



Determination

Case reference:	REF4087
Referrer:	A member of the public
Admission authority:	The governing board of Rothley Church of England Primary School, Leicester
Date of decision:	31 October 2022

Determination

We have considered the admission arrangements for September 2023 for Rothley Church of England Primary School, Leicester 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 adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of 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 Rothley Church of England Primary School (the school), determined by its governing board, which is the admission authority for the school. The school is an academy for children aged four to eleven. It is situated in the local authority area of Leicestershire County Council (the LA).

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. When the arrangements were brought to our attention, we also 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 School Admissions Code (the Code). Considered along with the matters raised by the referrer, there are sections of the arrangements that: are not clear; are not needed; are inaccurate, misleading or prohibited by the Code; and where subjects are referred to in different parts of the arrangements inconsistently. There are also some aspects missing where the Code requires them to be included in arrangements. All of the specific matters are detailed in the 'Consideration of Case' section of this determination.

4. In respect of all 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." Paragraph 1.8 of the Code, as far as is relevant here, says, "Oversubscription criteria **must** be reasonable, clear [and] objective". We will make reference to other paragraphs of the Code where relevant.

5. The parties to the case are the referrer, the school, the LA and the Diocese of Leicester (the diocese), which is the religious authority for the school.

Jurisdiction

6. The school is in a single academy trust and the governing board is the trust. The terms of the academy agreements between the governing board and the Secretary of State for Education require that the admissions policies 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 and paragraph 1.49 of the Code to determine admission arrangements for September 2023 by 28 February 2022. On 5 July 2022, when the objection was received, the governing board had not determined its arrangements for 2023. Because our jurisdiction is for determined arrangements, it was not possible for us to consider the arrangements at that time. The governing board subsequently determined the arrangements for the school on 16 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 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 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.

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 include information on the process for making in-year applications, which was not included in the 2022 arrangements. We have therefore not considered this part of the referral as it is no longer relevant.

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 5 July 2022;

b) copies of the minute of the extraordinary general meeting of the governing board which determined the arrangements on 16 September 2022;

c) a copy of the determined arrangements;

d) comments from the school on the matters raised; and

e) information available on the websites of the school, LA, diocese (including guidance provided for its faith schools), the Department for Education (DfE) and Ofsted.

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

12. The diocese provided the following comments:

"[...] you note that the Admissions arrangements have not been determined according to statutory timescales. [...] the Diocese advises all schools and academies in writing (via bulletins and website) and offers training annually. [...]"

Rothley CofE Primary Academy did not forward draft Admissions Arrangements as requested by the DBE [Diocesan Board of Education] in 2021 (for 2023/24) or attend training."

13. We have also taken account of information received during a meeting we convened on 12 October 2022 at 2pm. As well as the two adjudicators, the meeting was attended by representatives of the school (the headteacher, chair of governors, and clerk to the governing board). The referrer chose not to attend the meeting. The Diocesan Director of Education could not attend, but was content for the meeting to go ahead without her. A representative of the LA did not attend the meeting.

14. We note here that the governing board has already made changes to the arrangements published on its website, prior to the conclusion of the consideration of the case by us. This determination is based on the determined arrangements provided to us and not on the amended copy of the arrangements subsequently published online.

Background

15. 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.

16. At the meeting, the representatives of the governing board explained that there had been significant changes to the school leadership in recent weeks with all those attending relatively new in post. The intention to address all concerns and make sure that the admission arrangements fully complied with the Code in future was expressed, which was welcomed.

17. According to the Government website 'Get Information About Schools' (GIAS), the school has 466 pupils and a capacity for 420. The school's Published Admission Number (PAN) is 60. The school purchases advice from the LA on its admission arrangements and the LA is also commissioned by the school to undertake some of the admission processes on behalf of the school.

18. After the admission of children with Education, Health and Care Plans (EHCPs) children are admitted according to the oversubscription criteria in the arrangements although this is not explained clearly in the arrangements. The oversubscription criteria 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) Children who live in the catchment area.
- 3) Children of full time staff who have had a permanent contract with the school for a minimum of two years.
- 4) Children of the clergy serving as fully licensed ministers to the Rothley Parish Church.
- 5) Siblings of children at the school.

- 6) Children who have a serious medical condition or exceptional social or domestic needs.
- 7) Distance from the school.

Consideration of Case

Matters raised by the objector

19. The referrer raised a number of matters which we brought to the attention of the school.

- 19.1. The arrangements refer to 'statements of special educational needs'. This term is no longer used as statements were replaced by EHCPs.

Using obsolete terms renders the arrangements unclear for parents and so we agree that the arrangements do not comply with the Code in this regard.

