



Determination

Case reference:	REF4091
Referrer:	A member of the public
Admission authority:	Lionheart Educational Trust for Brocks Hill Primary School, Leicester
Date of decision:	7 October 2022

Determination

We have considered the admission arrangements for September 2023 for Brocks Hill Primary School, Leicester determined by the Lionheart Educational Trust 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 for admission arrangements.

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 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 member of the public (the referrer), about the admission arrangements (the arrangements) for September 2023 for Brocks Hill Primary School (the school) determined by the Lionheart Educational Trust (the trust), which is the admission authority for the school. The school is a primary academy in the local authority area of Leicestershire County Council (the local authority (LA)) and provides education for 4 to 11 year olds.
2. There are three other primary academies run by the same admission authority (Hallam Fields Primary School, Riverside Primary School and Highcliffe Primary School (the schools)). The same arrangements apply to all the schools (with different admission

numbers for the individual schools) and so our findings therefore apply to the arrangements for all four schools.

3. The referrer also referred the admission arrangements determined by five other admission authorities in Leicestershire. As permitted by the Education (References to Adjudicator) Regulations 1999, two adjudicators, Dr Robert Cawley and Deborah Pritchard were appointed to consider these six cases with Dr Robert Cawley being lead adjudicator for this case.

4. 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. The referrer raised a number of concerns in relation to the arrangements:

4.1. It was not clear why under oversubscription criterion 2 (sibling), it is stated that: "This will not apply to mid-term admissions in year groups where the admission number has been reached." The objector asserts that the admission authority chooses not to hold an oversubscription or waiting / reserve list beyond the minimum required by the School Admissions Code (the Code), and it was impossible to understand what difference this proviso would make.

4.2. Oversubscription criterion 4 gives priority on to the children of Crown Servants in breach of paragraph 1.9 e) and f) of the Code.

4.3. The last bullet point under Note v beginning "A child for whom..." is unclear to parents.

5. When the arrangements were brought to our attention, we considered that there were other matters which do not conform with the requirements for admission arrangements. The case manager wrote to the trust on our behalf providing details of the referral and our concerns that the arrangements included matters that do not meet the requirements of the Code. There are sections of the arrangements that are not clear, not needed, are inaccurate or prohibited by the Code, subjects are referred to in different parts of the arrangements inconsistently and the ordering and presentation of information could make it easy to misunderstand the arrangements and thus not meet the requirements of the Code in terms of clarity. In respect of these matters, Paragraph 14 of the Code states: "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." We will consider the matters raised by the referrer and any other matters below.

6. The parties to the case are the school, the trust (on behalf of all four of the schools covered by the arrangements), the LA, and the referrer.

Jurisdiction

7. The terms of the academy agreements between the trust and the Secretary of State for Education require that the admissions policies and arrangements for the schools are in accordance with admissions law as it applies to maintained schools. Admission authorities were required by section 88C of the Act and paragraph 1.49 of the Code to determine admission arrangements for September 2023 by 28 February 2022. The trust determined its arrangements for the school on 23 February 2022 and thus complied with the Code in this respect.

8. The referrer submitted his objection to the school's arrangements after the deadline of 15 May 2022 by which the Code required objections to admission arrangements for 2023 to be made to the adjudicator. As this deadline was missed, the case cannot be treated as an objection. However, as the arrangements have been brought to our attention, we 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 we are treating the objection as a referral.

9. As the arrangements had not been published at the point the referrer raised the matters with the adjudicator, the referrer had used the 2022 arrangements. The arrangements for 2023 have since been published and no longer include aspects of the arrangements that were raised as matters of concern by the referrer. The only matter remaining from the referrer in the 2023 arrangements which is in our jurisdiction is:

- 9.1. It was not clear why under oversubscription criterion 2 (sibling), it is stated that: "This will not apply to mid-term admissions in year groups where the admission number has been reached." The referrer asserts that the admission authority chooses not to hold an oversubscription or waiting / reserve list beyond the minimum required by the Code, and it was impossible to understand what difference this proviso would make.

