



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: ADA3763**

**Objector: a parent**

**Admission authority: Chancery Education Trust for Darrick Wood Infant & Nursery School in Orpington, Kent**

**Date of decision: 29 April 2021**

## Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2022 determined by Chancery Education Trust for Darrick Wood Infant & Nursery School in Orpington and the local authority area of the London Borough of Bromley.

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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised within two months except that the revision to the first priority regarding all previously looked after children must be revised by 1 October 2021 to meet the requirements of the School Admissions Code in force at that date.

## 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 parent (the objector) about the admission arrangements for September 2022 (the arrangements) for Darrick Wood Infant & Nursery School (the school), a primary school for children aged three to seven. The objection is that the information provided on the admission of summer born children does not comply with the Code.

2. The parties to this objection are:
  - 2.1. The person who made the objection (the objector);
  - 2.2. Chancery Education Trust which is the admission authority for the school (the trust); and
  - 2.3. The London Borough of Bromley which is the local authority for the area in which the school is situated (the local authority).

## Jurisdiction

3. The terms of the academy agreement between the trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by Chancery Education Trust on that basis. The objector submitted her objection to these determined arrangements on 16 March 2021. The objector has asked to have her identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of her name and address to me. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. 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 School Admissions Code (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;
  - c. the objector's form of objection and her comments on the responses by the other parties;
  - d. 'Advice on the admission of summer born children: for local authorities and school admission authorities' published by the Department for Education (DfE) in September 2020 (the DfE advice) and referred to in the objection;
  - e. the responses of the trust and the local authority to the objection and the other matters I have raised including further information in response to my enquiries; and
  - f. information available on the websites of the Department for Education, the trust, the local authority and the school.

## The objection

6. The objection is that the information provided in the arrangements on the delayed admission of summer born children is inaccurate, misleading and does not comply with paragraphs 2.17 and 2.17A of the Code. The term summer born children relates to all children born between 1 April and 31 August. These children have the right to start in reception year (YR) in the September of the school year following their fourth birthday and during the course of which they will reach five but they do not reach compulsory school age until the following 31 August. Parents do not have to send their summer born child to school until the beginning of the autumn term following the child's fifth birthday. Parents can also seek to have their child admitted to YR rather than Y1 at that point. Paragraph 2.17 of the Code says, "Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group." It is the information on requesting admission out of the normal age group in the arrangements to which the objection relates.

7. There are six aspects included in the objection. The objector cites:

- 7.1. the need for "exceptional circumstances" for the trust to consider a request for admission to YR when a summer born child has reached compulsory school age; and that the trust will consider the "impact on the school" but not the best interests of the child when the trust makes a decision on the admission of a summer born child (whose parent is considering delaying their child's start at school until the child reaches compulsory school age) to YR as opposed to Y1;
- 7.2. the requirement for parents to provide documentation that their child "has learning delay or difficulties and their social maturity is well below that of his or her peers";
- 7.3. that the arrangements do not say that the trust will explain its decision and how it is made in the best interests of the child or that there is a right to complain about the decision making process;
- 7.4. a quotation from an observation published by the Institute of Fiscal Studies being used in a misleading way;
- 7.5. a concern that incomplete information is included on what may happen when a parent needs to apply for another school; and
- 7.6. the policy in so far as it relates to summer born children being unnecessarily negative in its tone and thus that it would be off-putting to a parent considering the options.

8. The objector refers to paragraphs 2.17 and 2.17A of the Code and the DfE advice in her objection. The objector also refers to misquotes, missing information and to matters not being clear in the arrangements. I therefore consider that paragraph 14 of the Code is

relevant. Paragraph 14 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.”

## Background

9. The school is what is commonly called an infant school in that children attending the school normally leave aged seven. The majority of children will go on to Darrick Woods Junior School which mainly educates children between the ages of seven and eleven.

10. I explained above what is meant by the term ‘summer born child’ and that the parents of such a child have the right not to send their child to school until the September following the child’s fifth birthday which is a year after the September from which the child has the right to attend school. If a parent does decide to delay the child’s start at school until this point, then the parent has the right to request that the child is admitted to YR rather than Y1, Y1 being the year group most other children in the child’s age group will be beginning.

