



Office of
the Schools
Adjudicator

Determination

Case reference: REF4076 and REF4077

Admission authority: Dorset County Council

Date of decision: 7 July 2022

Determination

I have considered the admission arrangements for September 2022 and for September 2023 for schools for which Dorset County Council is the admission authority in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the matters sent out in this determination the arrangements do not conform with the requirements.

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 this determination.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), an objection was referred in November 2021 to the adjudicator by a member of the public about the admission arrangements (the arrangements) for primary schools in an academy trust (the trust) in the area of Dorset County Council (the local authority, the LA) for September 2022 which I considered, and concerning which I made my decision in REF3894, dated 28 April 2022. The objection had been submitted after the deadline of 15 May 2021 for such objections to be made and I had decided to use the power conferred on me by section 88I(5) of the Act to treat the objection as a referral.

2. In the course of that case, the admission authority for the schools in question provided me with a copy of the LA's determined admission arrangements for admissions to community and voluntary controlled schools (and also a copy of the LA's guidance document concerning the placement of children outside their normal age group). When I looked at the LA's arrangements for September 2022, it was evident to me that they bore a

very striking resemblance to the arrangements which I have just described – those which the trust had determined for its six first and middle schools.

3. The LA was one of the parties to the objection to the arrangements determined by the trust. When I wrote to all of them on 17 January 2022 setting out my concerns about the arrangements drawn to my attention by the referrer, I asked the LA for its comments on the fact that the matter which was the source of the referral and the matters of concern regarding the arrangements (save one) seemed also to apply to the admission arrangements which it had determined for the schools for which it is the admission authority. In subsequent correspondence I established that although it had posted a revised version of its arrangements for September 2022 on its website, the LA had not re-determined these arrangements in the light of the case then in hand. The LA had also told me that it determined its arrangements for September 2023 on 1 March 2022 (which, as I pointed out to the LA, was after the deadline for such determinations to be made) and that these arrangements contained changes from those for September 2022.

4. The LA's arrangements for both years had now come to my attention. I was concerned that they should be compliant with the requirements set out in the Code and I informed the LA of my view that it now needed to await my determination of the referral to which it was a party (ie REF3894). On the date that my determination REF3894 was published, I wrote an accompanying letter to the LA concerning its admission arrangements for both years, asking that it forward to me a copy of each, following the Council's deliberations in the light of my determination concerning the arrangements for the schools in the trust.

5. Following further correspondence, the LA told me on 29 May 2022 that it had not made changes to its arrangements for 2022 or 2023 in the light of my decision in REF3894, and I informed it on 9 June 2022 that I had accordingly decided to exercise my powers under section 88I of the Act to consider both sets of arrangements as a whole, and whether they conform with the requirements relating to admissions. The LA is the only party to this case.

Jurisdiction

6. The arrangements for September 2022 were determined under section 88C of the Act by the local authority (which is the admission authority for community and voluntary controlled schools in its area) on 19 January 2021, and those for September 2023 on 1 March 2022. 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.

7. When I wrote to the LA on 9 June 2022 I informed it of the matters, set out below, which I considered did not, or may not, conform with the requirements for admission arrangements.

Procedure

8. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code). At the time of the determination of the LA's admission arrangements for September 2022, the School Admissions Code 2014 (the 2014 Code) was in force. A revised Code came into force on 1 September 2021, which is prior to the date on which the arrangements came to my attention. By that date, the 2014 Code no longer had any effect.

9. Since the correspondence in this case has been framed in terms of the 2014 Code, I shall use the references to it which have been made by the LA and by myself in correspondence with them, but will indicate if the new Code differs in any respect. It is of course the revised version of the Code which is now in force.

10. The arrangements for the schools for which the LA is the admission authority for September 2022 were determined on 19 January 2021. At that date the 2014 Code 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 and grammar schools).

11. The new Code which came into force on 1 September 2021 extended the same 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, and this therefore means those determined for admissions in 2021 and those for admissions in 2022 and subsequently. There was no requirement for these variations to be approved by the adjudicator and no reason for the LA to send me its varied arrangements.

12. The LA has included relevant wording in its admission arrangements for September 2023 to make them comply with these new requirements and I have made my determination in this case on the basis that the admission authority would have varied its arrangements for September 2022 in order to comply with the new requirements set out above, but that it has awaited the outcome of this determination before considering all the changes which it should make in order to comply with the requirements of the Code and legislation.

13. The documents I have considered in reaching my decision include:

- a) correspondence with the LA in its role as a party to the referral concerning which I made my decision in REF3894 and subsequently;
- b) copies of the minutes of the meetings of the local authority at which the arrangements for September 2022 and September 2023 were determined;

- c) a copy of the determined arrangements for September 2022 and September 2023;
- d) comments from the local authority on the matters raised.

