 12 September 2021 cannot be used to justify not being clear on these issues in arrangements which the trust must publish by 15 March 2021. Furthermore, the Code requires that these matters are clear in the arrangements, not another document.

31. The last part of the objection was that the arrangements say in the section “Age of Admission”:

“If the application for a Reception place is not accepted this does not constitute a refusal of the place and there is no right to an independent statutory appeal.”

When in the section “Admission Outside of the ‘Normal Age Group’” it says:

“Parents have a statutory right to appeal against the refusal of a place at a school for which they have applied. However, this right does not apply if they are offered a place at the school but it is not in their preferred age group.”

The DfE Advice explains parents’ rights of appeal well:

“Parents whose request for delayed entry is refused have no statutory right to appeal this decision. (The purpose of the appeals process is to consider whether a child should be admitted to a particular school, not the year group into which they should be admitted.) Admission authorities should ensure parents are directed to the relevant complaints procedure.”

32. As I pointed out above, irrespective of the year group applied for, there are two decisions to be made when a parent requests admission outside of the normal year group. The first is whether the admission authority agrees to accept such an application. If a parent wishes to challenge that decision, then they should follow the trust's complaints procedure. If after accepting a request for admission outside of the normal age group a place is not offered on prejudice grounds, then parents may appeal that decision to the independent appeals panel which the trust is required to establish by its funding agreement.

33. It is clear that the objector has strong views about the admission of summer born children to reception classes and she is entitled to hold these views. The trust is also entitled to a view on when it may be in a child's best interests to be admitted out of their normal age group and the information (including any evidence available from relevant professionals) it will need to make decisions on these matters. My jurisdiction is limited to deciding whether the arrangements conform with the Code in making clear the process for requesting admission outside of the normal age group and in particular for summer born children starting school for the first time.

34. The trust suggested that the objector had "mis-interpreted" part of the arrangements. That is more likely if the arrangements are not clear. I have asked myself the following question – based on what is said in the arrangements would a parent of a summer born child who wanted their child admitted to reception in September 2023 rather than September 2022 know how to request this? I will repeat what the arrangements say in full:

"Where the parent of a 'summer born child' (1st April – 31st August) wishes their child to start school in the autumn term following their fifth birthday, they will need to apply for a place at the correct time for the normal admission round for the following academic year. Supporting evidence from relevant professionals working with the child and family stating why the child must be placed outside their normal age appropriate cohort must be submitted. The admissions authority will decide whether the application for a Reception place will be accepted or whether it will be treated as an application for a Year 1 place, the child's normal age appropriate cohort. If the application for a Reception place is not accepted this does not constitute a refusal of the place and there is no right to an independent statutory appeal."

35. This tells parents when to make their application. As for how, if parents are being told not to apply until the next normal admissions round, this will presumably be on the common application form (CAF) for the local authority where they live. It would be clearer if this were stated. What is missing completely is that the arrangements do not say who the information and any evidence in support of out of age group admission should be sent to and when this should be done by.

36. If the trust decides not to consider the child for a place in reception, that is the end of the application process. It is for the parent to decide if they would like to apply for a place in Year 1 at the school or not. The sentence about appeal does not make it clear that the refusal to accept an application for a place out of the normal age group is a matter for the trust's complaints process.

37. The process as described in the arrangements means that if the request to apply for a place in reception in the following academic year is refused, the normal age group might be fully subscribed, and no place may be available in what is by then an established year group. This possibility is recognised by the trust as quoted earlier:

“It is indeed for the Parent to decide - whether to accept that an out of age cohort consideration request has not been supported and therefore they need to either apply for a current Reception place, or whether to apply for their child to start school when compulsory school age is reached but in Year 1 (their age appropriate cohort) (also possibly considering that any such school of preference may be fully subscribed to their published admission number at this time by children who started school in the Reception year and have progressed forward to Year 1).”