- 19.2. Oversubscription criterion 4 gives priority to "Children of the clergy serving as fully licensed ministers to the Rothley Parish Church". The objector asserts this is included in breach of paragraph 1.9 e) and f) which prevents arrangements giving "priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including any religious authority" and "priority to children according to the occupational, marital, financial, or educational status of parents applying".

We agree that including this criterion breaches 1.9 e) and f) of the Code for the reasons given by the objector.

- 19.3. Note vi lists that priority will be given to "Crown Servants (serving members of the armed forces)"

We agree that this also breaches paragraph 1.9 f) in that it is giving "priority to children according to the occupational, marital, financial, or educational status of parents applying", again for the reasons given by the objector.

- 19.4. Note vi is referred to under oversubscription criterion 4. The referrer said that this note does not provide information related to that criterion and so is unclear for parents.

We agree that this is unclear and we discuss this matter further below.

- 19.5. The last bullet point of Note vi states: "A child for whom transfer to the catchment area school would involve attending a different school until he/she is the right age for transfer. (This is dependent on the child having attended the present school for at least a year)".

We agree with the referrer that it is not clear what the purpose of this statement is and so it will not be clear for parents.

- 19.6. Oversubscription criterion 6 states: "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)." This may not be clear because of the grounds listed.

Paragraph 1.16 of the Code states: "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." We will consider this matter further below.

- 19.7. The arrangements do not include information on the admission of children outside their normal age group (paragraphs 2.18 to 2.20). This has been addressed in the 2023 arrangements and so we do not agree with the referrer on this matter (who only had access to the 2022 arrangements).
- 19.8. The arrangements for 2023 were not published by 15 March 2022 as required by paragraph 1.50 of the Code.
- 19.9. The governing board did not meet the requirements of the Code in this regard. The arrangements have now been published and the governing board said that it had established a timetable to make sure that such requirements are met in future.

20. The referrer also asserted that the arrangements should include a section providing information on the admission of service children (paragraph 2.21). The school told us that it is not in an area where this is an issue for its admissions process. Paragraph 2.21 ends by stating: "Arrangements **must** be appropriate for the area and be described in the local authority's composite prospectus". The school's admission arrangements clearly are not the LA's composite prospectus. There is no requirement for any school's admission arrangements to include information about service children and paragraph 2.21 does not suggest that there is. Rather, it sets out a number of requirements but does not say that how a school will meet these must be set out in its admission arrangements. We do not agree with the referrer's points on this aspect of the arrangements.

21. In the meeting held on 12 October 2022, the school stated that it intended to amend its arrangements to address these matters, which is welcomed.

Other matters raised by the adjudicators

22. 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

paragraphs 14 and 1.8 of the Code (as stated earlier). Other paragraphs of the Code are indicated where relevant below.

The section entitled: 'ADMISSION CRITERIA'

23. The use of the term 'Admissions Criteria' for the oversubscription criteria is misleading for parents. The application of oversubscription criteria is only in situations where there are more applications than places. They do not apply when the number of applicants is fewer than or equal to the PAN. Parents may be led to believe the criteria are used for any admissions.

24. 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. The arrangements therefore do not meet the requirement of paragraph 1.7 of the Code which is that "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".

25. Oversubscription criterion 2 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 several issues:

25.1. The arrangements say that details of the catchment map can be found on the local authority's website via 'find a school'. There is no link to this in the arrangements. 'Find a school' does not show the catchment area for the school.

25.2. The school's website includes a link to a map of the catchment area, but this is not explained in the arrangements. This map shows the location of the school. There are boundaries of 'areas' all over the map, but nothing indicating the catchment of the school.

25.3. The criterion refers to Note iii, which states: "The child's place of residence is taken to be the parental home". This is not clear for parents in that it appears to have no reference to the catchment area and is in fact dealing with another issue.

25.4. Confusingly, the information that should be under Note iii appears elsewhere in the arrangements.

26. Oversubscription criterion 3 prioritises "Children of full time staff who have had a permanent contract with the school for a minimum of two years" and refers to Note iv. Note iv reflects the wording of paragraph 1.39 of the Code which says,

“Admission authorities may give priority in their oversubscription criteria to children of staff in either or both of the following circumstances:

- a) where the member of staff has been employed at the school for two or more years at the time at which the application for admission to the school is made; and/or
- b) the member of staff is recruited to fill a vacant post at the school for which there is a demonstrable skill shortage.”

27. Paragraph 1.40 of the Code says, “Admissions authorities **must** specify in their admission arrangements how this priority will be applied, for example, which groups of staff it will apply to.” . The school has clearly opted, in line with paragraph 1.40 to stipulate to which groups of staff this will apply to (those who are full-time and on permanent contracts). However, the Note does not match the criterion. This inconsistency makes the arrangements unclear.