The Matters of Concern

14. In my letter of 9 June 2022, I set out the following matters concerning the admission arrangements as those which I considered may contravene the requirements concerning them:

The arrangements for September 2022

- (i) the arrangements do not state the process for parents to request admission outside a child's normal age group in contravention of paragraph 2.18 of the Code;
- (ii) the reference to the policy applying to "statutory aged children" is incorrect and therefore renders the arrangements confusing, making them unclear in contravention of paragraph 14 of the Code;
- (iii) the statement that "places will be allocated according to the published oversubscription criteria" is incorrect unless qualified by a statement which makes clear that this is only relevant in the case of the school being oversubscribed. This makes the arrangements unclear and in contravention of paragraph 14 of the Code;
- (iv) the paragraph under the heading "in year admissions only" appears to be out of place, having no relation with the preceding or following content, making this part of the arrangements confusing and therefore unclear in contravention of paragraph 14 of the Code;
- (v) the statement "Parents can request part-time attendance until compulsory school age is reached. This needs to be agreed with the headteacher of the school where the place is offered" does not comply with the requirements set out in paragraph 2.17c) of the Code which confers a right to part-time attendance if a parent requests it;
- (vi) the phrase "a preference school" does not conform to standard English usage and is therefore unclear, in contravention of paragraph 14 of the Code;
- (vii) the statement which refers to the admission process for children in possession of an Education, Health and Care Plan (an EHC Plan) makes no reference to the requirement that if the EHC Plan names the school, the child must be admitted. Paragraph 1.6 of the Code makes this a mandatory requirement and requires admission authorities to set out in their arrangements how places at the school are allocated;
- (viii) a footnote refers to priority given on the basis of church attendance but there is no oversubscription criterion to which this is relevant, making the arrangements unclear and in contravention of paragraph 14 of the Code.

The arrangements for September 2023

- (i) the arrangements do not state the process for parents to request admission outside a child's normal age group in contravention of paragraph 2.18 of the Code;
- (ii) the statement that "places will be allocated according to the published oversubscription criteria" is incorrect unless qualified by a statement which makes clear that this is only relevant in the case of the school being oversubscribed. This makes the arrangements unclear and in contravention of paragraph 14 of the Code;
- (iii) the paragraph "In Year Admissions" refers to schools for which the local authority is not the admission authority, and does not refer to those schools for which it is the admission authority. It therefore appears to be out of place in these arrangements themselves, making them confusing and in breach of paragraph 14 of the Code.

Background

15. When I wrote to the LA with a copy of my determination in REF3894 on 28 April 2022, I stated that it was my view that the LA should be aware of its contents in relation to the arrangements which it had itself determined for September 2022 and September 2023. In doing so, I also explained that paragraph 3.6 of the Code permits an admission authority to vary its arrangements in order to comply with a determination of the adjudicator, or a mandatory requirement of the Code, or with admissions law. I asked the LA to provide me with a copy of both years' arrangements following its deliberations in the light of my decisions in REF3894. When it replied to me on 5 May 2022, the LA provided me with a copy of each years' arrangements as they had been originally determined (on the dates which I have set out above). It also copied to me, without comment, the document "Guidance on the Placement of a Pupil Outside their Normal Age Group" for each year in question.

16. I wrote again to the LA on 17 May 2022 following my receipt of these documents saying, in terms, that it was my view that the LA would need to consider whether it should now exercise the permission given in paragraph 3.6 of the Code to revise both sets of arrangements, pointing out that the 2022 arrangements were relevant until at least December 2022 and that it was now a pressing matter to ensure their compliance with the requirements concerning them. I asked again to be provided with any revised version of the arrangements which it had determined.

17. When the LA replied on 29 May 2022 it said that the 2023 arrangements which had been determined on 1 March 2022 incorporated the issues "in the final report" (the determination) in REF3894 (these matters having been made known to it during the course of REF3894, but it had nevertheless determined the 2023 arrangements prior to the publication of my decisions in REF3894). It provided me with a copy of what it said were revised arrangements for September 2022 saying that "assuming they are of a nature that do (sic) not require further consultation or determination we will make these available on our

website with immediate effect.” I explained to the LA that it was my understanding that this meant that there had been no formal variation of its 2022 arrangements. Further, I explained that it was not part of the adjudicator’s function to provide an admission authority with an assessment of putative admission arrangements. I repeated that my jurisdiction concerned only admission arrangements which had been determined by an admission authority and that these remained, in my understanding, those determined on 19 January 2021 (the September 2022 arrangements) and on 1 March 2022 (the September 2023 arrangements). I then set out my concerns with respect to each of these, as set out above.