Procedure

10. In considering this matter we have had regard to all relevant legislation and the Code.

11. The documents we have considered in reaching our decision include:

- a) the referrer's form of objection dated 14 July 2022;
- b) copies of the minutes from the trust where the arrangements were determined on 23 February 2022;
- c) a copy of the determined arrangements;
- d) comments from trust on the matters raised; and

- e) information available on the websites of the school, LA, the Department for Education (DfE) and Ofsted.

12. We have also taken account of information received during a meeting convened on 20 September 2022 at 10.30am. The meeting was attended by representatives of the trust (Deputy CEO and Head of Governance) and the school (Assistant Head and SENDCO) and was chaired by Dr Robert Cawley. The headteacher, the LA representative and Deborah Pritchard could not attend.

13. The LA wrote to say they had no comments to make on the matters raised.

Background

14. 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 objection that cannot be made, which are also described in paragraph 3.3 of the Code). The referrer was a member of the LA'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 admission arrangements to the LA, but he had not seen changes made. He therefore made the decision, as is his right, to make an objection to the arrangements to the adjudicator.

15. The trust is the admission authority for 14 academies (nine are secondary schools and five are primary schools). All five primary schools are in the LA's area (the one school not covered by the arrangements is Broom Leys School). The trust purchases advice from the LA on its admission arrangements and the LA is also commissioned by the trust to undertake some of the admission processes on behalf of the trust.

16. After the admission of children with Education, Health and Care Plans (EHCPs) children are admitted according to the oversubscription criteria in the arrangements. These can be summarised as:

- 1) Children who are in public care and previously looked after children (we deal with the fact that this does not say 'looked after children' below).
- 2) Siblings of existing pupils at the school.
- 3) Children who live in the catchment area.
- 4) Children living closest to the school.
- 5) Children of staff at the school.

Consideration of the arrangements

The matter raised by the referrer

17. The matter remaining in our jurisdiction from the list brought to our attention by the referrer was raised with the school. This was that it was not clear why under oversubscription criterion 2 (sibling), it is stated that: “This will not apply to mid-term admissions in year groups where the admission number has been reached.” The referrer asserts that the admission authority chooses not to hold an oversubscription or waiting / reserve list beyond the minimum required by the School Admissions Code (the Code), and it was impossible to understand what difference this proviso would make.

18. Paragraph 2.29 states: “Where an admission authority is dealing with multiple in-year admissions and do not have sufficient places for every child who has applied for one, they **must** allocate places on the basis of the oversubscription criteria in their determined admission arrangements only.” Footnote 61 specifies that the ‘determined admission arrangements are that which: “relate to the admission of pupils in the relevant school year”. This means that the school cannot apply different oversubscription criteria to those applying for places in-year, where there are more applicants than places. The arrangements therefore do not comply with the Code in this regard.

19. In the meeting held on 20 September 2022, the trust said that it understood why the referrer had raised the matter and how the arrangements currently do not meet the requirements of the Code. The trust stated it intended to amend its arrangements to address this matter. This is welcomed.

Other matters raised by the adjudicators

20. We raised a number of other matters with the school which are detailed in this section largely ordered under the headings used in the arrangements. Most relate to paragraph 14 of the Code (as stated earlier). Other paragraphs of the Code are indicated where relevant below.

Section ‘2. Legal Position & Other Requirements: Summary’

21. The arrangements refer to children with ‘statements of special educational needs’ (for example in sections 2.3 and 9.3). Statement of special educational needs no longer exist and have been replaced with Education, Health and Care Plans (EHCPs); these are referred to elsewhere in the arrangements. Using out of date terminology renders the arrangements unclear to parents.

22. The information under section 2.4 of the arrangements provides clear information for parents in respect of compulsory school age as set out in footnote 56 of paragraph 2.17 of the Code. However, the arrangements do not mention the right to full time education from the September after the child’s fourth birthday until section 3.7. Section 2.4 on its own is not clear for parents.

23. In section 2.5, we are concerned with the use of the term ‘capped’ in relation to the ‘admission number’ (AN) (referred to as the Published Admission Number (PAN) in the Code). The term ‘capped’ is inaccurate and should not be used. The admission number is not a limit on admissions. It is the minimum number of places that must be offered when

enough children apply in a normal year of entry. It has no existence beyond the normal year of entry. Additionally, paragraph 1.4 of the Code sets out, amongst other things, circumstances when an admission authority might admit above the admission number.