11. Advice on this matter has been issued by the DfE with the most recent advice issued in September 2020 which explains, “This is advice from the Department for Education. It is non-statutory, and has been produced to help admission authorities understand the framework within which they must operate when responding to parental requests for summer born children to be admitted out of their normal age group. It will help admission authorities fulfil the duties imposed on them by the statutory School Admissions Code.”

12. I asked the trust for further information following the objection. The trust did not respond to my specific points but provided a revised proposed set of arrangements and so by these means appeared to acknowledge that revision was required in order for the arrangements to comply with the Code. I cannot comment on the revised proposed arrangements provided to me which addressed many of the concerns raised by the objector but welcome the willingness of the trust to address any matters that do not comply with the Code. This determination is based on the arrangements as determined by the trust on 25 February 2021 as these are the arrangements for which I have jurisdiction under sections 88H and 88I of the Act.

## Consideration of Case

13. The objector referred to paragraphs 2.17 and 2.17A of the Code in her objection. These paragraphs are under the heading, “Admission of children outside their normal age group.” Parents can request that their child is admitted in advance of the normal year of admission as well as later and ask for a child to be admitted outside their normal age group not just at the beginning of their school career but at other points also. In this case, however, I am considering only the question of what the arrangements say about the delayed admission of a summer born child to YR when their normal year group would be Y1. Paragraph 2.17 says in relation to this: “Parents may seek a place for their child outside

of their normal age group, for example, if the child...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.” This clearly states that there are two distinct but related elements:

13.1. parents have the right not to send their summer born child to school until the September following their fifth birthday; and

13.2. admission authorities must clearly state the process for requesting admission outside their normal age group.

14. These matters are addressed in the arrangements in five paragraphs under the heading, “Delayed (summer born) applications”. These paragraphs deal with the process for requesting admission outside the normal age group but do not actually state that parents have the right to delay the admission of their summer born child although this is made implicit by virtue of the information included about requesting admission outside the normal age range. That said, I consider that the arrangements contain a certain amount of ambiguity and this does not comply with the requirement of paragraph 14 of the Code to be clear.

15. I will now consider if the arrangements make clear the process for parents wishing to request admission out of the normal age group as required by paragraph 2.17. The arrangements say, “The application must be made in writing by the child’s parent/carers to the Headteacher or Chair of Governors. The request must be supported by documentation confirming that the child has learning delay or difficulties and their social maturity is well below that of his or her peers. Parents/Carers must complete and return the form “Request for admission outside of a child’s normal age group” which is available online at [www.darrickwoodinfant.co.uk](http://www.darrickwoodinfant.co.uk). The completed form must be returned to Darrick Wood Infant & Nursery School.” It is not clear to me if the form is sufficient to meet the requirement to make the request in writing or if something else is required as well. However, I could not find this form on the school’s website and so asked the trust to provide it. The trust did not provide the form to me or comment on this matter in its response to my enquiries and at time of writing the form still does not appear to be available on the school’s website so the process for requesting admission outside the normal age group is not clear.

16. Paragraph 2.17A of the Code imposes further requirements on the consideration of applications for admission outside the normal round. It says, so far as is relevant here, “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.” The

Code does not require an admission authority to set out in its information details of the process it will follow once an application for an out of normal year application is made (as distinct from the process parents have to follow to make such an application). Nor does the Code require an admission authority to set out in its arrangements the factors they will take into account in making those decisions.

17. In this case, the admission authority has chosen to include in its arrangements quite a lot of information about how it will make its decision and what it will take into account in making that decision. The relevant part of the arrangements says, “The Headteacher, the Trust and the school’s Local Governing Board will consider applications for delayed entry in exceptional circumstances, taking account of the needs of the child and the impact on the school.”

18. The first issue that arises here is, as the objector has identified, the reference to “consider[ing] applications.... in exceptional circumstances”. It is not the admission authority’s right to choose to consider such an application only in exceptional circumstances. All parents of summer born children have the right to make a request and all requests must be considered. That is not to say that all such requests must be agreed, of course. These arrangements could be read as suggesting that parents do not have the right to make a request, which they do have, and this makes the arrangements unclear and so not compliant with the Code in this regard.

