



Office of
the Schools
Adjudicator

Determination

Case reference: REF4090

Referrer: A member of the public

Admission authority: The Oadby, Wigston and Leicestershire Schools Academy Trust for the six schools in the trust

Date of decision:

Determination

We have considered the admission arrangements for September 2023 for the schools for which the Oadby, Wigston and Leicestershire Schools Academy Trust is the admission authority 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 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 (the arrangements) for the schools for which the Oadby, Wigston and Leicestershire Schools Academy Trust is the admission authority for 2023. There are six schools (the schools) all of which are academy primary schools for children aged four to eleven. The admission arrangements for the schools are largely identical (other than in relation to the published admission numbers), and our findings apply to the arrangements for each of the schools.
2. The referrer noted matters that he considered were not clear when chairing an independent appeals panel for admissions to one of the schools in 2022. The referrer believes that the same lack of clarity continues in the arrangements for 2023 and so brought them to the attention of the adjudicator. 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 Deborah Pritchard being lead adjudicator for this case.

3. The parties to this case are:

- The Oadby, Wigston and Leicestershire Schools Academy Trust (known as the OWLS Trust) which is the admission authority for the schools (the trust);
- Leicestershire County Council which is the local authority for the area in which the schools are situated (the local authority); and
- the referrer.

4. The referrer said that the arrangements did not meet the requirement of the Code that admission arrangements are clear and did not meet the requirements of the Code in other ways. 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. 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. We also noted that the arrangements applied to six schools. The case manager wrote to the trust on our behalf providing details of the referral and our concerns that the arrangements did not meet the requirements of the Code in several matters. These matters included sections that were not clear, and subjects that were referred to in different parts of the arrangements and not always consistently. 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

6. The terms of the academy agreements between the trust and the Secretary of State for Education require that the admissions policy and arrangements for the schools are in accordance with admissions law as it applies to maintained schools. These arrangements were determined under section 88C of the Act by the trust on that basis.

7. The referrer submitted an objection to these determined arrangements on 18 July 2022. The School Admissions Code (the Code) requires objections to admission arrangements for 2023 to be made to the OSA 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 have decided to use the power conferred under section 88I(5) of the Act to consider whether the matters referred to us conform with the

requirements relating to admission arrangements and we are treating the objection as a referral.

8. As it also appeared to us that there were other matters in the arrangements which did not, or might not, conform with the requirements for admission arrangements, we decided to use our power under section 88I(5) of the Act to consider them as a whole.

Procedure

9. In considering this matter we have had regard to all relevant legislation and the Code. The documents we have considered in reaching our decision include:

- a) the referrer's form of objection; and
- b) a copy of the minutes of the meeting of the trust at which the arrangements were determined and a copy of the determined arrangements.

10. We have also taken account of information received during a meeting we convened on 7 September 2022 via Microsoft Teams. The meeting was attended by representatives of the trust, the local authority and ourselves. The referrer did not wish to attend.

The Referral

11. The referrer said that at four points the arrangements were not clear and referred to paragraph 14 of the Code (see above). The four matters raised by the referrer were:

- a) the arrangements might imply that a child seeking admission in-year may be admitted over the admission number and this is not consistent with statements made elsewhere in the arrangements;
- b) the third oversubscription criterion, which gives priority to siblings of existing pupils at the school, says that this priority does not apply to in-year admissions and this, in the context of the waiting list not being held after the first term, appears unclear;
- c) the fourth oversubscription criterion appears to give priority to the children of Crown Servants, which may breach the requirements of paragraph 1.9f by giving priority on the basis of a parent's occupation; and
- d) an explanatory note to the fourth oversubscription criterion is not clear.

Background

12. 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 admission arrangements to the local authority, but he had not seen changes made. He therefore made the decision to make an objection to the arrangements to the adjudicator. The local authority told the referrer that he did not have the right to object, but this was incorrect information.

13. The trust runs the following schools in Leicestershire: Glenmere Primary School; Langmoor Primary School; Little Hill Primary School; Fernvale Primary School; Hinckley Parks Primary School; and New Lubbethorpe Primary School. This determination applies to the admission arrangements for each of these schools.

