



Office of
the Schools
Adjudicator

Determination

Case reference: REF3887

Admission authority: Lincolnshire County Council for voluntary controlled and community schools in Lincolnshire

Date of decision: 9 December 2021

Determination

I have considered the admission arrangements for September 2022 determined by Lincolnshire County Council for voluntary controlled and community schools in Lincolnshire in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that the arrangements do not conform with the requirements. Those matters are 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 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 28 February 2022.

Jurisdiction

1. These arrangements were determined under section 88C of the School Standards and Framework Act 1988 (the Act) by Lincolnshire County Council, the local authority (LA), which is the admission authority for each of the maintained community and voluntary controlled schools in its area (the schools). They were brought to my attention in the course of my consideration of the arrangements of two other Lincolnshire schools for which the LA is not the admission authority, namely the William Hildyard Church of England Primary and Nursery School (the subject of my determination VAR2156) and St George's Church of England Primary School (the subject of my determination VAR2157). I have accordingly considered the arrangements for the schools, as determined by the LA, in accordance with my jurisdiction under section 88I(5) of the Act.

Procedure

2. In considering this matter I have had regard to all relevant legislation, and the Schools Admission Code (the Code).
3. The information I have considered in reaching my decision includes:
 - a. a copy of the arrangements for the schools as determined by the LA and set out in the LA's admission publications entitled "Going to Primary School in Lincolnshire 2022/23" and "Going to Secondary School in Lincolnshire 2022/23";
 - b. the LA's response to the questions posed by me and requests for information made in respect of determining VAR2156 and VAR2157 where relevant to this determination;
 - c. information received during a meeting conducted with representatives of the LA (Head of Education Support, Service Manager for Admissions, and the School Admissions Manager), which took place on 26 November 2021.
4. When the arrangements for the schools were determined by the LA, 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 adjudicator as it was a change necessary to comply with a mandatory provision of the Code. However, in looking at the determined arrangements on the LA's website, it was clear that this change has not yet been incorporated into the arrangements. I have made my determination in this case on the basis that the admission authority will vary its arrangements in order to comply with the new requirements as set out above.

Background

5. The oversubscription criteria used in the schools for which the LA is the admission authority include the giving of priority to children for whom the school is the "nearest school" to their home address. The arrangements explain this as: "Nearest School: measured by straight line distance". The use of this criterion creates an effective catchment area around each school, the boundaries of which are fixed by the location of other schools. The requirements as to catchment areas are set out in paragraph 1.14 of the Code as follows: "Catchment areas **must** be designed so that they are reasonable and clearly defined. ...". In addition, paragraph 14 of the Code provides as follows: "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.” Paragraph 1.10 says, so far as is relevant here: “This Code does not give a definitive list of acceptable oversubscription criteria. It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances...”

6. There are 276 primary schools listed in the LA’s admission publication entitled “Going to Primary School in Lincolnshire 2022/23”. The LA is admission authority for half of the primary schools listed in that publication. The LA adopts the same oversubscription criteria for all its community and voluntary controlled primary schools, that is, all the schools for which it is the admission authority. Reference will be made later to those schools in Lincolnshire for whom the LA is not the admission authority, but who utilise the ‘nearest school’ oversubscription criterion (or a form of words which has the same effect). I note here for that purpose that there are 93 primary schools for whom this is relevant.

7. The LA, in its publication “Going to Secondary School in Lincolnshire 2022/23” lists 54 secondary schools. There are two community secondary schools listed (Queen Elizabeth’s High School in Gainsborough and Spalding High School) which have bespoke or individual oversubscription criteria. Queen Elizabeth’s High School does not employ the ‘nearest school’ oversubscription criterion in the terms I have set out above but does use a form of words which effectively creates a catchment area – this matter is covered in this determination. Reference will be made later to those schools in Lincolnshire for whom the LA is not the admission authority, but who utilise the ‘nearest school’ oversubscription criterion (or a form of words which has the same effect). I note here for that purpose that there are 12 secondary schools for whom this is relevant.