24. The last sentence in section 2.6 states: “Legislation and regulation on infant class sizes requires an upper limit of 30 children per teacher for infant classes”. This is correct to a certain extent, but it does not provide parents with the information that the upper limit can be exceeded in the circumstances set out in paragraph 2.16 a) to h) of the Code. Section 4.1 of the arrangements covers this issue again and section 4.2 sets out some of the exceptions. The two areas that cover this aspect of admission are not consistent and are therefore unclear.

Section '3. First Time Admissions to mainstream Lionheart Educational Trust: Primary Schools'

25. The first part of section 3.2 of the arrangements states: “Parents must apply to their home Local Authority for a school place. The best way to apply is by applying online through Leicestershire County Council’s website.” This is contradictory and unclear for parents in the following ways:

25.1. Parents who are not applying from Leicestershire may be confused by the second sentence which contradicts the first.

25.2. On the LA’s online application website, applying online is described as “secure and is the quickest and easiest way to apply”. It is not described as the best. This may imply to parents that it an application submitted by any other means may be treated less favourably than those completed online.

26. The last part of section 3.2 states: “All late applications receive the lowest priority”. Parents could be led to believe that applications received after 15 January will be considered under the last criterion in the oversubscription criteria list. We think that what is meant here is, “All applications received after the closing date will be considered after those that have been received on time.” The information provided is therefore misleading and so is unclear.

27. Section 3.5 says that the admission number for the school is 30 while paragraph 2.5 says it is 60. These two statements are inconsistent and therefore the arrangements are unclear.

28. It was not apparent to us why parents needed to know about the policy of the Trust in terms of its marketing about admission to the school in sections 3.6 and 3.8. It appears that this is advice from the LA to the trust. Such extraneous information complicates the arrangements unnecessarily and contributes to making them unclear.

29. It was not clear to us what the first sentence of section 3.9, which states “Lionheart Educational Trust has a single start for first time admissions at 4+” means. In the meeting on the 20 September 2022 the school explained that statement was in its arrangements as

it wants parents to start at the same time and not join later in the year. This is misleading and its inclusion strives to contravene the rights of parents as set out in paragraph 2.17 of the Code as discussed further below.

Section '4. Infant Class Size Limits, Multiple Birth Children and Permitted Exceptions'

30. Section 4.1 references a paragraph from a previous version of the Code. A new Code came into force in September 2021 and that is the Code from which any references must be made if arrangements are to be clear.

31. The last sentence under section 4.2 reads: "In addition, schools will no longer have to take qualifying measures in such circumstances." The use of the term 'qualifying measures' renders this part of the arrangements unclear. The trust explained this was something that would have been in instructions / advice from the LA. We consider this to be another example of the trust including information that parents do not need to know which could cause confusion and render the arrangements unclear.

Section '5. Deferring First-Time Admission'

32. Section 5.1 states: "When a child's parents are notified of the allocation of a primary school place, they can request deferment of the child's admission. The School will consider to deferment to later in the school year or until the child reaches compulsory school age in that year". The first sentence of section 5.2 states: "Parents can also request that their child attends part-time until the child reaches compulsory school age". Paragraph 2.17 b) and c) of the Code states:

"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:

[...]

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."

33. The Code states the right of parents to choose whether their child's admission should be deferred or whether they should attend school part-time under the circumstances covered by paragraph 2.17. The use of the word 'request' in the arrangements (defined as 'the act or an instance of asking for something') implies that the school has something to decide in this circumstance and to grant if it so chooses. It shifts to the school that which the Code has put in the hands of the parents. In this respect therefore, the arrangements are not meeting requirements of the Code and are also not clear.

34. Section 5.5 describes as ‘exceptionally’ the right of a parent to choose to delay admission until a summer born child has reached compulsory school age and request admission to Reception. This does not make it clear that parents have the right to delay admission in such a way and to request admission to Reception as opposed to Year 1 which would have been the child’s year group if the child had joined at the normal year of entry.