14. The trust is advised on its admission arrangements by the local authority and seeks to have arrangements similar to those of the local authority. The oversubscription criteria in the arrangements can be summarised as:

- 1) Children who are in public care 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 living closest to the school.

Consideration of Case

15. In our consideration of the arrangements, we found a variety of matters which gave us concern regarding lack of clarity, as required by paragraph 14 of the Code (see above), and failure to meet the requirements of the Code in other ways. We were pleased that when we discussed these matters at the meeting, the trust showed its willingness to address them and was offered support in doing so by the local authority.

16. There were two general aspects that contributed to making the arrangements unclear.

- a) The arrangements include guidance to those managing the admissions process which is not relevant and could cause confusion.
- b) The arrangements lack a logical progression so that partial information is provided in several places on the same matters.

17. We will now consider specific matters, including those raised by the referrer.

Irrelevant information

18. The whole or parts of sections 1, 2, 3, 5, 6, 9, 10, 12 and 13 of the arrangements appear to be advice to the admission authority on its duties and actions. As such, these parts are not relevant to the arrangements and could cause confusion thus making the arrangements unclear.

Education, health and care plans

19. Section 2.3 in the arrangements says, "Parents have a right to express a preference for a school place at up to 3 schools, including where the child has an Education, Health and Care Plan (EHCP)." The process when a child has an EHCP which names a school is entirely separate to that for children admitted under the admission arrangements, and we were concerned that to discuss the two processes as if they were one could be misleading and make the processes unclear.

20. Sections 13.1 to 13.3 of the arrangements provide further information on EHCPs including that, "All governing bodies are required by section 324 of the Education Act 1996 to admit to a school a child with an Education Health & Care Plan that names the school." This is accurate information, but it is quite separate from the information provided in section 2.3, which is unhelpful. Unfortunately, section 13.2 also includes a reference to "being assessed for a Statement." We consider that this must date from the time when children had statements of special educational needs and not EHCPs. There are no statements of special educational need any more and children are instead assessed for EHCPs. This makes the reference to statements inaccurate and confusing which could be misleading and contributes to making the arrangements unclear.

Infant class size regulations

21. The schools are affected by 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 specific circumstances are described in paragraph 2.16 of the Code.

22. The trust said at the meeting that it wished to have admission numbers for all years so that no class exceeded 30 because all equipment was purchased (computers and so on) with classes of 30 in mind. Section 3.13 of the arrangements provides a list of what are described as "permitted exceptions to the class size limit regulations". The list in section 3.13 is not the same as that in paragraph 2.16 of the Code but rather a paraphrase of it which is not consistent with the Code. There is no requirement for arrangements to provide the information from paragraph 2.16 of the Code but to do so inaccurately is misleading and makes the arrangements unclear.

Admission numbers

23. The term ‘admission number’ is used in the arrangements, which is also the term used in the Act, whereas the Code uses the term published admission number (often referred to as the PAN). Both mean the same thing and we have adopted the term used by the school. The admission number (AN) is the minimum number of children who must be admitted in the year of entry if there were to be sufficient demand. It would not be lawful to refuse to admit below the AN if there were sufficient demand (except in specific circumstances which do not apply to the schools).

24. Often it is assumed that once the AN is reached then the school is full in that year group. This is not strictly the case as the AN is a minimum number which must be admitted if enough apply but it is not a maximum or a cap. In the arrangements are various references to the AN including sections 2.5, 3.5, 7, 13.35 and 13.36. Section 2.5 provides the ANs for the schools for which the trust is the admission authority and says,

“A capped Admission Number (AN) means that once a school has filled to the stated number of children in a particular year group (in line with the admissions criteria – see paragraph 5.3) all other applications for that year group will be refused, though parents will have the right to appeal.”

25. At the meeting we discussed what was meant by a “capped” AN. The trust explained that many of its schools were oversubscribed and that the appeals that led from this were expensive and time consuming for the trust with little benefit to the families concerned. The trust therefore wished to discourage parents from thinking that appeals might be successful and this informed the language it used in the arrangements. The term “capped” was therefore used to convey that there would be no admissions over this number. We understand the challenge to the trust but find the term, “capped AN” used frequently throughout the arrangements is misleading and thus makes the arrangements unclear.