Consideration of case

8. The concerns in respect of the use of the ‘nearest school’ oversubscription criterion are best explained by reference to the Office of the Schools Adjudicator Annual Report September 2018 to August 2019 (published January 2020) (‘the OSA Annual Report 2020’). Paragraph 18 stated:

“... The effect of working out all the addresses for which a given school is the nearest is the creation of an area around the school. The boundaries of this area will depend on the location of other schools. If residence within the area affords priority for a place at the school within it then that area meets the Code’s definition of a catchment area as it is quite clearly “[a] geographical area, from which children may be afforded priority for admission to a particular school.”

The second part of paragraph 19 of the OSA Annual Report 2020 also stated in respect of the use of this criterion that:

”... It is also worth pointing out that an area generated on the “nearest school” basis cannot take account of the number of children living in that area and whether the school concerned will be able to accommodate them all should they apply there. Nor does it take account of boundaries such as rivers or major roads or of transport routes to the schools.”

9. In the context of the community schools in Lincolnshire, the use of the nearest school criterion gives rise to the following questions:

- What is the catchment area as defined by the use of the ‘nearest school’ oversubscription criterion for each school? How do the arrangements indicate this area for parents?
- How does a parent easily work out if the school is the nearest school? How clear is it that in circumstances where there are a number of schools located in close proximity will parents easily know which school their child has priority for on the basis of it being the nearest school?
- Lincolnshire borders with Cambridgeshire, Rutland, Leicestershire, North Lincolnshire, Norfolk, and Nottinghamshire. How does this criterion work with the nearest schools when those schools are across the border in neighbouring counties?
- What happens if the nearest schools do not use the same approach? How would that school be taken into account in the calculation of the ‘nearest school’? If not, how would parents know if that is the case?

10. In the meeting with representatives on 26 November 2021, the LA told me that they have been using the ‘nearest school’ oversubscription criterion for 15 years. Putting aside the concern I have that the LA in their role as admission authority (with responsibility for its arrangements) have not dealt with this issue in that time, I note the following regarding the use of that criterion in relation to the Code. Paragraph 1.10 of the Code permits admission authorities to select appropriate oversubscription criteria that ‘would be most suitable to the school according to the local circumstances’. The LA explained that the use of this criterion was necessary as Lincolnshire is predominantly a rural county. The use of the ‘nearest school’ criterion provides for those families who live in areas where the nearest school is some distance away. If, instead of the ‘nearest school’ criterion, a straight line home to school distance calculation criterion was used, this would likely exclude some pupils altogether from admission to a school. I can see that the use of the ‘nearest school’ criterion is appropriate under these circumstances and therefore under paragraph 1.10 of the Code. I need to be very clear that there is nothing in using nearest school as an approach that is objectionable or non-compliant with the Code in itself; but the arrangements derived from this approach must be clear.

11. The arrangements for the primary schools for which the LA is the admissions authority include information on how the nearest school is calculated. In the 'Definition and Notes' section, it records that:

"3. The nearest school is found by measuring the straight line distance from the child's home address to all state funded mainstream schools admitting children in the relevant year group."

I have no concerns with the way that the calculation of the nearest school is explained in the arrangements.

12. However, the LA has not recognised in its arrangements that the effect of the use of the 'nearest school' criterion is to create a series of polygons or 'catchment areas' around each of the schools for which the LA is the admission authority. On this topic, the first part of Paragraph 19 of the OSA Annual Report 2020 recorded that:

"The Code's requirements as to catchment areas are clear and apply to catchment areas however they are created: they must be "reasonable and clearly defined." [Paragraph 1.14 of the Code]. Adjudicators have found cases where admission arrangements based on "nearest school" either did not make clear how parents could establish which schools were included for the purpose of defining nearest schools or did not make it at all easy for parents to work out which the nearest school to their address actually was."