35. Section 5.6 attempts to explain what happens when an admission authority agrees to admit a child to other than the normal year of entry, but it appears some words are missing and so the section is not clear and does not fully convey the meaning of paragraph 2.20 of the Code. Paragraph 2.18 of the Code says, “Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.” Section 5 in the arrangements only deals with the main admission round, that is admission to Reception, and does not provide any information, here or elsewhere, on how to request admission for any other year out of the normal age group and so does not comply with the Code in this regard.

Section ‘6. In-Year (mid-term) Transfers (all year groups)’

36. Section 6.1 says: “All mid-term transfer requests (in-catchment included) will be coordinated through Leicestershire’s School Admissions Service for approval before admission takes place”. The LA is not the admission authority. While the LA can co-ordinate in-year admissions for schools for which it is not the admission authority, it cannot actually admit children to the schools covered by the arrangements. Only the trust can admit children. Therefore, this section is inaccurate and misleading and consequently unclear.

Section ‘7. Parental Preferences & Criteria used for Prioritising Admissions to Schools’

37. Section 7.2 says: “All children with an EHCP where the school is named and can meet need will automatically be provided with a place at the school.” This does not meet the requirements of the Code. Paragraph 1.6 of the Code makes clear that all children with an EHCP, where the school is named, **must** be admitted to the school.

38. The arrangements provide oversubscription criteria (described as “priority criteria”) with explanatory notes appended which we consider below.

38.1. The reference to children in public care under oversubscription criterion 1 appears to conflate children in public care with those who are looked after and not referring to looked after children specifically means the criterion does not match Note ii to which it refers. It is the case that all children in public care are looked after, but not all looked after children are in public care. There are looked after children (described in the Code) who are not in public care. Paragraph 1.7 of the Code says: “the highest priority **must** be given, unless otherwise provided in this Code, to looked after children” and so the arrangements do not comply with paragraph 1.7.

38.2. Oversubscription criterion 3 prioritises those who live in the catchment area. Paragraph 1.14 of the Code states: “Catchment areas **must** be designed so that they are reasonable and clearly defined”. There are two issues:

38.2.1 The arrangements include a map of the catchment area. This map shows the location of three of the four schools to which the arrangements apply. There is one boundary on the map. It appears to be the boundary for the three schools shown. Brocks Hill Primary School is not indicated. It is not clear whether this boundary applies only to the schools indicated, to all schools or to some other arrangement.

38.2.2 The criterion refers to Note iv, which states “The child’s place of residence is taken to be where the child is resident for the majority of the school week and inline [sic] with best practice, the school will accept 50/50 living arrangements between their parents/carers”. This is not clear for parents in that this has nothing to do with the catchment area and it is not clear what is meant. The information on residence and distance from the school of the home is required by paragraph 1.13 of the Code and would be better placed elsewhere in the arrangements. Otherwise parents may miss this information as they might only look at it in relation to catchment areas. It is also important to note the statement “[...] the school will accept 50/50 living arrangements between their parents/carers”. Paragraph 1.13 says that the definition of distance of the home from the school should “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.” However, this section does not make that provision or explain practice in terms of the allocation of places in that situation. The arrangements do not meet the requirements of the Code in this regard.

38.3. The text ahead of the Notes section starts: “Lionheart Educational Trust will need to ask for proof of the following when applying, the oversubscribed [sic] criteria”:

38.3.1 The arrangements sometimes use the term ‘priority criteria’ and not ‘oversubscribed’ or ‘oversubscription criteria’, potentially making this statement unclear for parents. (Paragraph 14)

38.3.2 The information required listed after this statement is: address; child’s date of birth; and copy of an adoption, residence or special guardianship order and letter from the local authority that last looked after the child confirming that he or she has looked after immediately prior to that order being made. All this information will be provided on the common application form provided by the LA. It is therefore

misleading to imply that the trust will require this information separately.
In addition:

38.3.2.1 By using the phrase “will need to ask for”, the statement reads as if proof of all of these will be requested by the school with every application and is therefore unclear to parents. (Paragraph 14)

38.3.2.2 It is not clear why proof of the things listed is required for every application and not under certain circumstances, and what those circumstances might be. (Paragraph 14)

38.3.2.3 Later, section 12.5 contradicts the certainty in this section by saying “5 Lionheart Educational Trust will need to seek documentary evidence of residence from parents where the matter is unclear”.