26. Section 3.5 of the arrangements says,

“Places will be allocated up to the Admission Number (AN) as specified above (see paragraph 2.5), with careful consideration being given to the relationship between admission limits and infant class size requirements. The Admission Number (AN) for the school will not be exceeded regardless of living in or moving into the catchment area.”

27. The reference to “careful consideration being given to the relationship between admission limits and infant class size requirements” could imply that the trust will not admit up to its AN, which would be unlawful. The statement is therefore either unclear or stating an intention to act unlawfully. In either case the arrangements do not meet the requirements of the Code.

28. The last sentence of section 3.5 says, “The Admission Number (AN) for the school will not be exceeded regardless of living in or moving into the catchment area”. The AN applies only during the normal year of entry. As we have made clear above, it is a minimum

and not a maximum. There may well be circumstances in which the AN will need to be exceeded, whether as a result of a decision by the admission authority or an appeals panel. Outside the normal year of entry, the test for refusing admission is whether the admission will cause prejudice to the efficient provision of education or use of resources. It is thus misleading to suggest that the AN will never be exceeded and this makes the arrangements unclear.

29. Section 7 also discusses the AN and restrictions regarding exceeding it. Again, the section provides partial information which is not clear.

Right to start school, compulsory school age, right to defer or delay admission

30. Paragraph 2.17 of the Code says,

“The [admission] 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.”

31. Section 2.3 of the arrangements provides some information on these matters but does not make it clear that the child “is entitled to a full-time place in the September following their fourth birthday”. Section 3.9 says, “Date of admission for all primary schools is from the September immediately following a child’s fourth birthday (i.e. all children who have turned 4 before the end 31st August.” This could imply that all children have to start in the September, which is not the case. Sections 3.15 and 3.16 do set out the parents’ rights in this matter but it seems unhelpful that bits of information are provided in different parts of the arrangements when they might be provided together logically and clearly.

32. Section 3.17 of the arrangements says, “To defer a place at first time admission, parents are asked to make the request in writing to the school where the child has been allocated a place.” As paragraph 2.17 of the Code says, deferring admission until the child has reached compulsory school age is a right and thus parents do not have to make a request to do so. There is no need for a parent to make a request (although it is clearly sensible to inform the school). As the arrangements refer to making a request, the arrangements are misleading and therefore unclear.

33. It was also not clear to us if section 3.17 is referring to deferring admission until the child has reached compulsory school age within the normal year of admission, and/or

referring to a child born between 1 April and 31 August (known as a summer born child). Summer born children reach compulsory school age on 31 August following their fifth birthday (or on their fifth birthday if it falls on 31 August). If section 3.17 of the arrangements refers to the right to delay the entry of a summer born child until the child reaches compulsory school age and then to request that the child is admitted to YR, then this section is not clear. Section 13 does provide clear information on the admission of children (whether summer born or not) outside their normal age group.

Oversubscription criteria

34. Paragraph 1.8 of the Code, as far as is relevant here, says, “Oversubscription criteria **must** be reasonable, clear [and] objective”. As described above there are five oversubscription criteria. Section 5 of the arrangements provides the oversubscription criteria with footnotes containing further explanations.

35. Section 3.4 of the arrangements says, “All late applications receive the lowest priority.” This could imply that such applications can only meet the fifth oversubscription criterion which would not be accurate. Section 5.2 uses the same wording but explains what it means by saying, “i.e. they are only considered after all other applications which were received on time, unless there is a significant reason for lateness”. The arrangements could simply explain this rather than making an unclear statement twice and then clarifying it in one place. Section 13.13 also says, “Late requests for school places (i.e. those received after a closing date) will be considered on their merits, but generally will have the lowest priority of all requests, even when the parents are requesting the catchment area school.” This also is unclear information.