13. As a consequence of not recognising that the arrangements are creating catchment areas through the use of the 'nearest school' criterion, the LA has not then taken the step of ensuring that these areas are 'clearly defined' (paragraph 1.14 of the Code). In response to a question I asked of the LA in the course of my consideration of cases VAR2156 and VAR2157, when I asked how parents are able to establish which school is the nearest to their address, the LA replied:

"... anyone interested in understanding which school is their nearest can contact the customer service centre for this information. Parents can also email schooladmissions@lincolnshire.gov.uk or ask at any Lincolnshire state funded school who will forward the request to the admissions team. Lincolnshire county council run this as an address search within the synergy system as this may come down to the position of the data point within a property."

14. Whilst the email request service in place is no doubt a useful one, the response from the LA does not meet the requirements of the Code. The Code states that arrangements must provide clarity for parents and that: "Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated" (paragraph 14 of the Code). Parents must be able to access this information for themselves, not have to request it.

15. I noted earlier that I would also raise the matter of the arrangements for Queen Elizabeth's High School in Gainsborough, a community school for which the LA is the admission authority. The arrangements do not use the 'nearest school' criterion, but the oversubscription criteria state:

"4. The school is 9 miles or less from the child's home address by driving distance. Such children will be referred to in this policy as 'local children'. ...

6. The school is more than 9 miles from the child's home address by driving distance. ..."

By using 9 miles 'by driving distance', a catchment area has, for the same reasons I set out above, been created. The boundaries of this catchment area are set by the "driving distance" in each direction from the school.

16. I am conscious that the matters raised in VAR2156 and VAR2157 and here also apply to those other schools in the county that make use of the 'nearest school' criterion (or a form of words which has the same effect) in their arrangements. In looking at the oversubscription criteria for each of those schools, using the LA's admissions publications, I have found that around 67 per cent of the primary schools and around 22 per cent of the secondary schools for which the LA is not the admission authority use 'nearest school' (or a form of words which has the same effect) in their oversubscription criteria. I have not checked whether every one of those schools' arrangements conform to the Code in respect of the matters raised (as it is the case that this determination does not apply to those schools) and so the number which might be affected may be lower. However, the LA undertakes the important role of co-ordinating admission processes across the county. The LA may, therefore, find it helpful to promulgate the outcomes of its work to address the matters raised here across the county's schools so that all may benefit.

17. In my meeting with representatives of the LA on 26 November 2021, an understanding of the matters raised was expressed. The LA also made a commitment to address them, which is welcomed. The LA also suggested solutions. It is not within my jurisdiction to say how the LA, as the admission authority, should revise its arrangements in response to my determination. My role is to determine whether or not the arrangements conform and if not in which ways they do not so conform. I find that the arrangements do not conform because the catchment areas are not clearly defined as required by paragraph 1.14 and this makes the arrangements unclear in breach of paragraph 14. As is permitted by paragraph 3.6 of the Code, the LA can make changes in relation to the matters raised in this determination without the need to request a variation to its arrangements from the adjudicator or undertake a consultation. The LA has accepted that changes are required which is welcomed. Paragraph 3.1 of the Code requires that the LA must revise its arrangements within two months of the date of this determination, unless an alternative timescale is specified by the adjudicator. I have considered carefully how long I should allow for the LA to revise its arrangements given that the admissions round is well

underway for 2022. I have decided to allow until 28 February 2022 for the LA which is also the deadline for determining arrangements for 2023.

Determination

18. I have considered the admission arrangements for September 2022 determined by Lincolnshire County Council for voluntary controlled and community schools in Lincolnshire in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that the arrangements do not conform with the requirements. Those matters are set out in this determination.

19. 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 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 28 February 2022.

Dated: 9 December 2021

Signed:

Schools adjudicator: Dr Robert Cawley