38.3.3 The information in Note i is unclear in that it states: “combinations of the above criteria are used in priority order”. Given that admission is prioritised in order of the criteria when oversubscribed, it is not clear what is meant by ‘combinations of the above’ and this statement is likely to be confusing for parents.

38.3.4 The tie break situation is described in Note i. In respect of that:

38.3.4.1 The process of “drawing lots” needs to be explained for parents. It says that parents should see the LA’s policy. However, the LA is not the admission authority, and the arrangements for drawing of lots should be explained in the arrangements.

38.3.4.2 It also appears to us that this could be a form of random allocation. Paragraph 1.34 of the Code states: “Admission authorities that decide to use random allocation when schools are oversubscribed **must** set out clearly how this will operate, ensuring that arrangements are transparent, and that looked after children and previously looked after children are prioritised.” Paragraph 1.35 additionally states: “The random allocation process **must** be supervised by someone independent of the school”. The arrangements do not make clear how this process of random allocation will work.

Section ‘8. Out-of-Catchment Requests and Admissions’

39. The purpose of section 8 was not clear to us. Section 8 appears to be advice to a school or an admission authority on how to encourage a parent to apply for the catchment

area school for their address. Again, this is not relevant to the admission arrangements and could appear to add an additional unnecessary process and so is misleading.

Section '9. Exceeding the Admission Number (AN)'

40. Section 9.1 refers to 'transfer decisions'. We do not understand to what that refers, and it will, therefore, not be clear to parents.

41. Sections 9.1, 9.2 and 9.4 make reference to in and out of catchment applications when looking at exceeding the Admission Number (AN) which is unclear as that is already taken care of by the oversubscription criteria. It would seem to us that it would be clearer to look at any admissions, and not refer to the catchment area at all in this section.

42. Section 9.4 again refers to the wrong version of the Code as in section 4.1.

43. The first sentence of section 9.5 reads: "There will be no appeal process to challenge the LA's decision by a school or governing body." This is misleading in that it states something which, if read in a particular way, appears to contravene paragraph 15 f) of the Code which states the right of a parent to appeal if their child is refused admission. Additionally, a second sentence says, "Lionheart Educational Trust: Primary Schools commissions the LA to undertake all appeals on its behalf" which adds to the confusion in this section and is therefore unclear.

Section '11. Co-ordinated Schemes'

44. This section describes something which is self-evident and there appears to be no purpose, from parents' points of view, to including this in the arrangements. This is another example of the trust including in the arrangements that which parents do not need to know.

Section '12. Miscellaneous'

45. In respect of the information about the school's waiting list under the subheading 'Over-subscription Lists':

45.1. 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 sentence in section 12.7 states: "The OSL for admission will remain open until the end of the Autumn Term in the admission year". The use of the phrase 'until the end 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.

45.2. The final paragraph of this section includes the sentence: "The OSL may change, this means that a child waiting list position during the year could go 'up' or 'down'." The reason for the change is not clear to parents. Paragraph 2.15 makes clear that schools must state in their arrangements: "[...] that

each added child will require the list to be ranked again in line with the published oversubscription criteria". (Underlining is our emphasis).

46. The trust has told us that it understands the reasons for the matters that we have raised and made a commitment to address them within the timeframe specified by us. This is welcomed.

Summary of Findings

47. The arrangements include matters that are not clear, not needed, are inaccurate or prohibited by the Code. There are inconsistencies between sections and the arrangements overall are confusing in the way they are set out. Parents will not be able to look at the arrangements "and understand easily how places for that school will be allocated". The arrangements therefore do not meet the requirements of paragraph 14 and other paragraphs of the Code as detailed above.

48. Our findings apply to all four schools in the trust covered by these arrangements (the school and Hallam Fields Primary School, Riverside Primary School and Highcliffe Primary School).

Determination

49. We have considered the admission arrangements for September 2023 for Brocks Hill Primary School, Leicester determined by the Lionheart Educational Trust 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 for admission arrangements.

50. 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 arrangements within two months of the date of the determination.

Dated: 7 October 2022

Signed:

Schools Adjudicator: Dr Robert Cawley

Schools Adjudicator: Deborah Pritchard