



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2139

Admission authority: The governing board of Lea CofE Primary School,
Lea, Herefordshire

Date of decision: 27 October 2021

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the governing board of Lea CofE Primary School for September 2022.

I determine that for admission in September 2022 the faith-based oversubscription criteria will be as described in this determination.

I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

The referral

1. The governing board of Lea CofE Primary School (the school) has referred a proposal for a variation to its admission arrangements for September 2022 (the arrangements) to the adjudicator. The school is a voluntary aided school for children aged 5 to 11 in Lea, Herefordshire, with a Church of England religious character.
2. The proposed variation is for changes to the faith-based oversubscription criteria and is requested in the light of the COVID-19 pandemic.

Jurisdiction and procedure

3. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which deals with variations to determined arrangements. Paragraphs 3.6 and 3.7 of the Code say (insofar as relevant here):

“3.6 Once admission arrangements have been determined for a particular school year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements. Admission authorities may propose other variations where they consider such changes to be necessary in view of a major change in circumstances. Such proposals **must** be referred to the Schools Adjudicator for approval, and the appropriate bodies notified. Where the local authority is the admission authority for a community or voluntary controlled school, it must consult the governing body of the school before making any reference.

3.7 Admission authorities **must** notify the appropriate bodies of all variations”.

4. The governing board has provided me with confirmation that the appropriate bodies have been notified. I find that the appropriate procedures were followed, and I am also satisfied that the proposed variation is within my jurisdiction. I am also satisfied that it is within my jurisdiction to consider the determined arrangements in accordance with my power under section 88I of the Act as they have come to my attention and determine whether or not they conform with the requirements relating to admissions and if not in what ways they do not so conform.

5. In considering the variation request, and matters under section 88I, I have had regard to all relevant legislation, and the School Admissions Code (the Code).

6. The information I have considered in reaching my decision includes:

- a. the referral from the governing board dated 4 May 2021, supporting documents and further information provided at my request;
- b. the determined arrangements for 2022 and the proposed variation to those arrangements;
- c. comments on the proposed variation from the LA and the Diocese of Hereford (the diocese); and
- d. information available on the websites of the local authority, the school, and the Department for Education.

7. I have also taken account of information received during telephone meetings with the Diocesan Deputy Director of Education on 4 October 2021, and with the Executive Headteacher of the school on 12 October 2021.

8. A revised Code came into effect on 1 September 2021. Since the variation request and the responses to it were framed in terms of the 2014 Code, I shall use the references to it which have been made by the parties to the case and will indicate only if the new Code differs in any respect. It is of course the revised version of the Code which is now in force.

9. When the arrangements for the school were determined, the 2014 Code then in force provided that children previously looked after in England and then adopted or made subject to a child arrangements or special guardianship order should have equal highest priority with looked after children in school admission arrangements (subject to certain exemptions in schools with a religious character). The new Code has extended the level of priority for looked after and previously looked after children to children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted. All admission authorities were required to vary their admission arrangements accordingly by 1 September 2021. There was no requirement for this variation to be approved by the Office of the Schools Adjudicator (OSA). I have made my determination in this case on the basis that the admission authority will have varied its arrangements in order to comply with the new requirements as set out above.

The proposed variation and consideration of the proposed variation

10. Paragraph 3.6 of the Code (as above) requires that admission arrangements, once determined, may only be revised, that is changed or varied, if there is a major change of circumstance or certain other limited and specified circumstances. I will consider below whether the variation requested is justified by the change in circumstances.

11. Where the school is oversubscribed, priority may be given on the basis of faith. The school's arrangements take account of attendance at places of worship. During the COVID-19 pandemic places of public worship have at times been closed altogether and at other times not available for public worship or access to such worship has been restricted in the interests of public health. It is against that background that the request for a variation is made. Since the school's oversubscription criteria include priority on the basis of the frequency of attendance at Church (although that is only communicated via the Church Place Information Form which is in the arrangements but not referred to directly by the relevant oversubscription criteria – this is covered further in the 'Consideration of the arrangements' section), parents and their children are unable to meet these criteria under the terms of the school's arrangements. In consequence, the proposed variation provides that attendance will only have been required at times when places of public worship are open for such public worship.

12. The proposed variation reads as follows: "In the event that during the period specified for attendance at worship the church has been closed for public worship and has not provided alternative premises for that worship, the requirements of these arrangements

in relation to attendance will only apply to the period when the church or alternative premises have been available for public worship”.

13. It is beyond question that the COVID-19 pandemic has represented a major change of circumstances. I am satisfied that the proposed variation is a pragmatic and appropriate response. I approve the variation.

