



Office of
the Schools
Adjudicator

Determination

Case reference: REF4092

Referrer: A member of the public

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

Date of decision: 31 August 2022

Determination

We have considered the admission arrangements for September 2023 for the community and voluntary controlled schools in the local authority area of Leicestershire County Council 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.

By virtue of section 88K(2) the adjudicators' 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.

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 member of the public (the referrer), about the admission arrangements for September 2023 (the arrangements) for the community and voluntary controlled schools (the schools) in the local authority area of Leicestershire County Council (the local authority).

2. The referrer also referred the admission arrangements of five other schools in Leicestershire for which the local authority is not the admission authority. As permitted by the Education (References to Adjudicator) Regulations 1999, two adjudicators, Robert Cawley and Deborah Pritchard were appointed to consider these six cases with Deborah Pritchard being lead adjudicator for this case

3. The arrangements came to the attention of the referrer in his previous role as a member of an independent appeals panel considering appeals for admission to a voluntary controlled school. The referral related to:

- 3.1. the lack of clarity “on the balance between the operation of the Fair Access Protocol and the precedence usually given to satisfying parental preference”;
- 3.2. the priority given to the children of Crown Servants which may breach paragraph 1.9f) of the School Admissions Code (the Code); and
- 3.3. feeder schools not being named.

4. The referrer said that the arrangements were not clear and that the Code requires admission arrangements to be clear. Paragraph 14 of the Code says,

“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.”

5. Paragraph 1.8 of the Code, in so far as is relevant here, says, “Oversubscription criteria **must** be reasonable, clear [and] objective”.

6. When the arrangements were brought to our attention, we considered that there were other matters which did not, or might not, conform with the requirements for admission arrangements. The case manager wrote to Leicestershire County Council, which is the admission authority for these schools and the local authority for the area in which they are situated (the local authority), on our behalf. The letter detailed our concerns which were that the arrangements included sections that were not clear, had matters that were referred to in different parts of the arrangements and not always consistently and that the ordering and presentation of information could make it easy to misunderstand the arrangements and thus not meet the requirements of the Code to be clear. We will consider these matters below.

Jurisdiction

7. These arrangements were determined under section 88C of the Act by the local authority on 11 February 2022. The referrer submitted his objection to these determined arrangements on 18 July 2022. The Code requires objections to admission arrangements for 2023 to be made to the adjudicator by 15 May 2022. As this deadline was missed, the case cannot be treated as an objection. However, as the arrangements have been brought to our attention, we 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 we are treating the objection as a referral.

Procedure

8. In considering this matter we have had regard to all relevant legislation and the Code.
9. The documents we have considered in reaching our decision include:
 - a) the referrer's form of objection and his response to further enquiries;
 - b) copies of the minutes of the meeting of the local authority at which the arrangements were determined;
 - c) a copy of the determined arrangements; and
 - d) information available on the websites for the local authority and the Department for Education (DfE).
10. We have also taken account of information received during a meeting we convened on 19 August 2022 via Microsoft Teams. The referrer declined to attend and the Diocese of Leicester was willing for the meeting to go ahead without its presence as there were no matters raised relating to faith. The meeting was attended by two representatives of the local authority and ourselves.

Background

11. Admission arrangements are published documents, as required by paragraph 1.50 of the Code, and so available to all. As provided for in section 88H of the Act and paragraph 3.3 of the Code, anyone can object to admission arrangements (subject to the types of objections that cannot be made which are also described in paragraph 3.3 of the Code). The referrer was a member of the local authority's independent appeals panel and the work of the panel brought the arrangements to his attention. He said in his objection that he had been on panels that had raised concerns about the admission arrangements to the local authority but he had not seen changes made. He therefore made the decision, as is his right to do so, to make an objection to the arrangements.
12. The local authority is the admission authority for 37 primary schools and 13 secondary schools. The local authority said that it anticipated that soon there will be no community or voluntary controlled secondary schools as all will become academies. The oversubscription criteria in the arrangements for primary and secondary schools can be summarised as:
 - 1) Looked after and previously looked after children
 - 2) Children who live in the catchment area
 - 3) Siblings of existing pupils at the school

- 4) Children with a serious medical condition or exceptional social or domestic needs that make it essential that they attend the school
- 5) Children attending a feeder school
- 6) Children living closest to the school.

