



Office of
the Schools
Adjudicator

Determination

Case reference: REF4099

Admission authority: The governing board for Wark Church of England Primary School, Northumberland

Date of decision: 30 November 2022

Determination

I have considered the admission arrangements for September 2023 for Wark Church of England Primary School, Northumberland in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the matters set out below, the arrangements do not conform with the requirements relating to admission arrangements.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. I require the admission authority to revise its admission arrangements by 28 February 2023.

The referral and jurisdiction

1. The admission arrangements for Wark Church of England Primary School (the school) for 2023 (the arrangements) came to my attention while considering the admission arrangements determined by Northumberland County Council (the local authority) for community and voluntary controlled schools in the county (determination REF4069 dated 1 September 2022).
2. In the course of making that determination I wanted to find details of any catchment areas determined by the admission authorities for foundation, voluntary aided and academy schools in the area surrounding the village of Bellingham. Paragraph 1.50 of the School Admissions Code (the Code) requires that admission authorities publish their arrangements on their websites by 15 March each year. On 14 July 2022 I was unable to find the arrangements for the school on its website. On 13 September 2022, through the Office of the Schools Adjudicator (OSA), I asked the governing board, which is admission authority

for the school, to send me a copy of the arrangements and the minutes of the meeting at which they were determined.

3. Admission authorities were required to determine their arrangements for 2023 by 28 February 2022. The governing board was unable to provide any evidence that it had determined admission arrangements for 2023. The OSA wrote to the governing board to remind it of the need to determine arrangements for 2023 and asked for a copy of the determined arrangements and the minutes of the meeting at which they were determined.

4. On 15 November 2022 a copy of arrangements for 2023 was received together with the minutes of the meeting of the governing board held on 1 November 2022 at which they were determined. It appeared to me that they did not, or may not conform with the requirements of the Code and I decided to use my power under section 88I(5) of the Act to consider the arrangements.

5. The parties to the case are the governing board of the school, Northumberland County Council (the local authority) and the Diocese of Newcastle (the diocese) which is the religious authority for the school.

Procedure

6. In considering this matter I have had regard to all relevant legislation and the Code.

7. The documents I have considered in reaching my decision include:

- a) copies of the minutes of the meeting of the governing board at which the arrangements were determined;
- b) a copy of the determined arrangements;
- c) comments from the diocese on the matters raised; and
- d) an email from the governing board concurring with the comments from the diocese.

Background

8. The school is a voluntary aided Church of England primary school for children aged 3 to 11 in the village of Wark. It serves a sparsely populated rural area about 10 miles north of Hexham. The school is listed on the Department for Education (DfE) register of educational establishments as having a capacity of 75 with 46 pupils on roll. The published admission number is 15 and the oversubscription criteria can be summarised as follows.

1. Looked after and previously looked after children
2. Children with special medical or social circumstances
3. Children living in the parishes of Wark, Simonburn, Birtley and Chollerton

4. Children with siblings at the school
5. Children whose parents worship at any one of three named churches
6. Children whose parents have indicated a preference for a Church of England School
7. Other children.

Consideration of the arrangements

9. When I wrote to the parties listing my concerns with the arrangements, the diocese provided comments on all the issues raised. The governing board said that it agreed with the diocese's comments. The local authority made no substantive comment.

10. 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." In the first paragraph of the arrangements there is a list of the bodies who were consulted with about the arrangements. Paragraph 1.47 of the Code lists who **must** be included when an admission authority consults on its arrangements. The list in the Code includes: "parents of children between the ages of two and eighteen" and "in the case of schools designated with a religious character, the body or person representing the religion or religious denomination." Parents and the diocese were not included in the list of consultees in the arrangements.

11. I can either conclude that the governing board did not consult correctly or that it has not listed its consultees accurately. The diocese did not say that it was not consulted and so I have chosen the second option. There is no requirement for admission authorities to say in their arrangements who was consulted about them, but if an admission authority decides to include such a list, then to meet the requirement of paragraph 14 for arrangements to be clear, the list must be accurate. The diocese said that it advised governing boards on who should be consulted and suggested that this part of the arrangements should be deleted.

12. The third paragraph of the arrangements refers to statements of special educational need. These statements were phased out between 2014 and 2018. Including obsolete terms in the arrangements renders them unclear. The diocese referred to having removed the term from its model policy.

13. The first oversubscription criterion is, as required by paragraph 1.7 of the Code, for looked after and previously looked after children. The criterion includes children previously in state care outside of England who have ceased to be in that state care as a result of being adopted. However, while the arrangements include a note defining some looked after children, there is no definition of previously looked after children who would meet the criterion because of being adopted from state care outside of England. The definition of

children who would be considered as being in state care outside of England is provided in footnote 16 to paragraph 1.7 of the Code. Without this definition, the criterion is unclear; paragraph 1.8 of the Code requires that oversubscription criteria are clear. The diocese told me that it uses the definition from the Code in its model policy and proposed that the school did the same.

