



Office of the Schools Adjudicator

Determination

Case reference: ADA3802

Objector: A parent

Admission authority: Southampton City Council for the community and voluntary controlled primary schools in its area

Date of decision: 28 July 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 Southampton City Council for its community and voluntary controlled primary schools.

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 by 1 November 2021.

The Referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a parent (the objector), about the admission arrangements for September 2022 (the arrangements) for the community and voluntary controlled primary schools (the primary schools) for which Southampton City Council is the admission authority. The objection is to the information provided regarding the admission of summer born children to reception year (YR).

2. The parties to the objection are:

- 2.1. the parent who has made the objection (the objector);
- 2.2. Southampton City Council as the admission authority for the community and voluntary controlled schools in its area (the local authority); and
- 2.3. the Diocese of Winchester (the diocese) in its capacity as the religious authority for the voluntary controlled schools in the local authority area with a Church of England character.

Jurisdiction

3. These arrangements were determined under section 88C of the Act by the local authority which is the admission authority for the primary schools. The objector submitted his objection to these determined arrangements on 6 March 2021. The objector asked to have his 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 his 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 local authority at which the arrangements were determined;
- b. a copy of the determined arrangements for the primary schools;
- c. the objector's form of objection, supporting information and further information provided including in response to my enquiries;
- d. the local authority's comments on the objection and information provided in response to my enquiries;
- e. "Guidance on the education of children outside normal age group" dated February 2018 published by the local authority (the local authority guidance);
- f. guidance provided by the Department for Education (DfE):
 - a. 'Advice on the admission of summer born children for local authorities and school admission authorities' published September 2020 (the DfE guidance for admission authorities); and

- b. 'Summer Born Children Starting School: Advice for parents' published September 2020 (the DfE guidance for parents);
- g. admissions guidance provided by the diocese to admission authorities for schools with a Church of England character; and
- h. information available on the websites of the DfE and the local authority.

The Objection

6. The objection is that the information provided in the arrangements on the delayed admission of summer born children 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. Summer born children have the right to start in 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. A summer born child reaches compulsory school age at the beginning of the autumn term following their fifth birthday. Parents who decide to delay the admission of their summer born children until this point can request that their child admitted to YR rather than year 1 (Y1) at that point. It is the information in the arrangements on requesting admission out of the normal age group to which the objection relates and as it pertains to summer born children starting school. The emphasis of the objection is to the local authority guidance referred to in the arrangements which the objector describes as "outdated and irrelevant" and "incorrect".

Other Matters

7. 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 local authority. These matters were (with the relevant paragraph of the Code in brackets) as below.

- 7.1. The definition of looked after children is different to that provided in the Code and this may make the arrangements unclear (14 and 1.7).
- 7.2. The criterion for those who may meet the faith criterion for voluntary controlled schools may not be clear (14, 1.6 and 1.37).
- 7.3. The supplementary information form (SIF) does not appear to be published; it is part of the admission arrangements and must be published with the arrangements (1.47).
- 7.4. The information on the right of parents to defer the admission of their child until the child has reached compulsory school age may be unclear (14 and 2.16b).

7.5. The information on the right of parents to choose for their child to attend part time until their child reaches compulsory school age may be unclear (14 and 2.16c).

8. I have therefore used my powers under 88I of the Act to consider these matters.

Background

9. There were 14 community and voluntary controlled primary schools admitting children to YR when the local authority determined the admission arrangements for 2022. Three of the 14 schools are voluntary controlled schools and have a Church of England character.

10. I explained above what is meant by the term 'summer born child' and the rights of parents in these circumstances. The DfE guidance for admission authorities was issued in September 2020 (replacing previous guidance) and 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."

11. The DfE guidance for parents was also issued in September 2020 and said it was for "parents and carers who are considering delaying their summer born child's admission to school. It is intended to help them decide what would be best for their child. It also provides information about the options available, and about how to arrange delayed admission." This guidance said, "In September 2015, we committed to amend the school admissions code so that summer born children can automatically be admitted to a reception class at the age of five where that is what their parents want, and can remain with the cohort with which they are admitted throughout their education. We remain committed to making that change when a legislative opportunity is available."