19. The arrangements also say that “the impact on the school” will be taken into account when the trust makes its decision. The objector said that this is not appropriate as being summer born, according to the DfE guidance, is sufficient for the request to be considered. However, “the impact on the school” is what I understand the trust to say it will take into account when considering a request (as opposed to when making a decision whether to consider a request), although this is not entirely clear to me.

20. The Code does not require that arrangements say what will be taken into account when the admission authority makes a decision on a request, rather it requires that the best interests of the child are the basis for such decisions. The trust chose to say that it will take account of the “needs of the child and the impact of the school” when making its decision and chose not to say that the decision will be made in the best interests of the child. Again this introduces ambiguity as it could appear that the best interests of the child will not be considered (best interests being slightly different from the needs of the child). It would not be unreasonable for the school to consider the “impact on the school” as this would be part of the circumstances of the case, which the Code says must be taken into account. As the DfE advice explains “It is possible that different admission authorities may come to different conclusions and do so for good reasons...Some schools may be more equipped to support a particular summer born child’s needs if he or she starts school before compulsory school age than others.” This may be what the admission authority is referring to in its reference to “impact on the school”. However, this is not clear and overall the terminology the trust has chosen to use renders the arrangements unclear and so not compliant with the Code in this regard.

21. The second aspect of the objection is that the arrangements say that a request of admission outside the normal year of admission, “must be supported by documentation confirming that the child has learning delay or difficulties and their social maturity is well below that of his or her peers.” I have added underlining for emphasis. The Code does not suggest that such evidence must be provided in order to make an application for admission outside the normal age group. The DfE advice, referred to by the objector actually says “In some cases, parents may have professional evidence that it would be appropriate for them to submit this, for example, when a child receives support from a speech and language therapist. However, 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. In such cases the supporting information might simply be the parent’s statement as to why they have made their request. A lack of professional evidence, or limited evidence, does not mean that requests should be refused outright.” As the wording used in the arrangements says that documentation must be provided, this implies that such information is essential. In my view there is no basis for this requirement and it is at odds with the rights set out in paragraph 2.17 and hence not in conformity with the Code.

22. The third aspect of the objection is that the arrangements do not say that the trust will explain its decision and how it is in the best interests of the child or that there is a right to complain. Paragraph 2.17 of the Code says, “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.” There is no requirement in the Code that the admission authority should state in its arrangements that it will do this; the requirement is simply that it should set out its reasons clearly when it has made its decision at the appropriate time. I find no breach of the Code requirements in this regard.

23. The objector recognises that paragraph 2.17B of the Code explains that parents have the right of appeal against the refusal of a school place, but not if a place is offered and “it is not in their preferred age group.” Therefore, a parent of a summer born child could delay the admission of their child until the September after the child is five and then apply for a place in YR and the school, having taken the necessary steps, refuse a place in YR and offer one in Y1 and there is no right of appeal. The objector says that the trust should make it clear that there is the right to complain and that information on this should be provided in the arrangements. The objector refers to the DfE advice which explains the ways in which a parent could complain and says, “admission authorities should ensure that parents are directed to the relevant complaints procedure.” This is not the same as saying that directions to the relevant complaints procedure must be included in the admission arrangements because there is no requirement in the law or Code that this matter must be covered in the admission arrangements. Therefore the arrangements meet the requirements of the Code in this regard.

24. This fourth aspect of the objection concerns the inclusion in the arrangements of a quotation from an observation made on the website of the Institute of Fiscal Studies (IFS). The arrangements include the link to the observation. The quotation in the arrangements is, in full: “We know that, on average, deferred entry is not in the interests of summer born

children. IFS research has compared the performance of children who start school across areas of England which operate different admissions systems. We find that deferred entry to school does not close the gap in educational attainment between those born at the start and end of the academic year. In fact, on average, those born later in the year benefit slightly from starting school at the beginning of the academic year with their older peers, rather than joining them up to a year later. This is because the benefit of additional time in school more than outweighs the disadvantage of starting school slightly younger.”

