



Office of
the Schools
Adjudicator

Determination

Case reference: REF3915

Referrer: a parent

Admission authority: Merton Council for Garfield Primary School

Date of decision: 16 May 2022

Determination

I have considered the admission arrangements for September 2022 determined by Merton Council for Garfield Primary School in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the published admission number, the arrangements conform with the requirements.

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 referrer), about the admission arrangements for September 2022 (the arrangements) for Garfield Primary School (the school). The school is a community primary school for children aged three to eleven.
2. The referral relates to the published admission number (PAN) set for the school for 2022.
3. The parties to the case are Merton Council, which is the admission authority for the school (the local authority), the referrer and the Local Government and Social Care Ombudsman (the Ombudsman). I decided that the Ombudsman should be a party due to the nature of the referral.

Jurisdiction

4. The arrangements for 2022 were determined under section 88C of the Act by the local authority on 26 February 2021. The referrer submitted her objection to these determined arrangements on 21 April 2022. The School Admissions Code (the Code)

requires objections to admission arrangements for 2022 to be made to the adjudicator by 15 May 2021. As this deadline was missed, the case cannot be treated as an objection. However, as the arrangements have been brought to my attention, I have decided to use the power conferred under section 88I(5) of the Act to consider whether the arrangements conform with the requirements relating to admission arrangements and I am treating the objection as a referral.

Procedure

5. In considering this matter I have had regard to all relevant legislation and the Code.
6. The documents I have considered in reaching my decision include:
 - a) the referrer's form of objection;
 - b) confirmation from the local authority that the arrangements were determined;
 - c) the determined arrangements;
 - d) comments from the local authority on the matters raised; and
 - e) a variation for another primary school in the local authority area, Bond Primary School, approved 15 February 2022 (case reference: VAR2216).

The Referral

7. The PAN for the school was determined as 60 for 2022. The referrer applied for a place for her child to be admitted to the school for 2022 and her child was refused a place. The referrer made further enquiries and said in her objection that she was told by the local authority that fewer than 60 places would be offered. The referrer believes that this is unlawful and referred to paragraphs 1.45, 1.46, 1.47 and 1.48 of the Code in her objection.
8. Paragraph 1.45 details the requirement to consult if a change is planned to admission arrangements compared to those that applied in the previous year (that is, in this case, if the local authority had planned to have different arrangements for admissions in 2022 from those that applied in 2021). Paragraphs 1.46 to 1.48 detail the requirements of consultation in these circumstances.

Background

9. The referrer, with a child attending the nursery at the school, applied for a place at the school in reception year (YR) which is the school's normal year of entry for September 2022. I am told that application was made by the deadline for admissions (15 January 2022) and the local authority has not disputed this. On national offer day, 19 April 2022, the referrer was informed that her child had not been offered a place at the school. The referral said, "Upon speaking to Merton admissions team, I have been informed that she was unsuccessful due to the local authority deciding over the Easter holidays to reduce

available places at Garfield, from 60 to 30 places, therefore making it a single form entry school. This is an incredibly unfair and unlawful decision to make at this time of the admission process.”

10. The case manager for the Office of the Schools Adjudicator wrote to the local authority on my behalf on 22 April 2022, providing a copy of the referral and requesting confirmation that the arrangements had been determined and a copy of the determined arrangements. The local authority responded by email on 28 April 2022. The email included the following:

“..a late decision was made to limit the number of places at Garfield. The school has been dealing with a significant budget problem as a result of being under capacity in all year groups. The authority has been working closely with the school to identify areas where savings can be made. Predictions based on the number of Reception applications made for Garfield this year highlighted the school would be some way under capacity by September, somewhere in the mid to late 30s, as in this area there is always a fall in allocations from offer day the September [sic] due to independent schools and the drift out of London. This would add to the problems the school are already facing. The decision to limit the number of places offered was made very late in the process due to a reluctance of the school to accept their likely difficult position until the allocations modelling was shown, which is why no formal variation was submitted.