12. The oversubscription criteria in the admission arrangements for the primary schools are, in summary:

- 1) Looked after and previously looked after children
- 2) Children with a child protection plan or similarly at risk
- 3) Children with a sibling at the school
- 4) Children with a medical or psychological need to attend a particular school
- 5) Children eligible for the service premium
- 6) Children living in the catchment area for the school

- 7) For voluntary controlled schools only: "Children whose parents are applying for their child to attend a Church of England voluntary controlled school on denominational grounds"
- 8) Distance of the home from the school with children living nearest to the school given priority

Consideration of Case

13. Paragraph 2.17 of the Code says, "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."

14. The relevant section in the arrangements says, "Parents of summer-born children, that is children born between 1 April and 31 August, may, in addition, choose to send their child to school in the September following their 5th birthday and may request that their child is admitted out of their normal age group to reception year rather than Year 1. Any parent wishing to request for their summer born child to start school outside their normal age group should read the 'Guidance on the education of children outside normal age group' document available on the Southampton City Council website, which explains the procedures that need to be followed."

15. The objector said that the local authority guidance is part of the arrangements as "it is clearly referenced, and I have evidence of it being used to make these decisions. Therefore, in practice, it is very much, part of the policy."

16. I asked the local authority if the guidance referred to was part of the arrangements. The local authority told me that it was not part of the arrangements but acknowledged that the process for requesting admission out of the normal year of admission was in the guidance, not the arrangements. The arrangements determined by the local authority at its meeting on 9 February 2021 did not include the local authority guidance. I therefore consider that the guidance is not part of the arrangements. It is therefore the case that there is no clear explanation in the arrangements of the "process for requesting admission out of the normal age group." The arrangements therefore do not comply with paragraph 2.17 of the Code in this regard and I uphold the objection. The local authority will need to amend the arrangements so that they do comply with paragraph 2.17.

17. The bulk of the objector's complaint is about misleading and out of date information in the local authority's guidance. However, my jurisdiction is only for the arrangements and so I cannot consider the guidance as it is not part of the arrangements.

Consideration of other matters

18. I have listed above other matters which came to my attention when I saw the arrangements. I will consider them below in the same order.

Looked after and previously looked after children

19. The first criterion in the oversubscription criteria is: "Children who are currently, or have previously been in care (Looked After and Previously Looked After Children)." A definition is provided which says, "Looked After Children are those who are in the care of the Local Authority."

20. The definition for looked after children in the Code is: "A 'looked after child' is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions (see the definition in Section 22(1) of the Children Act 1989) at the time of making an application to a school." This is not the same as that provided by the local authority and this makes the arrangements inaccurate and unclear. Paragraph 14 of the Code requires arrangements to be clear so the arrangements do not meet the requirements of the Code in this regard.

Faith criterion

21. The local authority is the admission authority for the voluntary controlled schools in its area. There is one criterion in the oversubscription criteria which is relevant only to voluntary controlled schools. This criterion says, "Children whose parents are applying for their child to attend a Church of England voluntary controlled school on denominational grounds." The definition provided says, "Denominational Grounds: Evidence of regular church attendance at services held by the Church of England or a local ecumenical partnership (as defined in the school's prospectus) must be certified by the vicar or someone else of authority in the church, using the Local Authority's Supplementary Information Form (SIF) which can be found on the council website, alongside this policy. "Regular" is defined as "attending worship services at a Church of England church or local ecumenical partnership at least twice a month for the previous two years before the deadline for admissions set by Southampton City Council." The definition helpfully provides a definition of 'regular' and that any Church of England church would fulfil the criterion. However, the definition does not make it clear:

- 21.1. worship at which ecumenical churches would meet the criterion; and
- 21.2. whose attendance would fulfil the criterion. As written, the definition could be interpreted to mean the child, a parent or some other person.