36. Note i) to the oversubscription criteria says, “Combinations of the above criteria are used where appropriate, in priority order.” It is not clear what this means. Paragraph 1.6 of the Code says, “The admission authority for the school **must** set out in their arrangements the criteria against which places will be allocated at the school when there are more applications than places and the order in which the criteria will be applied.” This should include how it is decided who will have priority within a criterion. For example, there may be more children who live in the catchment area and who are seeking a place at the school than there are places. For example, in the case where the PAN is reached and exceeded among those living in catchment, would priority go first to those with siblings at the school and so on or would all catchment children be ranked by reference to distance from their home to the school? The arrangements need to explain simply how priority will be given in these and other circumstances. It may be that the sentence referring to “combinations of ...criteria” is intended to address this matter but, if so, it does not do so clearly and so does not meet the requirements of the Code.

37. The first criterion is, “Children who are in public care and those children who were previously looked after”. Paragraph 1.7 of the Code says, “All schools **must** have oversubscription criteria for each ‘relevant age group’ and the highest priority must be given, unless otherwise provided in this Code, to looked after children and all previously looked after children.” The criterion does not refer to looked after children but to children in

public care which is not the same thing as not all looked after children are in public care. The criterion therefore does not meet the requirements of the Code.

38. The note to criterion 1 does describe looked after children accurately but is not consistent with criterion 1. This inconsistency makes the arrangements unclear.

39. Criterion 2 is “Pupils who live in the catchment area”. The note to criterion 2 does not provide information on the catchment area except to say that living in it does not guarantee a place “at the catchment school”. Section 10 does provide information on the catchment area together with a link to a map of the catchment area which is provided on the websites for the schools and the trust. This is helpful and clear but not provided at the point where it is relevant to the oversubscription criterion. There are other references to the catchment area scattered across the arrangements and the frequent references do not aid clarity.

40. Criterion 3 is “Pupils who will have an older brother or sister attending the same school at the same time who live in the same house. This will not apply to mid-term admissions in year groups where the admission number has been reached (see note iv)”. Note iv provides a definition of a brother or sister. It is not clear to us what is meant by “Pupils who will have an older brother or sister attending the same school at the same time who live in the same house.” At the meeting it was thought that this might mean that the oversubscription criteria would apply to those who had a sibling who would still be expected to be attending the school when the child applying for a place joined but this is not clear in the current wording.

41. The referrer said that the second statement in criterion 3 is unclear because the trust does not hold a waiting list so the purpose of the statement was not clear. At the meeting the trust explained that many of its schools were receiving applications every week for admissions in-year. Sometimes there would be several applications from the same family. If there were to be one child admitted, because there was space in a year group, then the other children would meet criterion 3 as they had a sibling at the school. The trust did not want to use that criterion for in-year admissions.

42. Paragraph 2.29 of the Code says, “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.” There is a footnote to this paragraph which clarifies, “The determined admission arrangements [are those] that relate to the admission of pupils in the relevant school year.” The Code does not permit that different admission arrangements are used for in-year admission and so the arrangements do not meet the requirements of the Code in this respect.

43. 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) (see note v)”. Note v says,

“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);

A child for whom transfer to the catchment area school would involve attending a different school until he/she is the right age for a transfer (this is dependent on the child having attended the present school for at least a year)

Each case will be assessed on its individual merits”.

44. The referrer said that the inclusion of a priority on the basis of a parent being a Crown Servant, “appeared to breach section 1.9 of the Code by giving priority on the basis of parental occupation.” Paragraph 1.9 f) of the Code says admission authorities **must not** “give priority to children according to the occupational...status of parents applying.” We agree that to give priority to a child because their parent is a Crown Servant is a breach of 1.9 f) of the Code and the arrangements do not comply with the Code in this matter.

45. We note, however, that it is possible that there could be situations in which a parent’s occupation may create an exceptional social need for an individual child to attend a particular school. For example, it might be that Child A, the child of a prison governor would not want to attend the same school already attended by a child of a particular inmate of the prison concerned. If there were only one other local school which it would be reasonable for child A to attend, Child A might have a social need for priority to attend the other local school. The arrangements do not cover this eventuality however and it would always be contrary to the Code to name an occupation (except for school staff and those eligible for the service premium as detailed in 1.9 f) of the Code.