38. I note that this is not the process recommended on page 9 of the DfE advice which suggests that the parent applies for their child’s normal age group at the usual time and submits the request for admission outside of the normal age group alongside that application. This allows the admission authority to make its decision on the request and inform parents of it while parents have more choice about what to do following the admission authority’s decision. If the request for out of age admission is agreed parents will be able to withdraw the application for the normal age group and reapply the following year (although they may still not be offered a place if the school is oversubscribed, and other children have higher priority in the oversubscription criteria). If the request is refused, then parents still have the choice proceeding with the application for the normal age group.

39. The trust pointed out that the DfE Advice is not statutory guidance. This is true, it has not been issued under any specific power of the Secretary of State to give such guidance. There is no question that an admission authority must slavishly follow the guidance; indeed, this would not be the case if the guidance were statutory guidance. However, the guidance is still advice from the Secretary of State and cannot simply be disregarded because of that difference in status. The advice has been promulgated in part in order to assist admission authorities by setting out a process to allow them properly and lawfully to consider requests for out of normal age group admission for summer born children. The Code requires that admission arrangements are fair. It seems to me that to include in the arrangements a process different to that in the DfE advice and which also has the effect of constraining parents’ options is not fair and so not in accordance with the Code.

40. I have reached the conclusion that based on what is in the arrangements, a parent would not have sufficient information to know how to request admission out of the normal age group for a summer born child starting at a school in the trust. The arrangements do not, therefore, conform with paragraph 2.17 of the Code.

41. I find the arrangements do provide sufficient information for parents to be able to request an application for a place outside of the normal age group at other times.

42. Paragraph 2.17A sets out some of the factors which admission authorities are required to take into account in making decisions about out of age group admission. It does not require them to be published in admission arrangements. However, the trust does

publish them in the arrangements and by requiring professional evidence they go beyond what is set out in the Code and indeed the DfE Advice.

43. For the reasons set out above I uphold the objection.

Other Matters

Matters applying to all schools

44. The arrangements begin with four pages of definitions and explanations of processes. 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.”

45. One of the headings is “Home address”. Paragraph 1.13 of the Code says:

“Admission authorities must clearly set out how distance from home to the school will be measured, making clear how the ‘home’ address will be determined and the point in the school from which all distances are measured. This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent.”

This section of the arrangements addresses the last requirement of paragraph 1.13 concluding “In all cases it is expected that the adult with whom the child is ‘ordinarily resident’ receives the child benefit for the child (where eligible).”

46. It is not a requirement of the child benefit system that the child is ordinarily resident with a parent for that parent to receive the benefit. It is possible for a child to live with one parent for the majority, or all, the school week or term while another parent receives the child benefit payments. To decide in “all cases” where a child lives on the basis of where child benefit is paid, could lead to a child being refused a school place when on the basis of where they actually live during the school week they would have been offered one. This would not be fair and so this does not conform with paragraph 14 of the Code.

47. When I raised this matter with the trust it said the arrangements included the words “where eligible” and this was in line with the local authority’s arrangements which the trust uses as a benchmark for lawful wording. Eligibility for child benefit must be established before it is decided which parent receives it. Eligibility is not the point; it is that the parent the benefit is paid to is not necessarily the parent whom the child lives with on school days. While the child benefit may be one factor in determining where a child lives, if as the arrangements say, it is taken “in all cases” to determine where a child lives, then unfairness can occur, and so this practice does not conform with paragraph 14 of the Code.

48. In the section on admission of children from overseas, there is reference to the ownership of a property in Essex and intended residence in it. This may not conform with *R v Greenwich London Borough Council, ex parte John Ball Primary School* (1989) 88 LGR 589 [1990] Fam Law 469 (the Greenwich judgement) which held that pupils should not be discriminated against in relation to admission to the school simply because they reside outside the local authority area in which the school is situated. Some of these schools are close to the county boundary with Thurrock and this provision in the arrangements would appear to discriminate against a family with a property in that local authority area.