28. Criterion 4 is “Children of the clergy serving as fully licensed ministers to the Rothley Parish Church”. Note vi begins: “If criterion 4 is used, professional supporting documentation from the Lead Professional must be supplied and must be submitted with the application”. Note vi is not relevant to criterion 4 so this makes the arrangements unclear. We have already made clear that giving priority to children because they are children of clergy is unlawful.

29. It would appear that Note vi relates to criterion 6 which 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).”

30. It is not clear what is meant by the term ‘Lead Professional’ in Note vi. “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 LAs refer to the lead professional when describing this role. The term ‘Lead Professional’ in the arrangements is not defined, and it is not clear what or who is meant by the term in this context. Therefore the arrangements do not conform with the requirement of paragraph 1.6 of the Code that the arrangements must state clearly what supporting evidence will be required.

31. Oversubscription criterion 7 is “Pupils living nearest to the school measured in a straight-line distance.” Note vii explains how the distance will be calculated from an applicant’s home to the school for prioritising admissions under this criterion. Paragraph 1.13 of the Code states: “This **must** include making clear how the ‘home’ address will be determined [...] 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.” This information is not provided in the arrangements.

32. With regards to Note i:
- 32.1. This is not referred to anywhere in the arrangements and the information does not appear therefore to need to be presented in the form of a Note. It may be missed by parents who are not directed to it.
- 32.2. The information in Note i is unclear in that it states: “combinations of the above criteria will be used in priority order”. Given that admission is prioritised in order of the criteria when the school is oversubscribed, it is not clear what is meant by ‘combinations of the above’. Paragraph 1.6 of the Code states: “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. 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 the above 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.
- 32.3. The tie break situation described in Note i is unclear in that:
- 32.3.1 the process of “drawing lots” needs to be explained for parents; and
- 32.3.2 it 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.

The section entitled: ‘AGE OF PUPILS’

33. It is stated that: “Children are admitted in the Autumn Term after their 4th birthday” and no further information is provided. 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."

34. The arrangements do not include this information on the rights of parents and so do not comply with the Code in this regard. 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." The arrangements do not include any information on this matter and so do not comply with the Code in this regard.

The section entitled: 'APPLICATION PROCEDURE'

35. The arrangements say that all applications must be made via Leicestershire County Council. This is misleading as applications must be made via the local authority for the area in which the child lives, which may not be Leicestershire. This makes the arrangements unclear.

36. It is stated that the admissions policy will be published annually in the autumn term. Paragraph 1.50 of the Code requires that admission arrangements, including matters such as catchment area maps and supplementary information forms, must be published on the admission authority's website by 15 March following determination by 28 February every year. As noted at the beginning of this determination, the school has put in place a revised schedule for the determination of its arrangements in order to comply with the Code from this point forward.

37. Under this subheading is a reference to a 'supplementary application form', but no form is provided or appears to be needed. The reference needs to be removed or, if needed, the form added. The current reference makes the arrangements unclear.

The section entitled: 'Late Applications'

38. The final sentence in this section reads: "All supplementary information i.e. medical consultant letters to proof of change of address, remains the parent's responsibility to supply". It is not clear why this applies to late applications and not relevant to applications in the normal year of entry.

The section entitled: 'Oversubscription (OSL 'Waiting') List'

39. In respect of the information about the school's waiting list under this section:
- 39.1. The subheading is muddled and therefore confusing. It is not clear why it is not just called the 'waiting list'.
- 39.2. 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 this section of the arrangements 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.
- 39.3. The final paragraph of this section includes the sentence: "The OSL may change, this means that a child's OSL 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).

The section entitled: 'Fraudulent Information'

40. The arrangements when we first saw them stated: "If the allocation of a place has been made on the basis of fraudulent or intentionally misleading information, the governors reserve the right to withdraw the place". There is in fact no requirement for such a statement to be included in admission arrangements. However, where an admission authority chooses to include information about matters such as the possible withdrawal of places it is important that it accurately reflects the provisions of the Code. The sentence used by the school does not reflect completely paragraph 2.14 of the Code, which states: "In deciding whether to withdraw the place, the length of time that the child has been at the school **must** be taken into account. For example, it might be considered appropriate to withdraw the place if the child has been at the school for less than one term."
41. The school 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

42. Matters raised by the referrer and by us have been brought to the attention of the school. There are sections of the school's arrangements that are not clear, not needed, are inaccurate, misleading or prohibited by the Code, and where subjects are referred to in different parts of the arrangements inconsistently. There are also some aspects missing

where the Code requires them to be included in arrangements. As a result, 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 and other paragraphs of the Code as detailed above.

Determination

43. We have considered the admission arrangements for September 2023 for Rothley Church of England Primary School, Leicester 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.

44. By virtue of section 88K(2) the adjudicator’s decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

Dated: 31 October 2022

Signed:

Schools Adjudicator: Dr Robert Cawley

Schools Adjudicator: Deborah Pritchard