



Determination

Case reference:	REF4094
Referrer:	A member of the public
Admission authority:	L.E.A.D. Academy Trust on behalf of Millfield L.E.A.D. Academy, Leicester
Date of decision:	6 October 2022

Determination

We have considered the admission arrangements for September 2023 for Millfield L.E.A.D. Academy, Leicester determined by the L.E.A.D. Academy 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 a member of the public (the referrer), about the admission arrangements (the arrangements) for September 2023 for Millfield L.E.A.D. Academy (the school) determined by the L.E.A.D. Academy 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 5 to 11 year olds.
2. 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.

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

- 3.1. That the 2023/24 arrangements are not published on the school's website in breach of paragraph 1.50 of the School Admissions Code (the Code).
- 3.2. That the following bullet points on page 3 of the arrangements are unclear, in that:
 - 3.2.1 The third bullet point is unclear in the Leicestershire context because it refers to "moving into Nottingham".
 - 3.2.2 The final bullet point refers to "other exceptional circumstances" without further definition.
- 3.3. In the same section the objector asserts that there is the potential to give priority to children on the basis that they belong to certain ethnic groups, and this would be unfair.
- 3.4. It was not clear how the arrangements can state that oversubscription criteria 2 to 5 can be 'overridden' by the criteria on page 6. The objector asserts that it is not clear what the trigger is for the two circumstances under which it is stated that the criteria can be overridden.
- 3.5. The reference to "children who are the subject of a direction by a local authority to admit" on page 7 is an error as it is not possible for a local authority to direct an academy to admit a child.

4. When the arrangements were brought to our attention, we considered that there are 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 include matters that do not meet the requirements of the Code. There are sections of the arrangements that are not clear, 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 to be clear. 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 below first the matters raised by the referrer and then other matters which we identified from our own consideration of the arrangements.

5. The parties to the case are the trust and the school, LA, and the referrer.

Jurisdiction

6. The terms of the academy agreement between the trust and the Secretary of State for Education require that the admissions policy and arrangements for the school are in accordance with admissions law as it applies to maintained schools. Admission authorities were required by section 88C of the Act to determine admission arrangements for September 2023 by 28 February 2022. On 18 July 2022, when the objection was received, the trust had not determined the arrangements for the school. Because our jurisdiction is for determined arrangements, it was not possible for us to consider the arrangements at that time. The trust subsequently determined the arrangements for the school on 14 September 2022 and has reassured us that it has put into place the necessary process to ensure that the determination of its arrangements meets the requirements of paragraph 1.49 of the School Admissions Code (the Code) for 2024 and subsequent years.

7. The referrer submitted their objection to the school's arrangements after the deadline of 15 May 2022 by when the Code requires objections to admission arrangements for 2020 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.

8. 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 a number of the matters raised by the referrer. The only matter remaining from the referrer in the 2023 arrangements in our jurisdiction is:

- 8.1. It was not clear how the arrangements can state that oversubscription criteria 2 to 5 can be 'overridden' by the criteria on page 6. The referrer asserts that it is not clear what the trigger is for the two circumstances under which it is stated that the criteria can be overridden.

Procedure

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

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

- a) the referrer's form of objection dated 18 July 2022;
- b) copies of the Chair's Action minute from the trust which determined the arrangements on 14 September 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.

11. We have also taken account of information received during a meeting convened on 21 September 2022 at 1pm. The meeting was attended by representatives of the trust (the Deputy CEO and Senior Governance Lead) and was chaired by Dr Robert Cawley. Deborah Pritchard and a representative of the LA could not attend the meeting.

12. The LA did not provide any comments on the matters raised in respect of this case.

Background

13. 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 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 do so, to make an objection to the arrangements to the adjudicator.

14. The trust is the admission authority for 25 schools, only three of which are in the LA's area (one is the school and the other two are Forest Lodge Academy and Uplands Junior L.E.A.D. Academy). 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. The admission arrangements for the school are specific to the school and not the same as the admission arrangements for other schools for which the trust is the admission authority.

15. 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) Looked after and previously looked after children.
- 2) Children who live in the catchment area and who have a brother or sister attending the school at the time of admission.
- 3) Other children who live in the catchment area.
- 4) Children who live outside of the catchment area and who have a brother or sister attending the school at the time of admission.

- 5) Other children who live outside of the catchment area.

Consideration of the arrangements

The matter raised by the referrer

16. The matter remaining in our jurisdiction from the list brought to our attention by the referrer was raised with the school. This was:

16.1. It was not clear how the arrangements can state that oversubscription criteria 2 to 5 can be 'overridden' by the criteria on page 6. The objector asserts that it is not clear what the trigger is for the two circumstances under which it is stated that the criteria can be overridden.