Consideration of the arrangements

14. Having considered the arrangements as a whole it appeared to me that the following matters do not conform with requirements of the Code and so I brought them to the attention of the governing board. These matters were (paragraphs of the Code are indicated where relevant):

1. The arrangements do not include that, “All children whose statement of special educational needs (SEN) or Education, Health and Care (EHC) plan names the school **must** be admitted”. (Paragraph 1.6)
2. Although the first oversubscription criterion covers ‘looked after children’ as required by the Code, the definition of looked after children is not in line with the Code and does not mention ‘previously looked after children’. (Paragraph 1.7)
3. Oversubscription criterion two relates to the school’s catchment area. The Code (Paragraph 1.14) states that, “Catchment areas **must** be designed so that they are reasonable and clearly defined”. This criterion refers to the catchment area ‘as defined by the LA’. In the first place it is for the admission authority (that is the governing board) to define its catchment and in the second, the form of words used does not define clearly for parents reading the admission arrangements for the school what the catchment actually is.
4. There is a definition of ‘siblings’ (siblings forms part of oversubscription criterion two) in the arrangements in line with Paragraph 1.11 of the Code. This definition sets out what is meant by the term ‘sibling’. This definition ends with, “...where the parents and children live together in the same family household”. This is not clear.
5. Paragraph 1.37 of the Code states, “Admissions authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied”. The following issues are noted with reference to oversubscription criterion three:
 - There is no reference to the ‘Church Place Information Form’ (supplementary information form) which is found later in the arrangements.

- The criterion does not explain to parents how the information on the 'Church Place Information Form' will be used to allocate a faith-based place.
 - The 'Church Place Information Form' asks for information which does not have a direct bearing on the oversubscription criteria, such as whether there have been siblings in the school 'in the past'. (Paragraph 2.4). Former pupils are not mentioned in the oversubscription criteria, and if the intention is to use that information for admissions purposes, then Paragraph 1.11 of the Code states, "If an admissions authority wishes to give some priority to siblings of former pupils, it **must** set out a clear and simple definition of such former pupils and how their siblings will be treated in the oversubscription criteria".
 - The 'Church Place Information Form' asks for information which the Code specifically prohibits. (Para 1.9b)
6. The 'Church Place Information Form' is likely to duplicate some information that is already provided to the school on the LA's Common Application Form (CAF). (Paragraph 2.4)
 7. Oversubscription criterion six begins, "Children whose home address is outside the catchment area of the school as defined by the LA, but who are living within the parish boundaries; living within the ecclesiastical parishes of St John the Baptist, the Lea, or St John the Baptist, Aston Ingham' ...". Paragraph 14 of the Code states, "Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated." There is nothing in the arrangements to support or enable parents to understand the boundaries of these areas, or whether they live within these parishes.
 8. Oversubscription criteria four and seven are based on the calculation of the 'shortest available walking route to school' within the catchment area. Paragraph 1.13 of the 2014 Code (in force when the arrangements were determined) stated, "Admissions 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 will be measured. This should include provision for cases where parents have shared responsibility for a child following a breakdown of their relationship and the child lives for part of the week with the parent." The revised Code states, "Admission authorities **must** clearly set out how distance from home to the school and/or any nodal points used in the arrangements will be measured. This **must** include making clear how the 'home' address will be determined and the point(s) in the school or nodal points from which all distances will be 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.” The arrangements include definitions of ‘shortest available walking route to school’ and ‘the home address’ but do not set out provision about cases where there is shared parental responsibility and where the child lives for part of the week with a different parent, in line with Paragraph 1.13 of the new Code.

9. Para 1.8 of the Code states, “Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated”. The arrangements have no provision for a tie-breaker.

15. The governing board has told me that it will address these matters, as permitted by paragraph 3.6 of the Code, which is welcomed. In response to this, the Executive Headteacher has prepared a revised set of arrangements. I have looked at what has been proposed and it appears to me that the revisions have begun the process of addressing the areas listed above. One area I have raised with the school is that the proposed revisions have removed the faith-based oversubscription criteria entirely. Recognising that the revised arrangements were not presented in a final version, the school should note the following: that ordinarily the governing board would be expected to make such a significant change to their arrangements only after carrying out a consultation on proposed new arrangements and determining arrangements in the normal way and not via a variation to existing determined arrangements. However, given I have raised with them clear issues in relation to the way that the faith-based criteria are dealt with in the determined arrangements for 2022, this change could be seen in the context of the school addressing those issues. It will be for the governing board (which must in due course decide how it wishes to vary its arrangements to respond to my determination) to decide whether to remove the faith-based arrangements in this way and whether this is appropriate.

16. Both the LA and the diocese have offered assistance to the school in respect of making changes to the arrangements.

17. As the governing board has accepted that changes are required and the school is clearly working to address them, I will not discuss them further other than to make clear that the Code requires that the arrangements be amended, within two months, to address the points set out in this section.

Determination

18. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the governing board of Lea CofE Primary School for September 2022.

19. I determine that for admission in September 2022 the faith-based oversubscription criteria will be as described in this determination.

20. I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the ways set out in this determination.

21. 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: 27 October 2021

Signed:

Schools adjudicator: Dr Robert Cawley