Following Offer Day, we have spoken to a number of the parents involved. While the decision was made with the best of intentions to protect the financial position of the school and ultimately no or very few on-time applicants may have been denied a place by September due to movement from offer day, it is accepted that parents applied based on the published admissions number and that it would be necessary to fully apply our arrangements for Garfield. As of Friday 22 April, there were 12 families on the waiting list for Garfield. All were contacted on that Friday and informed that offers were being made for them. No on time applicants are therefore still waiting for a place at Garfield. Any late applicants will be offered a place at the school based on the admissions number of 60.”

11. On 3 May the case manager wrote again to the local authority on my behalf asking for the information requested in her letter of 22 April. The information requested was confirmation that the arrangements had been determined and a copy of the arrangements. The local authority provided this information on 3 May 2022.

Consideration of Case

12. Section 86 of the School Standards and Framework Act (the Act) is concerned with parental preference and requires that parental preference is complied with unless to do so would (subject to some exceptions none of which apply here) “prejudice the provision of efficient education or the efficient use of resources.”

13. In addition, section 86(5) of the Act states, “No prejudice shall be taken to arise for the purposes of subsection (3)(a) from the admission to a maintained school in a school year of a number of pupils in a relevant age group which does not exceed the number determined under section [88C or] 89 as the number of pupils in that age group that it is intended to admit to the school in that year; but this subsection does not apply if the conditions set out in subsection (5A) are met in relation to the school and the school year.” None of the conditions in subsection 5A applies in the case of this school.

14. In other words, the Act requires that the admission authority meets parental preference unless to do so would prejudice the provision of efficient education or the efficient use of resources and that such prejudice cannot occur below the PAN for the school in a normal year of entry. In this case the normal year of entry is YR and the PAN was set at 60 so the admission authority had no grounds to refuse to meet parental preference until at least 60 children had been offered places.

15. I also consider that the following paragraphs of the Code are relevant in this matter and have provided the relevant parts. I have added comments as appropriate.

16. Paragraph 1.2 of the Code says: “As part of determining their admission arrangements, all admission authorities **must** set an admission number for each ‘relevant age group’.” The local authority set the PAN for the school at 60. Paragraph 1.6 says so far as is relevant here that “If the school is not oversubscribed all applicants **must** be offered a place (with the exception of designated grammar schools)...” The school is not a grammar school and given that the PAN was set at 60 it could not have been oversubscribed if fewer than 60 children had been offered places.

17. Paragraph 1.3 of the Code says: “All admission authorities **must** consult in accordance with paragraph 1.45 below where they propose a decrease to the PAN.” The local authority has not consulted in accordance with paragraph 1.45 to decrease the PAN as noted by the referrer.

18. Paragraph 3.6 of the Code says: “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 Schools 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 maintained schools) or the Secretary of State (for academies) for approval, and the appropriate bodies notified.”

19. It is therefore possible for an admission authority to request a variation to the determined admission arrangements if the admission authority says that a major change of circumstances has taken place. The local authority was aware of the law in this regard as it had previously requested a variation to reduce the PAN of another of the schools for which it is the admission authority, namely Bond Primary School. No request for a variation has been made to reduce the PAN for the school.

20. My jurisdiction is for whether the determined admission arrangements comply with the Code and I have seen no evidence that they do not do so. My jurisdiction is limited to the arrangements, and I do not find that the arrangements were not in conformity with the Code. To put it another way, because in law (and for that matter in the arrangements as published on the local authority's website) the PAN had not been changed, the arrangements were and remained compliant with requirements in that regard. The mischief here is that the admission arrangements had not been applied in the way required by the law. It is not within my jurisdiction to consider the application of the arrangements to individual children and so I do not do so. I am, however, exceptionally making clear in this determination my concern that a local authority should act in a way that it must have known not to be lawful, by acting as if the PAN for the school had been reduced when no lawful process had been followed for this to happen.

21. I made the Ombudsman a party to this case as complaints about maladministration of admission arrangements by local authorities fall to the Ombudsman not the adjudicator. The Ombudsman can only consider complaints made to him directly from members of the public. In this case, the child's parent who originally brought the matter to my attention has now been offered the place to which that child was entitled.

Determination

22. I have considered the admission arrangements for September 2022 for Garfield Primary School in accordance with section 88(5) of the School Standards and Framework Act 1998 and find that in relation to the published admission number, the arrangements conform with the requirements.

Dated: 16 May 2022

Signed:

Schools Adjudicator: Deborah Pritchard