17. The relevant part of the arrangements to which this matter relates states:

"The above criteria (2-5) may be overridden and priority given to an applicant who can establish any of the following:

- pupils with special educational needs that can only be met at the named academy (e.g. where the academy has specialist provision)*;
- pupils with exceptional medical, mobility, or social grounds that can only be met at the named academy [...]"

18. This part of the arrangements does not meet the requirements of the Code for the following reasons:

18.1. The first of the two circumstances described is already covered earlier in the arrangements when dealing with EHCPs (in line with paragraph 1.6) and so is likely to cause confusion for parents for it to be included again here using different terminology and for it to be described as 'overriding' the oversubscription criteria.

18.2. The second of the two circumstances described contravenes paragraph 1.7 of the Code, which states: "[...] the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and all previously looked after children, including those 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". This circumstance makes provision to prioritise children with 'exceptional medical, mobility, or social grounds' who would be admitted above children who are looked after or who have previously been looked after. This ordering of the oversubscription criteria is unlawful.

19. In the meeting held on 21 September 2022, the trust said that it understood why the referrer had raised the matter and how the arrangements currently do not meet

requirements. The trust stated it intended to amend its arrangements to address these matters. 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. Most relate to paragraph 14 of the Code (as stated earlier). Other paragraphs of the Code are indicated where relevant below.

The introduction

21. The introduction to the arrangements states: “If the year group total is below the published admission number for that year group [...]”. This is unclear in that it appears to say that the published admission number (PAN) applies to all year groups when in fact the PAN only applies to the normal year of entry which for this school is Reception. (Paragraph 1.2)

The section entitled: ‘Applications - Normal Year of Entry via normal admissions round’

22. It is stated in this section of the arrangements that: “The academy will not refuse to admit a child in the normal year admissions round on the basis of poor behaviour from elsewhere subject to paragraph 3.8 of the Code”. In fact, paragraph 3.8 of the Code concerns only children who have been permanently excluded from two other schools and were of compulsory school age at the time of the last permanent exclusion. It is challenging to say the least to conceive of circumstances in which this provision could apply to children being admitted to Reception. This is important as paragraph 3.9 of the Code goes on to emphasise that admission authorities “**must not** refuse to admit a child on behavioural grounds in the normal admissions round or at any point in the normal year of entry except where paragraph 3.8 applies”. The way it is expressed in the arrangements (by stating it ‘will not’) appears to bestow upon the admission authority a choice it does not have in respect of paragraph 3.9 of the Code.

23. It is also stated that: “If there is oversubscription within any year group the academy will maintain a waiting list. Details will be provided on request. Inclusion on the academy’s waiting list does not mean that a place will eventually become available.” This implies that waiting lists are held for all year groups which is inconsistent with other statements made about waiting lists in the arrangements. This makes the arrangements unclear.

The section entitled: ‘Late Applications for the Normal Year of Entry’

24. The arrangements state that: “In very limited circumstances, Leicestershire County Council Local Authority and the Academy Trust may be willing to accept applications which are received late but before the date set by the Local Authority [...]”. The trust is the admission authority, but this is not clear from this statement. This is unclear for parents in that it states that more than one body can make a decision in these circumstances. This is in fact an issue which is replicated in paragraphs throughout this section of the

arrangements and renders much of this part of the arrangements unclear and inaccurate and are therefore not in accordance with the requirements of the Code.

25. The weblink in this section takes parents to the LA's admissions website and not to a site about late applications.

The section entitled: 'Applications Outside the Normal Year of Entry ("In-Year applications")'

26. The subheading itself is unclear in that it conflates in-year applications with applications made outside of the normal year of entry. An application for a place in the normal year of entry but outside the normal admissions round is also an in-year admission (although it is the case that certain specific provisions apply to in-year admissions for normal years of entry). This makes this section of the arrangements unclear for parents.

27. This section is included under the broader heading of 'Applications - Normal Year of Entry via normal admissions round'. In-year applications are not in the normal admissions round and so this is unclear for parents.

28. The information under the subheading does not relate to the subheading. Additionally, it refers parents to the LA's policy. As already stated, the LA is not the admission authority. This section is therefore unclear.

The section entitled: 'Fair Access Protocols, Allocation, Acceptance of places and Appeals'

29. Information relating to the fair access protocol is not relevant to the normal admissions round. The information being situated in the section on the normal admissions round therefore renders the arrangements unclear for parents.