Consideration of the arrangements

13. In our consideration of the arrangements, we found a variety of matters which gave us concern regarding clarity, as required by paragraph 14 of the Code, and meeting the requirements of the Code in other ways. We were pleased that when we discussed these matters with representatives of the local authority at the meeting that we convened, the local authority showed its willingness to address these matters.

14. At times the wording in the arrangements was not clear to us and an example is:

“ The Council will endeavour:

~ where possible give priority for a place in the catchment area school (dependent on the parent applying at the appropriate time);

~ to give entitlement to a place in a preferred school if there is room;

~ to give entitlement to be considered according to the same priority criteria as other children where the preferred school is oversubscribed. The application will be determined in accordance with the priority criteria where oversubscribed.”

15. We think that the local authority is saying that where a school is oversubscribed it will apply the oversubscription criteria but it is our view that the use of such wording as “entitlement” could be misconstrued. Another example from the arrangements is:

“The Council will only admit children up to the admission number except in certain limited circumstances (see Sec 4 and 17) and will ordinarily consider that anything over and above that number would be prejudicial to the efficient education and/or efficient use of resources.”

We believe that this statement is accurate but that the meaning could be conveyed more simply making it easier for parents and others to understand.

16. Similarly in other places the wording is more complicated than necessary and so could be misunderstood. Sometimes similar matters are referred to more than once in different terms, which has led to inconsistencies and therefore lack of clarity. The matters that gave us concern are spread across the 23 pages of the arrangements. We have therefore summarised the matters below under appropriate headings.

Clarity regarding to which schools the arrangements apply

17. The community and voluntary controlled schools to which the arrangements apply are not listed and there is no obvious way to know to which schools the arrangements apply. The arrangements are therefore not clear in this regard.

The published admission numbers (PAN) and infant class sizes

18. Paragraph 1.2 of the Code requires that the admission authority must set a PAN or admission number for each relevant age group for the schools for which it is responsible. The PAN is the minimum number of children to be admitted to a school in a normal year of entry (often reception year or year 7) if the school is oversubscribed. The PAN does not apply to other years when what is known as in-year admissions occur. In-year admissions may occur as the result of children moving into the area or changing school for other reasons.

19. The local authority has set the PANs for its schools and published them in a separate document to the admission arrangements. At the meeting, the local authority noted that the list of PANs included the capacity of schools and that this could confuse parents at times. The arrangements refer to the PAN (though as 'Admission Number' (AN) in the arrangements) at several points throughout but do not make clear the purpose of the PAN or signpost the reader to where the PANs for the schools are available. This makes it hard for a parent to find and understand the arrangements. The arrangements are therefore not clear in this regard.

20. The community and voluntary controlled schools which admit children to reception year (YR) will be subject to the provisions of the School Admissions (Infant Class Size) (England) Regulations 2012 (the infant class size regulations) which require that infant classes (those where the majority of children will reach the age of five, six or seven during the school year) must not contain more than 30 pupils with a single qualified school teacher except in specific exceptional circumstances. The Code describes a child for whom these exceptions can be made as an excepted child.

21. Section 3.8 in the local authority's arrangements says, "The Council's decision will either be to offer a place at a school or refuse the place because: the school is full or because admission would breach the infant class size limit (in an infant or primary school see section 4)." This implies that admissions may be refused in the year of entry even if the PAN has not been reached. The PAN is the minimum number of children who **must** be admitted if there are sufficient applications. For example, if the PAN for a school is 60 and 31 children seek a place at the school then all 31 must be admitted and the school will have to organise its classes to avoid breaching the infant class size regulations (such as two classes or mixing different year groups). In the example we have given, it would not be lawful to refuse admissions so that there were only 30 children admitted if the PAN were 60 (or any other number higher than 30). However, the arrangements imply that this will occur.

22. Similarly section 4 in the arrangements say, “Infant Classes (Foundation Stage, Year 1 and Year 2) must not exceed 30 children per teacher and applications for year groups which would cause that number to be exceeded will be refused.” In both instances, the wording is unclear and implies that admissions may be refused even if the PAN has not been reached in the year of entry. There are similar statements elsewhere in the arrangements. The arrangements are not clear in this regard. If these statements in the arrangements mean that children will be refused entry in the year of entry even if the PAN has not been reached, this would not comply with section 86(5) of the Act.