49. In its response to me on this point the trust said “The section ‘Admission of children living overseas’ entirely mirrors that used by Essex County Council in their determined arrangements – the Local Authority within whose area the schools fall – and to whom we refer as a benchmark for being acceptable and lawful wordings.” If that is the case, then the local authority’s arrangements would also contravene the Greenwich judgement. The trust is the admission authority responsible for the arrangements which I am considering here and must revise the arrangements to address this issue.

50. One of the oversubscription criteria gives priority to children living in the “priority admission area”. The Code defines a “geographical area, from which children may be afforded priority for admission to a particular school” as a catchment area and requires that they are published as part of the admission arrangements. The responsibility for publishing admission arrangements falls to the admission authority, in this case the trust. This is found in paragraph 1.47 of the Code. The arrangements say:

“Parents can check in which school’s priority admission area their address is located (if any) using the online ‘Catchment Area Finder’ tool on the Local Authority website www.essex.gov.uk/admissions.”

I note that in this part of the arrangements the term ‘catchment area’ is used when ‘priority admission area’ is used elsewhere. This does not help the clarity of the arrangements.

51. After going to the link on the local authority website, it required three further clicks of the mouse to arrive at a page where a post code must be entered to proceed. After entering the post code of one of the schools I was told that postcode was in the priority admission area for that school. However, I was not able to find out the what the entire extent of the priority admission area was from this link.

52. In the case of St Mary’s where the priority admission area is described in the arrangements as “the Ecclesiastical parishes of Woodham Ferrers and Bicknacre” (the boundaries of which are unlikely to be common knowledge among parents) when I entered the school’s postcode into the ‘Catchment Area Finder’ I was told that the St Mary’s postcode was in the admission priority area for another school. Given the school’s proximity to the church, I would be surprised if it was not in the parish and hence the stated admission priority area.

53. The trust did not “feel this was an issue”. It said: “Parents are clearly advised as to where / how they can establish in whose priority admission area their address falls with the

website link being given to the 'Catchment Area Finder' tool on the Essex County Council website."

54. Whether called a catchment area or an admission priority area, it is part of the admission arrangements for each school. The trust as admission authority is required by the Code to publish its admission arrangements. I do not consider that providing an indirect link to another body's website which informs (sometimes unreliably) which school catchment area a postcode falls into meets that requirement. I find that the admission priority areas are not published by the trust and are not clear.

55. Paragraph 14 of the Code requires that arrangements are clear. In the section on multiple births there is the phrase "the Local Authority will ensure both twins are offered a place." The arrangements also say: "In the case of triplets or other multiple births, if the majority of children can be offered a place initially, the Local Authority will offer places to the remaining children." The local authority is not the admission authority for the schools, it is for the trust to make such decisions. When I raised this matter with the trust it said: "The Trust will amend this to read the 'Admission Authority'. This is purely an administrative oversight."

56. In the section headed "How to Apply" the arrangements state the PAN and then say:

"To apply for a school place for your child, you need to follow the procedures set out below:

For all year group applications including Reception – you must apply for your child's school place via Essex County Council's website: www.essex.gov.uk/admissions.

Once your application has been processed, you will receive a letter from Essex County Council informing you if a place is available or not (this can take up to 3 weeks). If a place is not available, you will be added to our waiting list."

The oversubscription criteria are then set out and the arrangements go on to say:

"The application process is in accordance with the co-ordinated scheme for primary admissions and involves completion of the Common Application Form – either online or by paper. Offers of places will be sent by Essex County Council on 19th April 2022. Where applications are made mid-year the criteria in this document shall apply.

The closing date for applications will be on 15th January 2022."

57. I considered that this section of the arrangements may be unclear and raised my concern with the trust, it disagreed that it was unclear.

58. The vast majority of applications for places at the school will be made as part of the normal admission round to reception. The deadline for applications and the date on which places are offered are mandatory. The law also requires these applications to be made through the local authority in which the child lives which is also the body responsible for

sending out offers of places. I have noted above that some of these schools are close to the local authority boundary and so applications for children resident in another authority could be expected. The arrangements say that applications must be made through Essex County Council who will also send out offers when in fact it may be another local authority.