The section entitled: 'Admission of Children Below Compulsory School Age and Deferred Entry to School'

30. In this section, it is stated that parents may 'request' deferral of entry or that their child takes up a part-time place until reaching 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."

31. The Code extends the right to 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. This paragraph does not state that parents are expected to request in the sense of seeking agreement or permission for deferment or part-time attendance from the school. 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 the requirements of the Code.

The section entitled: 'Admission out of the normal age group'

32. This heading is similar to the sub-heading: 'Applications Outside the Normal Year of Entry ("In-Year applications")' such that it might be confusing for parents as to which section of the arrangements covers the issue of applying for a place outside the normal age group.

33. It is also not clear that, in line with paragraph 2.18 of the Code, "[...] 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."

34. Paragraph 2.18 of the Code also says: "Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group." The arrangements state in this regard: "You can contact the academy or your home Local Authority for advice on how to request admission for your child outside their normal age group." This is confusing in that the LA is not the admission authority. Additionally, the arrangements must state what the parent must do. They should not have to go elsewhere to find that information.

The 'Oversubscription Criteria'

35. The text in orange in the oversubscription criteria section refers to children who have a 'statement of special educational need (SEN)'. Statements of SEN were replaced by EHCPs several years ago and no child in a primary school will now have a statement of SEN. This is a reference to something that is no longer in use. Using out of date terminology renders the arrangements inaccurate and therefore unclear to parents.

36. Under criterion 2:

36.1. Reference is made to the 'relevant catchment area' and the 'relevant academy'. This is presumably because the trust has designed the arrangements to be used by more than one school, but because they only currently apply to one school, it is confusing for parents.

36.2. There is no catchment area map in the arrangements. The link to the map in a separate section at the end of the arrangements does not work.

37. The same reference to 'relevant catchment area' is made under criterion 4.

The section entitled 'Waiting List'

38. The first paragraph of this section states: "Parents whose children have not been offered Millfield LEAD Academy will automatically be added to the school's oversubscription (waiting) list (OSL). The OSL for first time admission (FTA) will remain open until the end of the Autumn Term. The OSL relates to the first time admissions (FTA) process only". In respect of this paragraph:

38.1. 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 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.

38.2. It is also not clear why the waiting list is only for first time admissions and not 'mid-term transfers' as reinforced in the second paragraph in this section. It appears that a parent applying for their child in the autumn term in the situation there were no places would not be added to the waiting list. There is no reason why this should be the case.

38.3. The final paragraph of this section includes the sentence: "The OSL may change, this means that a child [sic] 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).

38.4. It was not clear why the tie-breaker description is in this section of the arrangements when the tie-breaker may need to be used when allocating places using the oversubscription criteria and it would be better placed in that section of the arrangements. Also, in respect of the tie-breaker:

38.4.1 The process of 'drawing lots' needs to be explained for parents.

38.4.2 It also appears to the adjudicators 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." The arrangements do not make clear how this process of random allocation will work.

The section entitled: 'Definitions of terms used in these arrangements'

39. Under the 'Resident in the Catchment Area' definition, it is not clear why the explanation of how the child's residence will be determined in situations where a child's

parents do not live together and the child lives part of the time with one and part with the other is only relevant to the catchment area. This may also be relevant to other situations in relation to distance from the school. (Paragraph 1.13)

40. The last bullet point in the definition of sibling is “adopted or fostered children living in the same household under the terms of a Child Arrangements Order.” We read this to mean that for the other points in the definition of sibling, it was not necessary to live in the same household. However, this might not be the case and the trust will need to make this clearer for parents.

41. Where referring to multiple births, the arrangements say, “In these cases, the parent/carer will be asked which child(ren) should take up the place(s).” The intention of the admission authority is not clear here and this will need to be explained more effectively so that parents understand what to do in these situations.

The arrangements overall

42. Overall, the structure of the arrangements is confusing and therefore unclear for parents. Much of the information for the normal admissions round is not situated early on enough in the arrangements that it is able to provide the context for other aspects of the arrangements. It is also the case that there are explanations of elements of the admission process which have nothing to do with the ‘normal admissions round’ which are included in that part of the document.

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

Summary of Findings

44. The arrangements include matters that are unclear, inaccurate or are 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 paragraphs 14, 1.8 and other paragraphs of the Code as detailed above.

Determination

45. We have considered the admission arrangements for September 2023 for Millfield L.E.A.D. Academy, Leicester determined by the L.E.A.D. Academy 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.

46. 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: 6 October 2022

Signed:

Schools Adjudicator: Dr Robert Cawley

Schools Adjudicator: Deborah Pritchard