23. Section 3 in the arrangements includes a statement which says, “Where an infant child moves into a catchment area and applies for the catchment school, and there is no other available school with places within 2 miles walking route of the home address, they will be an excepted pupil in the catchment school and may be offered a place at that school without breaching the infant class size rules.”

24. The exceptions to the infant class size regulations are described in paragraph 2.16 of the Code, and include “children who move into the area outside the normal admissions round for whom there is no other available school within reasonable distance.” This is also provided in the arrangements in section 4. It is not clear to us whether the description of an excepted child provided in the arrangements in section 3 which refers to catchment areas will always be the same as that allowed in law and as provided in section 4. We see no need to have two similar descriptions in separate parts of the arrangements for the same matter which may have different meanings. The arrangements are not clear in this regard.

Oversubscription criteria

25. I will now turn to consideration of the oversubscription criteria which are in section 10 of the arrangements and which I have summarised above.

26. Criterion 2 is for those living in the catchment area of a school. There are notes to criterion 2 on page 13 of the arrangements which concern how a home address is decided upon when parents are separated or the child’s parents are Crown Servants. On page 19 in section 18 of the arrangements there is a link provided to maps of catchment areas for the schools. This requires diligent reading to discover it. The catchment areas for the schools are part of the arrangements and must be clearly defined and published as part of the arrangements.

27. Section 18 says, “Most Community and Voluntary Controlled schools have their own catchment areas, which are defined as the geographic area from which pupils / students are eligible to be considered under criterion 2.” This implies that not all community and voluntary controlled schools have catchment areas but there is no information on which schools do or do not have catchment areas. This makes the arrangements unclear.

28. Criterion 3 is “Pupils who will have a brother or sister attending the same school at the same time at the point that they are attending.” Criterion 6 is similar saying, “Pupils

starting at an infant school with a sibling who will be attending the feeder junior school at the same point they are attending”. These statements are not clear.

29. Criterion 4 is “Pupils who have a serious medical condition or exceptional social or domestic needs that make it essential they attend the school requested. (Professional documentation confirming the situation must be submitted with the application.)” Paragraph 1.16 of the Code says,

“If admission authorities decide to use social and medical need as an oversubscription criterion, they **must** set out in their arrangements how they will define this need and give clear details about what supporting evidence will be required (e.g. a letter from a doctor or social worker) and then make consistent decisions based on the evidence provided.”

30. There are notes to criterion 4. These say,

“If criterion 4 is used, professional supporting documentation from the Lead Professional must be supplied and must be submitted with the application. The following list are the areas that are considered exceptional:-

- Crown Servants
- Children subject to Child Protection Plans
- Hard to Place children – who fall under the Fair Access Protocol
- Parents suffering domestic violence (This is dependent on documentary evidence by a lead professional)”

31. There are several points on criterion 4 which we have considered. One was raised by the referrer. This was that giving priority to the children of Crown Servants would mean that children were given priority on the basis of the occupation of a parent. This is specifically prohibited by paragraph 1.9f) of the Code which says that admission authorities **must not** “give priority to children according to the occupational, marital, financial, or educational status of parents applying” (underlining given for emphasis). There are exceptions to this but none that are valid in this case. At the meeting the local authority explained that this had been included in response to police officers and others who wished to protect their children from potential problems caused by possible aggravation as a result of a parent’s occupation and so may not wish their children to attend the school in the catchment area of which they lived. This is an understandable motivation but the arrangements do not comply with paragraph 1.9f) of the Code.

32. A second matter relating to criterion 4 is that it may not be clear what is meant by a “Lead Professional”. We have heard the term used in the context of a team around the child which is part of an early help approach to facilitate co-ordinated multi-agency support to efficiently identify the emerging needs of children and young people at risk of poor outcomes and take action to address them. In this context the lead professional is the

person who co-ordinates the joint working and could be a teacher, early years professional or other such role. It was not clear to us if this was what was meant or what was meant by the term in the arrangements.

33. Depending on what is meant by the term, 'Lead Professional', it was also not clear what evidence was required where there was a serious medical need that required attendance at a particular school. This matter was discussed at the meeting and the local authority explained that medical evidence could be provided by a variety of people with medical backgrounds, not just doctors and we agree with that view. However, the local authority agreed that the wording was not clear on this matter. In addition, the list provided did not include any information on children with a serious medical condition so it is not clear if they were included or not.