25. The objector considers that the quotation amounts to “a fundamental misquote” of the research and argues that deferring, as referred to in the quotation, may mean a child starting at Christmas or Easter rather than September, and so missing part of the school year rather than delaying to the following September and then starting, potentially, in YR and so not missing any part of a school year.

26. In this case I am not considering the accuracy or otherwise of the research undertaken and the conclusions made, but whether the research and the observation upon it was properly represented in the arrangements and so the potential effect on the clarity of the arrangements. The quotation in the arrangements is largely talking about deferred entry (by which I mean starting school at any point up to the beginning of the final term of the academic year) and not delayed entry until a later year. As this section in the arrangements is about delayed entry, this may make the arrangements less clear. However, the quotation also refers to “joining [their peers] up to a year later” which could imply, because ‘up to a year later’ is only possible by joining in the following September, that this is referring to delayed entry. Given the focus on deferred entry in the section quoted, rather than delayed entry, and the ambiguity of the section itself, I think that the use of the quotation makes the arrangements less clear and could potentially mislead parents. This is unhelpful.

27. The fifth part of the objection concerns the information in the arrangements which says, “Parents/Carers also need to be aware that when a child is taught out of cohort this may not be accepted by any new school applied for later on, including at secondary transfer.” The objector recognises that this statement is accurate but refers to the DfE guidance which says, “Admission authorities must consider these requests in the same way as the original request...Unless there are sound educational reasons to do otherwise, the assumption should be that children remain outside their normal year group (that is, in the year which they have been educated so far).” The objector is therefore saying that by providing what she considers to be partial information the arrangements are misleading.

28. Of course, these are the admission arrangements for the school and no child applying to join YR will have previously attended primary school. That means that for the application of the arrangements it cannot be that any child has been previously educated out of their normal age group. On that basis, it is arguable that there is no need to mention this and there is certainly no Code requirement to set out what might happen when a child moves on from the school at which a place is being sought. I assume that it has been included as it will be pertinent when the child leaves the school and parents need to apply for another school and so it is provided to inform a parent’s decision. There is no need for the admission arrangements to address the later implications (by which I mean the



implications for when a child comes to leave Darrick Wood Infant School) of delayed entry. The form of words which the admission authority has chosen to include here do not relate to admission to the school and I make no formal finding on their use but note that they do appear to provide partial information.

29. The sixth part of the objection is that the section in the arrangements on delayed entry is “worded in such a way that it comes across very negatively. Whilst some of this is factually correct, taken together it creates a generally negative tone to applying for a reception start at compulsory school leaving age. It would suggest the school is not supportive of this approach.” The objector also brought my attention to various phrases used in the section, as explored above, which she believes would mean that a parent, not familiar with the guidance would be, “very put off from applying for this school.”

30. I will not comment specifically on this aspect of the objection as it does not pertain to any breach of the Code except in the ways that I have already covered above.

## Other matters

31. Having considered the arrangements as a whole it appeared to me that the following matters may not conform with requirements of the Code and so I brought them to the attention of the trust. These matters were (with the relevant paragraph of the Code in brackets) as below.

32. The first priority in the arrangements is: “Children Looked After (Children in Public Care including “all adopted children who were previously looked after”).” Note 1 provides definitions of what is meant. However, the terminology used in the priority itself is unclear. This is because of the use of the term “all adopted children” could give the impression that that this includes children previously in state care outside of England who were later adopted. This would not be permitted under the current Code and this might not be the intention of the admission authority but it is not clear (14 and 1.7).

33. However, I also note that the Government has consulted recently on a new Code which would give children adopted from state care outside England the same level of priority as children who have been previously looked after in England. If a new Code is adopted with this requirement then the trust, as all admission authorities, will need to vary its arrangements to comply with the Code as permitted by paragraph 3.6 of the Code. In short, whether or not the current Code is superseded, the existing arrangements will need to be changed. It would not be sensible to require the trust to change arrangements only for further revisions then to be required. Any new Code is not likely to come into effect until 1 September 2021. In the light of these circumstances I require the amendment to this aspect of the arrangements to be made by 1 October 2021 by which time it will be clear whether or not there is to be a new Code.