22. Paragraph 14 of the Code requires that arrangements are clear, paragraph 1.8 requires oversubscription criteria to be clear and paragraph 1.6 says, "The admission authority for the school must set out in their arrangements the criteria against which places will be allocated at the school when there are more applications than places and the order in which the criteria will be applied." This does not appear to be the case here as it is

necessary to look at the relevant school's prospectus in order to understand the criterion. In addition, 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 meet the requirements of the Code in this regard.

23. I looked at the information on the webpage for one of the voluntary controlled schools (St Mary's Church of England Voluntary Controlled Primary School which I will refer to as St Mary's) and could find no prospectus or any other explanation for attendance at what ecumenical churches, if any, would fulfil the criterion. In fact, I or any other interested party should not have to look at a voluntary controlled school's website in order to understand its admission arrangements as the requirement is that the admission arrangements are published on the website of the admission authority.

24. I asked the local authority and the diocese for its comments on this matter and the local authority expressed its intention of addressing these matters in discussion with the diocese. The local authority also provided a copy of the SIF and this states that it is a parent's regular attendance at worship which is necessary to meet the criterion; this needs to be clear in the oversubscription criterion.

The supplementary information form

25. The arrangements say, as above, to use a SIF to provide evidence of regular church attendance. Paragraph 2.4 of the Code permits the use of a SIF, "in order to process applications." The SIF is part of the arrangements but it was not clear to me how to find the SIF on the local authority's website. The local authority provided a link for me to reach the SIF but it remained unclear to me how a parent would find the SIF from the website. Indeed, taking the same example as above, the local authority website said that a SIF was not required for St Mary's or any of the other voluntary controlled schools in the local authority's area. This makes the arrangements internally inconsistent and unclear and not compliant with the Code.

Information on the right of parents to defer the admission of their child until the child has reached compulsory school age

26. Paragraph 2.16b) of the Code says, "The [admission] authority **must** make it clear in their arrangements that, where they have offered a child a place at a school:

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".

27. The arrangements say, "Flexibilities exist for those parents who do not feel that their child is ready to start school in the September following their fourth birthday. It is possible for them to:...

- Request to defer their child's entry 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. This should be negotiated with the headteacher of the allocated school."

28. The wording in the arrangements implies that parents may request such a deferment when parents have the right to defer the admission of their child. The arrangements do not comply with the Code in this respect.

Information on the right of parents to choose for their child to attend part time until their child reaches compulsory school age

29. Paragraph 2.16c) of the Code says, "The [admission] authority **must** make it clear in their arrangements that, where they have offered a child a place at a school:

- 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."

30. The arrangements say "Flexibilities exist for those parents who do not feel that their child is ready to start school in the September following their fourth birthday. It is possible for them to:...

- Request part-time admission to the allocated school from the September following their child's fourth birthday. This should be negotiated with the headteacher of the allocated school."

31. The arrangements therefore imply, again, that parents may request that their child attends part-time when parents have a right to choose that their child attends part-time. The arrangements do not meet the requirements of the Code in this regard.

32. The local authority has said that it will address all these matters which is welcomed. Paragraph 3.6 of the Code provides that once the admission arrangements have been determined they can be changed to give effect to a mandatory requirement of the Code and a determination of the adjudicator. This means that the local authority can amend the arrangements for September 2022 without requesting a variation as the changes required are to give effect to mandatory requirements of the Code and a determination from the adjudicator.

Timescales

33. The Code says at paragraph 3.1 that "The admission authority **must**, where necessary, revise their admission arrangements to give effect to the Schools Adjudicator's decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Schools Adjudicator." I have considered how long I should allow in this case for changes to be made. I am aware that this determination will be published during the summer school

holidays and that it may be helpful, given the pressures on the local authority in this difficult time, to provide additional time to address these matters. I have therefore decided that the arrangements must be revised by 1 November 2021.

Summary of findings

34. The local authority has not made clear in its arrangements the process for requesting admission outside the normal age group and does not meet the requirements of the Code in this regard. There are other matters as described above which do not comply with the Code.

Determination

35. 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 Southampton City Council for its community and voluntary controlled primary schools.

36. 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.

37. 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 by 1 November 2021.

Dated: 28 July 2021

Signed:

Schools Adjudicator: Deborah Pritchard