34. The list for criterion 4 includes "Hard to Place children - who fall under the Fair Access Protocol." The DfE guidance on fair access protocols (published August 2021) says "The purpose of a FAP (fair access protocol) is to ensure that vulnerable children, and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible, minimising the time the child is out of school." (underlined for emphasis) The FAP therefore does not apply to the normal admissions round and to have it included here is misleading and makes the arrangements unclear.

35. Criterion 5 is, "Pupils who are attending a feeder school at the point of application." The referrer said that the feeder schools were not named and so this does not comply with paragraph 1.9b) of the Code which says that admission authorities **must not**, "take into account any previous schools attended, unless it is a named feeder school" (underline added for emphasis). The feeder schools are not named and so the arrangements do not comply with paragraph 1.9b) of the Code. In addition, not naming the feeder schools makes the arrangements unclear. Criterion 6 also relates to feeder schools and does not meet the requirements of the Code for the same reasons.

Home address

36. Paragraph 1.13 of the Code requires that arrangements set out clearly how the home address is determined and "include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent." At various points throughout the 23 pages of the arrangements there are references to parents who have separated, descriptions of how home addresses are decided and explanations about how to settle disputes over home addresses. However, these references are not always consistent with each other and as they are scattered in different places, could easily be misunderstood. The arrangements are therefore not clear in this regard.

Late applications

37. The arrangements say in section 3.4 (with similar wording in section 7.4), "All late applications received after the closing date will receive the lowest priority and will be

considered after those that have been received on-time.” Paragraph 2.22 of the Code is concerned with the requirement of local authorities to publish “a scheme to co-ordinate admission arrangements for the normal admissions round and late applications for all publicly funded schools within their area.” The co-ordinated admissions scheme, as such schemes are known, is outside our jurisdiction but the reference to “late applications” in the arrangements are not.

38. The footnote to paragraph 2.22 of the Code says, ““Late applications” are applications for entry in a relevant age group which are submitted before the first day of the first term in the admission year but have not been made in time to enable the local authority to offer a place on National Offer Day.” It appears in this instance that the local authority considers anything made after the deadline for applications (31 October for secondary schools and 15 January for primary schools) to be late. We note that the arrangements allow for exceptional circumstances to consider such applications at the same time as those received before the closing date.

39. Our concern was that the arrangements say that all late applications will receive the lowest priority which could mean that such applications would only be considered under criterion 7 of the oversubscription criteria. It is, of course, possible that the oversubscription criteria would need to be applied to applications received after the closing date. The local authority clarified that its meaning in the arrangements was that all applications made before the deadline for applications would be considered before applications made afterwards. The arrangements are not clear in this matter.

Clarity

- Right to full time education and deferring admission

40. Paragraph 2.17 of the Code says,

“Admission authorities **must** provide for the admission of all children in the September following their fourth birthday. The authority **must** make it clear in their arrangements that where they have offered a child a place at a school:

a) that child is entitled to a full-time place in the September following their fourth birthday;

b) the child’s parents can defer the date their child is admitted to the school until later in the school year but not beyond the point at which they reach compulsory school age and not beyond the beginning of the final term of the school year for which it was made; and

c) where the parents wish, children may attend part-time until later in the school year but not beyond the point at which they reach compulsory school age.”

41. The arrangements provide this information but unfortunately in such a way that it could be difficult to follow. Sections 2.4 and 2.5 of the arrangements explain in detail when

it is compulsory for a child to have started full time education but do not explain the entitlement to a full time place from the September following the child's fourth birthday. This is explained in section 3.9 but having two sections does not help to make these matters clear as required by the Code.

- Information on education, health and care plans

42. Section 2.4 of the arrangements say, "Parents have a right to express a preference for a school place, including where the child has an Education, Health & Care Plan." The process when a child has an education, health and care plan which names a school is entirely separate to that for other children and we were concerned that to discuss the two processes as if they were one could make the processes unclear. Section 2.11 does say, "The law requires Children with an Education Health and Care Plan (EHCP) that names a school in their plan is allocated the place and is not subject to conditions set out within this policy" which partly addresses the potential confusion but it does not seem helpful to have created it in the first place.