18. When I set out these matters in an email dated 9 June 2022, I asked the LA if it wished to make any comments concerning them, saying that I was conscious that there had already been considerable correspondence between itself and the adjudicator in relation to the same matters in the arrangements determined by the trust (ie as a result of REF3894) and that in particular its letter to me on 3 March 2022 was relevant in this respect. In that letter, the LA had provided me with comments on the matters of concern in relation to the admission arrangements of the trust for 2022 because I had pointed out to it at that time that these same issues appeared to be present in the arrangements which it had determined for schools for which it is the admission authority.

19. I had pointed out to the LA on 14 March 2022, in reply to its letter of 3 March 2022, that it had not made any comment concerning the matter which had occasioned the original objection to the arrangements determined by the school trust (to which I have referred above), namely that concerning compliance with the requirements of paragraph 2.18 of the Code. I have taken the LA’s inclusion of the guidance documents referred to above in its reply to my letter of 28 April to be the LA’s response to the fact that I had pointed out that it was yet to comment on this matter.

20. When the LA responded to my email of 9 June 2022, it again did not mention this directly, but said “I attach the determined policy for admissions outside of a child’s chronological age group – this was determined at the same time as the rest of the 2023-2024 policies. I also attach the 2022-23 version”. In other words, the LA again contented itself in response to the concerns which I had expressed concerning the compliance of the arrangements with paragraph 2.18 of the Code, and in spite of being in receipt of my determination on REF3894, by simply copying to me its guidance documents, as it had done on 5 May 2022. I shall refer to this matter again below.

Consideration of Case

A. The arrangements for September 2022

(i) Admissions outside a child’s normal age group

21. Paragraph 2.18 of the Code says:

“Parents may seek a place for their child outside of their normal age group, for example, if the child is gifted and talented or has experienced problems such as ill health. In addition,

the parents of a summer born child may choose not to send that child to school until the September following their fifth birthday and may request that they are admitted out of their normal age group – to reception rather than year 1. Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.”

22. The arrangements say the following:

“This section of the policy should be read in conjunction with the guidance on the placement of a pupil outside his or her normal age group.This guidance is available on Dorset’s school admissions website.....Parents and carers wishing to request that their child be placed outside of their normal age group must do so through the Head Teacher (sic) of the pupil’s actual or proposed school.... Where Dorset Local Authority is the admissions (sic) authority for the affected school, the case will be considered by the local authority’s In Year Fair Access Panel.”

23. The reference made to parents making their request “through” a headteacher does not constitute a clear procedure, since there is nothing to tell a parent how to do this (for example in what form to do so, or by what date). Paragraph 2.18 is explicit in requiring a procedure to be set out clearly in a school’s admission arrangements and that means in this case on the face of the arrangements themselves which have been determined by the local authority. So even if the LA’s guidance document did provide a relevant procedure, the reference to it in the arrangements would not have the effect of rendering the arrangements compliant. The arrangements therefore fail to conform with what paragraph 2.18 of the Code requires, and the Code requires that they be amended so that they do comply.

24. I have set out elsewhere (in paragraphs 26 to 28 of REF3894) my views concerning the LA’s guidance document and what it does and does not provide in the way of assistance to any parent seeking admission for their child to an age group which is not their child’s normal age group at a school for which the local authority is the admission authority. In spite of what I understand the local authority to believe (based on its failure to comment directly on this matter, even when requested to do so) and its approach of simply forwarding to me the guidance document by way of a response, for the reason I have just given, nothing in the guidance document itself saves the arrangements from failing to comply with what paragraph 2.18 of the Code requires.

(ii) The reference to “statutory aged children”

25. Paragraph 30 in REF3894 explains why the use of this phrase in the arrangements that were considered there means that these are confusing, and that they fail to comply with what paragraph 14 of the Code requires. The relevant parts of the LA’s arrangements are identical in every respect to those which were the subject of REF3894. For the same reasons which are set out there, the LA’s arrangements also do not comply with paragraph 14 of the Code.

(iii) The reference to oversubscription criteria

26. Paragraphs 31 and 32 in REF3894 explain why the reference to oversubscription criteria in an early part of the arrangements which were considered there were likely to be misleading or confusing to parents because no mention was made of the need for a school to be oversubscribed before these criteria become relevant to the allocation of places. The relevant parts of the LA's arrangements are identical in every respect to those to which were the subject of REF3894. For the same reasons which are set out there, the LA's arrangements also do not comply with paragraph 14 of the Code.

(iv) The reference to in-year admissions

27. As I explained in paragraphs 33 and 34 of REF3894, the arrangements which were considered there and those determined by the LA contain identical paragraphs about in-year admissions, set in an identical context within the arrangements. I explained in those paragraphs the reasons why I was of the view then that this paragraph was wholly unnecessary and likely to be confusing to the reader in the case of the arrangements for schools in the trust, and that in the case of the LA's arrangements, while it might be meaningful in an appropriate context, it was not helpful as part of a description of admissions at the normal point of entry to a school. I have not changed in my view, and for the reasons set out in REF3894, I find that the arrangements fail to comply with paragraph 14 of the Code, as the presence of the paragraph makes the arrangements confusing.