59. I find that this section of the arrangements does not make clear that the timetable and process for the normal admission round and for admission at other times are different. They also give less emphasis to the statutory process through which the vast majority of children are offered places than to the non-statutory process which affects fewer children. Furthermore, the arrangements misdirect parents as to how applications during the normal admission round should be made and who offers of places will be made through. This section of the arrangements is unclear.

60. Paragraph 1.47 of the Code requires that admission arrangements are published once they have been determined. On 9 March 2021 I was unable to find the arrangements for Felmore Primary School on its website. The trust told me that unlike the arrangements for earlier years which were published under the 'Admissions' section of the website, they had been published under the 'Policies' section. I was told that they would be added to the 'Admissions' section "in order to ensure consistency for parents". I note that this had not been done by 7 April.

St Mary's Primary School

61. As a school with a religious character, St Mary's may use faith-based oversubscription criteria. These must conform with paragraph 1.37 of the Code which says: "Admission authorities must ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied."

62. The fourth oversubscription criterion reads "Parents actively involved at St Mary's Church, Woodham Ferrers or St Andrew's Church, Bicknacre**" and the associated note says "**Defined as monthly attendance at the place of worship, which will be supported by the clergy through the completion of the Supplementary Information Form". The use of a plural could suggest that both parents are required to worship. This would be unfair to single parent families and if just one parent is required to worship it would not be clear and so not conform with the Code. The trust recognised that not all children would have two parents actively involved in worship but said it did not feel this wording was unclear.

63. However, I consider that the wording is open to misinterpretation. In contrast to the other oversubscription criteria which begin "Children with ...", "Children living ...", "Children who ..." and "Children of ..." this and the other faith-based criteria begin "Parents actively ..." with no mention of children. It would be a simple matter to redraft these criteria to make them consistent with the other criteria and completely clear that it is children with one parent who worships at the required frequency who meet them.

64. The arrangements do not say how long monthly attendance at worship should have been sustained for in order to meet the fourth oversubscription criterion and so parents may not understand easily how this criterion may be met. When I raised this concern with the

trust it said: “Should there be more applicants with ‘monthly attendance at a place of worship’ than places available, then determination is based on straight line distance rather than length of time monthly attendance has been sustained.”

65. This misses the point that, without defining how long monthly attendance must be sustained, the arrangements give the same level of priority to a child whose parent may have attended worship monthly from September 2021 to December 2021 as to a child whose parent may have attended monthly for their whole life or another whose parent attended monthly for an indeterminate period some years ago. A parent who has worshipped monthly for their whole life could consider it unfair that a child living closer to the school whose parent had started to worship very recently had greater priority for a place than their child did. Any unfairness would be felt more acutely if the new worshipper stopped attending church after places had been offered.

66. Without stating how long monthly worship must be sustained for, parents will not know whether their worship meets the required level and unfairness could arise. To meet the requirements of the Code it would normally suffice to require monthly attendance for perhaps one or two years prior to the closing date for applications or for another clearly defined period. This determination will require the trust to set such a period and in doing so the trust will need to bear in mind that places of worship have at times been closed due to Covid-19 restrictions during the past year.

67. The same requirement for monthly attendance at worship appears in the fifth and seventh oversubscription criteria for members of other churches or faiths. As for the fourth criterion, to meet the requirements of the Code, the arrangements must be clear about for how long monthly attendance must be sustained at other churches or in other faiths. It is also necessary for the arrangements to be clear on what constitutes another faith. The trust took the view that this was unnecessary as it could complicate the arrangements by specifying particular faiths or beliefs. The trust has chosen to include this criterion and so must ensure it conforms with the Code and is clear and objective. This is a common criterion used for schools with a religious character and the requirements of the Code are often met by simply listing major world religions and ensuring the test for membership and practice in them is appropriate and in line with any guidance from the school’s religious authority.

