



Office of
the Schools
Adjudicator

Determination

Case reference: REF3896

Admission authority: Warwickshire County Council for the community and voluntary controlled schools in its area

Date of decision: 7 February 2022

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998 I have considered the admission arrangements for September 2021 determined by Warwickshire County Council for the community and voluntary controlled schools in its area and find that the arrangements do not conform with the requirements relating to admissions.

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 or by 28 February following the decision, whichever is sooner. In this case the arrangements must be revised by 28 February 2022.

The referral

1. The arrangements for community and voluntary controlled primary and secondary schools in Warwickshire came to my attention in the course of my consideration of a proposed variation to one of those schools. It appeared to me that the arrangements for that school and in consequence also those for other schools with the same arrangements did not or may not meet the requirements relating to admissions. I therefore decided to use my powers under section 88I(5) of the School Standards and Framework Act 1998 (the Act), to consider the arrangements for the schools.

2. The matter which I consider may not comply with requirements concerns the definitions provided for looked after and previously looked after children.

Jurisdiction

3. The arrangements for 2021 were determined under section 88C of the Act by the local authority, which is the admission authority for the community and voluntary controlled schools in its area on 20 February 2020. When they were brought to my attention it appeared that the arrangements did not, or might not, conform with the requirements for admission arrangements. I therefore decided to use my power under section 88I(5) of the Act to consider them 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) copies of the minutes of the meeting of the local authority at which the arrangements were determined and a copy of the determined arrangements; and
- b) comments from local authority on the matters raised and supporting documents.

The Referral

6. The local authority requested a variation to reduce the published admission number of a community primary school. When I looked at the arrangements, I was concerned that the definitions of looked after children and previously looked after children might not meet the Code's requirements set out in paragraph 1.7 and accompanying footnotes. A new Code came into force on 1 September 2021 and all my references are to the Code now in force.

7. I raised my concerns with the local authority and the local authority expressed its intention to address the matter by adopting the same wording and definitions as those used in the Code for looked after and previously looked after children; this is welcomed.

Consideration of Case

8. The oversubscription criteria in the arrangements, in so far as is relevant here, say:

“Criterion 1a: Looked after children and all previously looked after children;

Criterion 1b: Children who have been adopted through a CVAA UK agency”.

9. I will consider first the definition of looked after children. The definition in the arrangements for looked after children is, “children in care.” The Code says that 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.”

As the definition of a looked after child set out in the arrangements only refers to a child in care it excludes a child who is “being provided with accommodation by a local authority in the exercise of their social services functions”. The arrangements therefore do not conform to the definition in the Code and in relevant legislation in this regard. The definition used in the arrangements could mean that a child entitled to a high level of priority by virtue of falling within the Code’s wider scope would not receive that priority. The arrangements therefore fail to comply with the requirement in paragraph 1.7 of the Code which requires that all looked after children (and previously looked after children) be given the highest priority.

10. Turning to “previously looked after children”, the definitions of previously looked after children in the arrangements are,

“1a. children who ceased to be in care because they were adopted (or became subject to a child arrangement order or special guardianship order);

1b. Children who have been adopted, either through a local authority or through a voluntary adoption agency that is registered with CVAA UK. This category applies to all adoptions which do not fit within Category 1a, including those which take place outside of English law.”

11. As the definition of looked after children does not comply with the Code, the definition of previously looked after children, which is based on the definition of looked after children, also does not comply with the Code as it does not include children who were previously accommodated as well as those previously “in care”. In addition, the Code is clear that a previously looked after child is one who was adopted:

“(…or subject to child arrangements orders or special guardianship orders) immediately following having been looked after” (underlining added for emphasis).

The arrangements do not say this and therefore do not conform to the definitions in the Code and in relevant legislation in this regard.

12. The arrangements appear to order or rank the priority given to different groups of children by using “1a” and “1b”. This could mean that those in 1a have priority over those in 1b. This would not comply with the requirements of paragraph 1.7 of the Code as all looked after and previously looked after children must have equal highest priority. Alternatively, it may be that the arrangements intend to provide that all looked after and previously looked after children do have equal priority but the arrangements are not clear in this regard. Paragraph 14 of the Code requires that arrangements are clear and paragraph 1.8 requires that oversubscription criteria are clear and so the arrangements do not comply with paragraphs 14 and 1.8.

13. The Code includes in the definition of previously looked after children, in paragraph 1.7,

“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.”

The adjudicator understands that the local authority intended to address the requirement to give highest priority to children formerly in state care outside England by the inclusion of the wording “Children who have been adopted through a CVAA UK agency” in its definition of previously looked after children. The definition in the arrangements further explains:

“Children who have been adopted, either through a local authority or through a voluntary adoption agency that is registered with CVAA UK. This category applies to all adoptions which do not fit within Category 1a, including those which take place outside of English law.”

14. It is my view that the term “all adoptions” could include children who do not fall within the scope of the definitions in footnote 15 (which I have set out above) and footnote 16 to the Code which is “A child is regarded as having been in state care outside of England if they were in the care of or were accommodated by a public authority, a religious organisation, or any other provider of care whose sole or main purpose is to benefit society” but who were, nonetheless, adopted. It would appear that the definition in the arrangements will include, for example, a child adopted following a surrogate birth or the adoption of a child by a step-parent. This would therefore not meet the requirement of the Code as the child would not have necessarily been previously looked after and so the definition would be inaccurate. If the term “all adoptions” is not intended to include adoptions other than the adoptions of children who were formerly looked after according to the meanings of that phrase in the Code, then it is misleading which renders the arrangements unclear and therefore not compliant with paragraphs 14 and 1.8 of the Code.

15. If the intention was that “all adoptions” meant all adoptions, then children who were not previously looked after and therefore not entitled to be given priority under paragraph 1.7 of the Code, as described above, would be given the highest priority and this would not meet the requirements of the Code.

16. I note that the website for the CVAA UK says, “CVAA members are not-for-profit adoption agencies in all four nations of the UK.” This appears to imply that any child adopted by parents not living in the UK at the time of an adoption would not be included by the definition in the arrangements. This would appear to limit recognising a child is previously looked after to those who have been adopted by parents who were resident in the United Kingdom at the time. This is not what is said in paragraph 1.7 of the Code which encompasses those who appear to the admission authority to have been in state care outside England and ceased to be in such care as a result of being adopted. The definition used in the arrangements would therefore appear to exclude children who must be included in the highest priority of admission arrangements.

17. I therefore find that the priority given to looked after and previously looked after children in the arrangements do not meet the requirements of the Code.

Determination

18. In accordance with section 88I(5) of the School Standards and Framework Act 1998 I have considered the admission arrangements for September 2021 determined by Warwickshire County Council for the community and voluntary controlled schools in its area and find that the arrangements do not conform with the requirements relating to admissions.

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 admission arrangements within two months of the date of the determination or by 28 February following the decision, whichever is sooner. In this case the arrangements must be revised by 28 February 2022.

Dated: 7 February 2022

Signed:

Schools adjudicator: Deborah Pritchard