43. Section 4.2a) of the arrangements describes one of the groups of children who may be excepted children under the infant class size regulations as, "children admitted outside the normal admissions round with statements of special educational needs or Education, Health and Care Plans specifying a school". There are no longer statements of special educational needs and to use an obsolete term makes the arrangements unclear. Section 18.16 says, "All applications that have an EHCP will be forwarded to Special Educational Needs and Assessment for their consideration and processing." The arrangements therefore contain information on the admission of children with EHCPs in several places with some misleading information. This makes the arrangements unclear and not compliant with the Code.

- Closing dates for admissions

44. Section 3.0 of the arrangements says, "For first time admission, applications for a school place must be made by the relevant closing date during the academic year (between 1st September and 31st August) in which the child turns four, even if the child will not be of compulsory school age in September when they start school." For primary school admissions the "relevant closing date" is 15 January. This date is provided in the Code. It would be easier for parents to understand if the date was simply stated.

45. Section 7.0 of the arrangements says, "Parents will need to submit an application for admission to secondary school in accordance with the closing date for applications which is set out within the Council's co-ordinated admission arrangements." The closing date for secondary school admissions is 31 October as provided by the Code. It is inappropriate to expect parents to find and look through another document, which is 23 pages long and designed for use by admission authorities, rather than simply state the date.

- **Fair access protocol**

46. As referred to above, the DfE guidance explains that the FAP “exists to ensure that vulnerable children, and those who are having difficulty securing a school place in-year, are allocated a place as quickly as possible”. The role of the FAP is therefore clearly for in-year admissions. In other words the FAP has no role in the normal admissions round.

47. The referrer brought to our attention that sections 2.8, 18.3 and 18.4 of the arrangements which say,

2.8 “The Council must allocate any places in schools according to objective and transparent criteria. Where the admission number has not been reached, the Council will allocate a place at that school except where paragraphs 18.13 regarding twice excluded pupils (reception aged children would be exempt) and 18.14 regarding children being considered under the fair access protocol.”

18.3 “In areas where there is dual or multiple catchment entitlement, equal preference process will be applied at the normal round of applications. For children who move into an area outside of the normal admissions round, the normal criteria will be applied (see section 10). In both circumstance the highest-ranking preference where possible will always be offered.”

18.4 “Parents are not precluded from applying for a school place even whilst the FAP is ongoing.”

48. The referrer explained that he thought it made the arrangements unclear to include information about the FAP when providing information on the normal admissions round. He said, “There is no requirement in the Code to give information about the FAP in this way and doing so may risk reducing clarity for parents by introducing extraneous and complex information. This would fail one of the basic tests of admission arrangements; clarity.” He also notes that section 18.3, referred to in section 2.8 as above with regard to twice excluded pupils, makes no reference to twice excluded children.

49. We are of the view that including information regarding the FAP when discussing the normal admissions round is unhelpful and makes the arrangements unclear in this regard.

- **Relevance**

50. The first page of information in the arrangements has a section headed, “Scope of the Policy”. This section has four paragraphs and one says,

“Where one parent objects to a school application made by the other parent, and to prevent the application from being processed the School Admissions Service will require a court order. In such circumstances, the application will be paused for seven days (following a letter from a solicitor confirming a court order request has been submitted) to allow the objecting parent time to obtain the court order.”

This is an unusual subject to see in admission arrangements and it does not seem relevant to the 'scope' of the policy. It will rarely be relevant to most parents and the prominence given to it gives an unfortunate tone to the arrangements. The local authority gave no rationale for its inclusion and we consider that its inclusion in this section does not assist parents to easily understand the important points of the arrangements.

Summary of Findings

51. These are long and over-complicated arrangements with wording that is not easily understood in all instances, some inconsistencies and some unclear or inaccurate information as detailed above. The arrangements therefore do not meet the requirements of paragraphs 14, 1.8 and other paragraphs of the Code as detailed above. Parents will not be able to look at the arrangements "and understand easily how places for that school will be allocated."

Determination

52. We have considered the admission arrangements for September 2023 for the community and voluntary controlled schools in the local authority area of Leicestershire County Council in accordance with section 88(5) of the School Standards and Framework Act 1998 and find that the arrangements do not conform with the requirements.

53. By virtue of section 88K(2) the adjudicators' 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.

Dated: 31 August 2022

Signed:

Schools adjudicator: Deborah Pritchard

Schools adjudicator: Dr Robert Cawley