46. As noted above criterion 4 refers to the role of the “lead professional”. “Working Together to Safeguard Children”, which was published by the government in 2018 as “a guide to inter-agency working to safeguard and promote the welfare of children”, says, “A lead practitioner should undertake the assessment, provide help to the child and family, act as an advocate on their behalf and co-ordinate the delivery of support services.” Many local authorities refer to the lead professional when describing this role and this would be pertinent to several of the categories listed. The term “Lead Professional” is not defined, and it is not clear what or who is meant by the term in the context of the list, therefore the arrangements do not conform with the requirement of paragraph 1.6 that the arrangements must state clearly what supporting evidence will be required.

47. Children being considered under the fair access protocol (the protocol) are also included in the list in criterion 4. The protocol is, as paragraph 2.14 of the Code says, “to ensure that unplaced and vulnerable children, and those who are having difficulty in securing a school place in-year, are allocated a school place as quickly as possible [our underlining for emphasis].” Placements under the protocol are separate to the allocation of places in the normal admissions round. The inclusion of this category in a list of children who would be given priority in the normal year of entry based upon social or medical need makes the arrangements unclear because it implies that the criterion applies to them, whereas it cannot.

48. The list of those children who could be considered under criterion 4 also includes, “A child for whom transfer to the catchment area school would involve attending a different school until he/she is the right age for a transfer (this is dependent on the child having attended the present school for at least a year)”. It is not clear to us or the referrer why this situation would be deemed to be “a serious medical condition or exceptional social or domestic needs that make it essential they attend the school requested”, particularly as the year of admission is YR and the trust does not hold a waiting list for other years. The local authority explained at the meeting that this was now irrelevant as the local school organisation had now changed. The inclusion of this category for this criterion is therefore meaningless and has no rationale; this makes the arrangements unclear.

49. The list provided in the note to criterion 4 appears to be exclusive in that it describes “the areas that are considered exceptional” under this criterion. The list does not include anything relevant to children with “a serious medical condition” but these children are included in the criterion. Criterion 4 and the explanatory note are therefore inconsistent and such inconsistency makes the arrangements unclear.

50. We also note that the oversubscription criteria refer frequently to “pupils” when, in fact, children to whom the criteria will apply (those wishing to join YR) will not already be pupils of a school.

Definitions of home address

51. Paragraph 1.13 of the Code is concerned with distance and how admission arrangements **must** state clearly how the distance from home to school, if part of the oversubscription criteria, is measured. There are various places in the arrangements where there is information about how the home address is defined and/or proven including sections 5.4, 13.10 to 13.12 and 13.23 to 13.32. These various statements are not all consistent and so the arrangements are not clear.

52. Paragraph 1.13 of the Code continues that, “This 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.” Section 13.10 of the arrangements says, “Where a child lives for part of the week with one parent and for part of the week with the other parent, the address recognised for the purpose of school admissions is the one where the child lives for the majority of the school week.” A child’s

time can be split so that he or she lives with both parents equally and so the requirement of paragraph 1.13 is not met by this statement.

Waiting list

53. Paragraph 2.15 of the Code says, “Each admission authority **must** maintain a clear, fair, and objective waiting list until at least 31 December of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria.” The arrangements say that the waiting list will be maintained until the end of the autumn term. The end of the autumn term will not be 31 December so the arrangements do not meet the requirements of the Code. Nor do the arrangements state that “each added child will require the list to be ranked again in line with the published oversubscription criteria.” There are words that could be construed to mean this but the wording is not clear and so the arrangements do not meet the requirements of the Code in this regard.

Summary of Findings

54. The arrangements include matters prohibited by the Code, 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

55. We have considered the admission arrangements for September 2023 for the schools for which the Oadby, Wigston and Leicestershire Schools Academy Trust is the admission authority 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 relating to admissions.

56. 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: 25 October 2022

Signed:

Schools Adjudicators: Deborah Pritchard / Dr Robert Cawley