34. The notes to the first priority also say, “These children must still be “looked after” when the child starts school unless (b) applies.” By (b) the note is referring to previously looked after children. The term ‘previously looked after children’ is defined in the Code as

“children who were looked after, but ceased to be so because they were adopted (or became subject to a child arrangements order or special guardianship order).” A child who was looked after but ceased to be looked after for any other reason, such as returning to the care of his or her parents, is not included in the definition of previously looked after children and so not entitled to be included in the priority afforded to previously looked after children.

35. My concern is that paragraph 2.12 of the Code explains that “An admission authority must not withdraw an offer unless it has been offered in error, a parent has not responded within a reasonable period of time, or it is established that the offer was obtained through a fraudulent or intentionally misleading application.” It does not appear that any of these circumstances apply to a child who was offered a place when looked after and for whom the place was accepted but who was no longer looked after at some point between the place being offered and the start of the school year. The arrangements do not comply with the Code in this regard (14 and 2.12).

36. The notes regarding home address say, “It is expected that the applicant and pupil will still be resident at the same address when the child starts school.” The closing date for primary school applications is 15 January for a place that September and offers of places are made on primary National Offer Day which is usually 15 or 16 April for a place that September. It is entirely reasonable for admission authorities which use where a child lives as part of their oversubscription criteria to satisfy themselves of the veracity of the address given. However, if a place is offered and accepted it is not reasonable to withdraw the offer of the place simply because the family moves at some point between the acceptance of the offer and the child’s beginning school. I should add that this is different from any provisions in admission arrangements which prohibit the use of temporary addresses purely to gain a school place or the fraudulent use of false addresses. These matters would fall squarely within the scope of paragraphs 2.12 and 2.13 which set out the circumstances in which offers may be withdrawn. The arrangements for this school go beyond this and do not comply with the Code in this regard (14 and 2.12).

37. The second priority is “Siblings - Children who have a brother or sister at the preferred school at the beginning of their first term.” Note 2 provides a definition of sibling and also says, “The sibling criteria operates across linked infant and junior schools as they are deemed as Primary Schools that provide primary education (section 5 of Education Act 1996) if at the time of admission their older sibling will be on roll of the Junior School or will transfer from Year 2 into the Junior School in the September.” I understand the “preferred school” to mean Darrick Woods Infant School but this is not clear. In addition the notes refer to a linked junior school or linked junior schools without naming it or them. Paragraph 1.12 of the Code says, “Some schools give priority to siblings of pupils attending another state funded school with which they have close links...Where this is the case, this priority must be set out clearly in the arrangements.” This priority is not set out clearly in the arrangements and so the arrangements do not comply with the Code in this regard (14 and 1.12).

38. The fourth priority is proximity of the home to the school; it is not stated that children who live closer to the school have a higher priority for admission; and this makes the arrangements unclear (14).

39. The arrangements do not include information required by the Code regarding:

- a. the provision of a tie-breaker (1.8);
- b. the determination of the home address 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 (1.14);
- c. maintaining and ordering a waiting list (2.14); and
- d. admission of children below compulsory school age and deferred entry to school including the right to attend part time (2.16).

40. The governing board has conveyed to me its intention to address all these matters and this is welcomed so I will not discuss them further other than to make clear that the Code requires that the arrangements be amended to address the points set out here.

## Summary of Findings

41. I have found that in relation to the admission of summer born children the arrangements do not comply with paragraphs 14, 2.17 and 2.17A of the Code and I therefore partially uphold the aspects of the objection where the requirements of the Code have not been met. There are other matters as described above which do not comply with the Code. The Code requires the trust to revise the arrangements to address these matters and I note that the trust has already produced revised proposed admission arrangements which are intended to make sure that the requirements of the Code are met.

## Determination

42. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2022 determined by Chancery Education Trust for Darrick Wood Infant & Nursery School in Orpington and the local authority area of the London Borough of Bromley.

43. 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.

44. 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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised within two months except that the revision to the first priority

regarding all previously looked after children must be revised by 1 October 2021 to meet the requirements of the School Admissions Code in force at that date.

Dated: 29 April 2021

Signed:

Schools Adjudicator: Deborah Pritchard