



Office of
the Schools
Adjudicator

Determination

Case reference: REF3897

Admission authority: Merton Council for voluntary controlled and community schools in the London Borough of Merton

Date of decision: 31 January 2022

Determination

I have considered the admission arrangements for September 2022 determined by Merton Council for voluntary controlled and community schools in the London Borough of Merton 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 or by 28 February following the determination, whichever is sooner, 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. The arrangements were determined under section 88C of the School Standards and Framework Act 1988 (the Act) by Merton 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 a school in the London Borough of Merton (the borough), referred by the LA for the adjudication of a variation request, and for which the LA is the admission authority, namely Bond Primary School (the subject of my determination VAR2216). When I saw the arrangements it appeared to me that they did not or may not conform with the requirements relating to admissions. 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 "Merton Community & Voluntary Controlled Schools Admission Arrangements for Entry in 2022/2023";
 - b. the LA's response to the questions posed by me and requests for information made in respect of determining VAR2216 where relevant to this determination;
 - c. information received during a meeting conducted with representatives of the LA (the Service Manager (Contacts and School Organisation) and the School Admissions Team Manager), which took place on 18 January 2022.

Background

4. The LA lists 27 community primary schools (no voluntary controlled) and three community and voluntary controlled secondary schools that are covered by the arrangements for September 2022.
5. With the exception of Dundonald, Wimbledon Chase and Wimbledon Park Primary schools, when a community or voluntary controlled primary or secondary school is oversubscribed for any year group (excluding the sixth form), applications for entry will be ranked against the following criteria:
 - i) Looked after children or previously looked after children.
 - ii) Where there are professionally supported medical reasons or exceptional social reasons why a child should attend a particular school.
 - iii) Children of permanent teaching staff.
 - iv) Where a sibling is already in the main school at the time of admission.
 - v) Straight line distance between the child's home address and the main school.

The slightly different criteria employed in the arrangements for Dundonald, Wimbledon Chase and Wimbledon Park Primary Schools are not the subject of this determination and therefore are not listed here. It should be noted that the arrangements for those three primary schools include the criteria i) to iv) in some form in any event.

6. The focus of this determination relates primarily to issues arising from compliance with paragraph 14 of the Code: “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.” Other paragraphs of the Code are identified where relevant.

7. Three sections of the arrangements for 2022 form the focus of this determination:

- Section ‘1.3 Admission of Children Outside Their Normal Age Group’.
- Section ‘4.5.4 Straight Line Distance’.
- Section ‘5 Waiting lists’

I will use these to structure the ‘Consideration of case’ section of this determination. I will also make points in relation to ‘wider considerations for the LA’ arising from this determination.

Consideration of case

Section ‘1.3 Admission of Children Outside Their Normal Age Group’

8. I have brought to the attention of the LA three matters from Section 1.3 of its arrangements that do not conform to the Code. Of relevance to these matters is paragraph 2.18 of the Code, which states: “Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group”.

The three matters are:

- The first paragraph of section 1.3 states that: “However, parents of summer born children may request that their child is admitted outside their age group.” This sentence appears to imply it is the only reason for doing so, and parents may interpret the entirety of section 1.3 of the arrangements as only applying to summer born children. There are a number of other reasons why requests might be made by parents for their children to be admitted outside their normal age group (such as paragraph 2.18 of the Code suggests, “... for example, if the child is gifted and talented or has experienced problems such as ill health”).
- The final paragraph of section 1.3 starts: “Parents requesting admission to an age group below the child’s actual age [...]”. The section does not state, and therefore is not clear, that this also applies to parents who wish to request admission to an age group above the child’s actual age. I cannot find this information elsewhere in section 1.3 either.
- It is not clear how parents who have been successful in an application to

have their child admitted to a year group outside of their child's normal age group in primary school, are then expected to make an application out of their normal age group when it comes to applying for a place at secondary school for which Merton Council are the admission authority.

Section '4.5.4 Straight Line Distance'

9. This section of the arrangements should be numbered 4.5.5 in order that parents led to it by earlier references to this section as 4.5.5 will not be confused by the fact there are two sections numbered 4.5.4.

10. In the final part of Section '4.5.4 Straight Line Distance', the LA sets out the list of 10 criteria it uses to judge the authenticity of an applicant's address. Before looking at a specific issue in this list, I want to make clear that it is entirely fair and reasonable for an admission authority to set out circumstances in which it may further investigate a home address and to set out the types of evidence which may be required in order for it to make a finding of fact as to whether a claimed address is genuine. This is encapsulated by paragraph 2.5 of the Code, which states: "Admission authorities may need to ask for proof of address where it is unclear whether a child meets the published oversubscription criteria."

11. The fourth bullet point in the list on page 8 of the arrangements states: "Where an applicant rents a property and has ownership of an alternative property, the rented property will only be used for admission purposes if the child has been resident away from the owned property for a period of 3 years or more at the closing date for applications." I recognise that many LAs and other admission authorities for understandable reasons seek to prevent the use of a temporary address by a parent in order to gain an unfair advantage in admissions and this is, of course, a legitimate purpose. There is no concern with this circumstance being treated as a reason for casting doubt on the accuracy or completeness of an application which led to a requirement for additional evidence. However, it is presented as an absolute requirement. This does not allow for a family to provide evidence that, despite this, the home address given is genuine. Therefore, this statement in the list could be considered unfair as it does not make provision for an applicant to provide further evidence to rebut the presumption inherent in the statement.

Section '5 Waiting lists'

12. Paragraph 2.15 of the Code starts: "Each admission authority **must** maintain a clear, fair, and objective waiting list until at least **31 December** of each school year of admission...". The second paragraph of section 5 of the arrangements begins: "Waiting lists for entry to Reception and Secondary school will be maintained strictly in accordance with the admissions criteria for the school until the last day of the Autumn term". Despite going on to state that parents should "...write to Merton Local Authority by 31 December", the use of the phrase 'until the last day of the Autumn term' could be unclear in that parents may believe that waiting lists are only maintained until the day upon which schools close prior to the Christmas holiday period.

13. The reference to children with ‘statement of special educational needs’ in this section is no longer necessary as these have now been completely replaced by Education, Health and Care Plans.

Wider considerations for the LA

14. I am conscious that the matters raised this determination may also apply to those other schools in the borough (for whom the LA is not the admission authority) that might make use of the same or similar oversubscription criteria in their arrangements to those used by the LA. I have not checked those schools’ arrangements or whether they conform to the Code in respect of the matters raised (as it is the case that this determination does not apply to those schools). However, the LA undertakes the important role of co-ordinating admission processes across the borough. The LA may, therefore, find it helpful to promulgate the outcomes of its work to address the matters raised here across the schools in the borough so that all may benefit.

15. I also raised with the LA an issue in respect of VAR2216. Bond Primary School provided additional information in parts of its admissions web page that might cause confusion for parents, as it differs from that provided by the LA (the admission authority for the school).

16. In my meeting with representatives of the LA on 18 January 2022, an understanding of the matters raised was expressed. The LA has accepted that changes are required and has 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 are in breach of paragraph 14. They do not conform because they are unclear in the areas I have identified and, specifically in respect of setting absolute requirements for when the LA may further investigate the authenticity of a home address, could be considered unfair. 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. 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. I have decided to allow until 28 February 2022 for the LA which is also the deadline for determining arrangements for 2023.

Determination

17. I have considered the admission arrangements for September 2022 determined by Merton Council for voluntary controlled and community schools in the London Borough of Merton 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.

18. 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 or by 28 February following the determination, whichever is sooner, 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: 31 January 2022

Signed:

Schools adjudicator: Dr Robert Cawley