(iv) Part-time attendance

28. The wording of LA's arrangements is identical to those of the trust concerning part-time attendance of children up to the point of compulsory schooling. Both state that:

"Parents can request part-time attendance until compulsory school age is reached. This needs to be agreed with the headteacher of the school where a place is offered."

29. For the reasons which I gave in paragraph 37 of REF3894, the inclusion of this statement means that the LA's arrangements, like those of the trust, fail to comply with the requirements concerning part-time attendance which are set out in paragraph 2.17c) of the Code.

(vi) "A preference school"

30. Paragraph 38 of REF3894 sets out my view of the phrase "a preference school", which also appears in the LA's arrangements. For the reasons given there, the latter arrangements therefore also fail to comply with paragraph 14 of the Code as the result of its inclusion.

(vii) The admission of children who have an EHC Plan

31. The LA's arrangements contain identical wording about the admission of children in possession of an EHC Plan to that which I considered in paragraph 39 of REF3894. I

explained there why this statement in the trust's arrangements meant that they failed to comply with what paragraph 1.6 requires concerning what admission arrangements say about the admission of such young people to a school. For the same reasons, the LA's arrangements also fail to comply with paragraph 1.6 of the Code.

(viii) Priority on the grounds of faith

32. Whereas the arrangements for schools in the trust contained an oversubscription criterion and a footnote referring to priority given on the grounds of faith to schools within the trust which have a religious character, the LA's arrangement contain the identically worded footnote (but without a reference to the effects of the COVID-19 pandemic on religious observance), but no associated oversubscription criterion. The LA was made aware of this omission during the course of REF3894, and told me in its letter of 3 March 2022 that it is the admission authority for nine voluntary controlled primary schools with a Church of England designation and for two voluntary controlled secondary schools. I note here that one of the two secondary schools named by the LA does not have a religious character and so a faith-based oversubscription criterion may not be employed to give priority to children wishing to attend it. The LA intended to rectify the omission of any reference to these schools in its arrangements, but as I have also explained above it has not so varied its arrangements, which remain those which it determined on 19 January 2021. These arrangements are therefore unclear, and fail to comply with paragraph 14 of the Code.

B. The arrangements for September 2023

33. As I stated above, the LA informed me that it had taken into account the matters which had been brought to its attention during REF3894 when it determined the arrangements that would apply to the schools for which it is the admission authority for September 2023, which it did on 1 March 2022. When I looked at these arrangements, it seemed to me that there remained a number of these matters for which this did not appear to be the case. When I wrote to the LA on 9 June 2022, I set these out, seeking its comments.

34. First, there again appeared no statement in the arrangements which complied with the requirements of paragraph 2.18 of the Code concerning a process for requesting that a child be admitted to an age-group which is not its normal age-group. The arrangements simply contain the following statement:

"The processes for the admission of children outside their normal or chronological age-group are detailed in the "Dorset Council – Guidance on placement outside normal age group" (sic).

I take this statement to mean that the process which a parent would need to follow is set out in the LA's guidance document on this subject. It was to this document that the LA referred in its response to my email of 9 June 2022, as I have stated above in relation to this same issue concerning the 2022 arrangements, by simply providing me with a copy.

35. I have set out in REF3894, and again above in relation to the LA's arrangements for September 2022, why reference in the arrangements on this matter to a separate document means that the requirement of paragraph 2.18 of the Code, which is that a process for parents to follow should be stated on the face of the arrangements themselves, has not been complied with.

36. Second, the arrangements again contained an early reference to the use of oversubscription criteria as the means for allocating places to schools, but did not explain that this is only the case when a school is oversubscribed. The LA has helpfully acknowledged that the arrangements remain unclear as a result. However, as determined, the arrangements fail to comply with paragraph 14 of the Code.

37. The LA has also helpfully accepted that the arrangements contain a reference to in-year admissions concerning schools which are their own admission authority which seems out of place, while not referring to the schools for which it is the admission authority, as might be appropriate in these arrangements. This renders the arrangements confusing, and in breach of paragraph 14 of the Code.

Summary of Findings

38. I have set out above the reasons why the arrangements for September 2022 are in breach of paragraphs 2.18, 14 (on five matters), 2.17c) and 1.6 of the Code.

39. I have also explained why the arrangements for September 2023 fail to comply with what the Code requires in paragraphs 2.18 and 14 (on two matters).

Determination

40. I have considered the admission arrangements for September 2022 and for September 2023 for schools for which Dorset County Council is the admission authority in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the matters sent out in this determination the arrangements do not conform with the requirements.

41. 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 this determination.

Dated: 7 July 2022

Signed:

Schools Adjudicator: Dr Bryan Slater