68. The sixth oversubscription criterion is for “Children who would be best educated at this school because of pastoral, medical or social reasons***”. The associated note in the arrangements says “*** Consideration will be given alongside an independent report by a suitably qualified person.”

69. Paragraph 1.8 of the Code requires that oversubscription criteria are clear and objective. It is not clear what “best educated” may mean and how it is objectively decided. Paragraph 1.16 says:

“If admission authorities decide to use social and medical need as an oversubscription criterion, they **must** set out in their arrangements how they will define this need and give clear details about what supporting evidence will be

required (e.g. a letter from a doctor or social worker) and then make consistent decisions based on the evidence provided.

70. When I raised my concern with the trust that this criterion may not be clear, it said:

“The Trust asks parents via the Supplementary Information Form that if their application is based on exceptional medical, social or pastoral circumstances, that they (i.e. the parents) provide information including any other relevant professionals that have been working with their child. The Trust would look to see whether this demonstrates that St Mary’s is the only school to meet their child’s needs i.e. provide the ‘best education’ based on the information and circumstances declared.”

71. There is a discrepancy here between what is written in the arrangements and the trust’s response. If the criterion is intended for children where the school is the only school which can meet the child’s exceptional needs, that should be stated in the arrangements. It appears to me that this is a much higher test than “best educated” which could mean a range of things, from a match between a child’s interests and the curriculum strengths of the school, to the location of the school in relation after school care provision. The Code is clear in paragraph 1.16 that if admission authorities decide to use “social and medical need” as a criterion they must set out how they will define this need and give clear details about what supporting evidence will be required. The criterion adopted for St Mary’s is wider than that envisaged in the Code and the arrangements do not conform with the requirements for clarity as to supporting evidence. I find this criterion is not clear.

72. The arrangements say that a SIF is required for applications to be considered under criteria 2 and 4. Criterion 2 is for siblings and criterion 4 is for applicants whose parents are actively involved in two named churches. It is not clear if the SIF is also required to show that criteria 5 and 7 are met for children whose parents worship at other churches or in another faith.

73. The trust said this was an administrative error. It said that a SIF was not required for criterion 2 as details of siblings are provided on the common application form (CAF), but the SIF was required for criteria 4, 5 and 7. These are the faith-based criteria, in its response on the previous matter the trust referred to the SIF being used to collect information to support applicants under the sixth criterion, but did not include this in its clarification of when a SIF is needed. I will assume this is a further administrative error.

74. The trust did not provide me with a copy of the SIF; however, one is available on the website for St Mary’s. The requirements for SIFs are set out in paragraph 2.4 of the Code.

“In some cases, admission authorities will need to ask for supplementary information forms in order to process applications. If they do so, they **must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability. They **must not** ask, or use supplementary forms that ask, for any of the information prohibited by paragraph 1.9 above or for:

- a) any personal details about parents and families, such as maiden names, criminal convictions, marital, or financial status (including marriage certificates);
- b) the first language of parents or the child;
- c) details about parents' or a child's disabilities, special educational needs or medical conditions;
- d) parents to agree to support the ethos of the school in a practical way;
- e) both parents to sign the form, or for the child to complete the form."

75. The first page of the SIF asks for names, addresses and contact details of both the child's mother and the father including home, mobile and work telephone numbers and email addresses. It says: "If parents reside at different addresses, please indicate whether child's residence is with MOTHER or FATHER". It appeared to me that this could reveal details about the parents' marital status and that these details were unnecessary to make decisions about the oversubscription criteria.

76. The trust said the Code did not prohibit requesting details of both parents and that the address was relevant to the oversubscription criteria and so this did conform with paragraph 2.4.

77. Requesting details of both parents and asking if they share an address and who the child lives with will in many cases reveal details about parents' marital status and so is prohibited by the Code.

78. The CAF will provide details of the child's address but including it on the SIF may be necessary, along with the date of birth, to match the SIF to the CAF. It is the child's address that is used to make decisions about oversubscription criteria, not the address of a parent who the child may, or may not, live with. Nor are the telephone numbers and email addresses of parents necessary to apply the oversubscription criteria.

79. The next section of the SIF asks for details of siblings at the school. In its response the trust has said that this information is provided on the CAF and that the SIF is not required for applications to be considered against the second criterion. This question should not therefore appear on the SIF.

80. On the second page of the SIF after the parent has written down the name of the church they attend, the vicar or minister is asked to complete "the following section" yet the questions in the following section are asked as if to the parent "How long have you been worshipping at this church?" and "How would you describe your involvement at this church?" It is not, therefore, clear who should be answering these questions.

81. The trust was of the view that the vicar or minister would be sufficiently experienced to complete the form as intended, but it said it would change the wording if required. While vicars and ministers may deal with several SIFs each year, a parent may only complete one once. Parents need to be clear as to whether they are making a declaration about their

worship which the vicar or minister is being asked to endorse, or if it is for the vicar or minister to state the parent's level of worship. This is not clear.

82. There are four boxes to tick as answers to the question "How long have you been worshipping at this church?" They are: "Less than 6 months", "6 - 12 months", "1 – 2 years" and "Greater than 2 years". I have noted above that the period of time that monthly worship should have been sustained for in order to meet faith-based criteria, should be stated in the arrangements. A question is therefore necessary to elicit this information, but without a statement in the arrangements on the required period of worship, or how worship for different periods of time is taken into account the question as it stands bears no relation to the oversubscription criteria. The trust agreed with this point.

83. The options provided for answers to the question "How would you describe your involvement at this church?" are: "At the heart of the church (we worship regularly at least fortnightly)", "Committed to the church (we worship regularly at least monthly)", "Known to the church (we attend but not regularly)" and "Not known to the church". The criteria only require monthly worship, therefore any other frequency of worship is irrelevant when making decisions about oversubscription. This question should not be asked when the subsequent box is for the vicar or minister to sign to confirm monthly worship which is all that is necessary. The trust also agreed with this point.

84. The vicar or minister is also provided with a space for "Comments". The frequency of worship (and to meet the requirements of the Code, the period of time of worship) are all that is required to decide if the faith-based criteria are met. Other comments should not be asked for.

85. The final part of the SIF is a box headed "Other Reason for Application to St. Mary's C of E Primary School" in which parents can state "Reasons for applying to this school (if your application is based on exceptional medical, social or pastoral circumstances, please provide information here, including any other relevant professionals that have been working with your child)" I have set out above my concerns with the vagueness of the criterion "Children best educated at the school because of pastoral, medical or social reasons" compared to the wording on the SIF which requires such reasons to be "exceptional". The trust's response to my enquiries reveals that the test for meeting this criterion is that St Mary's is "the only school to meet their child's needs". Once the trust has clarified the criterion, the SIF will need to be revised accordingly.

86. While the local authority did not take up the opportunity to comment on the matters relating to St Mary's the diocese did. It explained that other pressures on the school provided a context where "the details of the Admissions Policy and its oversubscription criteria and SIF was not thought a priority". The diocese went on to say that the matters raised were "helpful and will assist the Trust in the future revision of the school's policy and supporting documents."

Summary of Findings

87. I find that the arrangements do not make clear the process for requesting admission outside of the normal age group for summer born children when they are starting school. This does not conform with paragraph 2.17 of the Code. The arrangements require evidence to be provided from a “relevant professional” in support of requests for admission outside of the normal age group for summer born children. This exceeds what is found in paragraph 2.17A of the Code. I therefore uphold the objection.

88. I also find that the arrangements do not conform with the Code in the other ways detailed in this determination.

Determination

89. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2022 determined by Berlesduna Academy Trust for Whitmore Primary School and Nursery, Merrylands Primary School, The Willows Primary School, Cherry Tree Primary School, Crays Hill Primary School, Felmore Primary School, Fairhouse Community Primary School and St Mary’s Church of England Primary School in Essex.

90. 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.

91. 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: 12 April 2021

Signed:

Schools Adjudicator: Phil Whiffing