14. The fifth oversubscription criterion is “Children whose parents worship regularly and frequently at St Michael’s Church, Wark, St Mungo’s Church, Simonburn or St Giles’ Church, Birtley.” In the notes section the arrangements say, “Regularly and frequently is defined as attendance at least once per month over the last twelve months.” Paragraph 1.37 of the Code says “Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.” I was concerned that the term “last twelve months” was not clear. This could indicate several different periods. For example, it might mean the 12 months prior to the deadline for applications, that is 15 January 2023, or the 12 months prior to the day on which a parent asked the vicar for a letter to confirm their pattern of worship.

15. The diocese said that this was intended to be the 12 months prior to the date of application and proposed that the school made this clear in the arrangements. Parents can apply on any date up to 15 January and so each application considered under this criterion would be based on a different 12 months. This may present some administrative issues, but I do not think this is contrary to the Code. The time period, however, must be made clear in the arrangements.

16. The sixth oversubscription criterion is “Children whose parents have indicated a preference for a Church of England School”. Every parent who applies for a place at this school for their child will meet this criterion as by applying to the school they will have expressed a preference for a Church of England school. A criterion which does not discriminate between any applicants cannot be reasonable and so will not conform with the requirement of paragraph 1.8 of the Code for oversubscription criteria to be, among other things, reasonable. The diocese agreed that this criterion was unnecessary.

17. Paragraph 1.8 of the Code also requires that “Admission arrangements **must** include an effective, clear, and fair tie-breaker to decide between two applications that cannot otherwise be separated.” The arrangements include a tie-breaker which would give priority to the child living nearest the school. However, it is possible for two or more children to live the same distance from the school which would make the tie-breaker ineffective. The diocese said that it recommended the use of random allocation as a tie-breaker as in its model policy.

18. Paragraph 1.13 of the Code concerns the measurement of distance from the school. It requires admission authorities to make clear how the child’s home address will be determined and to “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 requirement was not met in the arrangements, and the diocese again recommended the school follow its model policy.

19. The arrangements include a section about waiting lists. This section does not include the statement required by paragraph 2.15 of the Code that “that each added child will require the list to be ranked again in line with the published oversubscription criteria.” The diocese pointed out that the arrangements did make reference to the oversubscription criteria in the section on waiting lists. The arrangements say, “the selection criteria and the tie breaker indicated above will apply.” In my view, this does not meet the requirement of the Code.

20. The arrangements include the following statement: “Parents are asked to let the Headteacher know at the time of application whether their child has a disability. Parents should be assured that the nature of the disability is not grounds for refusing the application. The school will make every reasonable adjustment to ensure that disabled children are not put at a substantial disadvantage in accessing a full curriculum and that they will not be treated less favourably, without reasonable justification, than their able-bodied peers.” Asking parents of children with disabilities to follow a different course of action when applying to the school contravenes the Equality Act 2010 (the EA) as much as asking parents of boys and girls to apply in different ways. Information about a child’s disability may be necessary after a place has been offered but cannot be sought as part of the admissions process. The diocese did not think that the EA was breached by the arrangements but said the comment should be removed to avoid uncertainty.

21. I am concerned that the arrangements mislead parents about the process and timescale for making an application and so are not clear. The arrangements say, “formal written applications for admission must be made on the form provided by the Local Education Authority and returned to the school by the stated date. Places will then be allocated by strict application of the above criteria, with no reference to the date of application. Parents will be notified as to whether or not their child has been allocated a place by the end of March.” Not only is the term “Local Education Authority” no longer used, but this does not accurately describe the school admissions process which has been in place for many years. The most recent changes to the process were made in the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012. The process has been clearly set out in all versions of the Code which have been in effect since then. In summary, parents must apply on the common application form (CAF) used by the local authority in which they live. For primary schools applications must be made by 15 January and parents will be informed by their local authority of the outcome of their application on 16 April (with variations to the date if the prescribed day is not a working day). The diocese again suggested that the school use the wording taken from its model policy.

22. The arrangements include a section with the heading “Admission outside of the normal age range”. This begins by referring to “The School Admissions Code 2014”. A new version of the Code came into force in September 2021. Referring to a previous Code renders the arrangements unclear. The diocese described this as an “omission”.

23. This section of the arrangements conflates the requirements of two sections of the Code. Paragraph 2.17 concerns the admission of children below compulsory school age and deferred entry to school while paragraphs 2.18 to 2.20 concern the admission of children outside their normal age group. The arrangements say:

“Parents are entitled to request in writing that:

- their child attends part-time until they reach compulsory school age, or
- that the date their child is admitted to school is deferred until later in the same academic year or until the term in which the child reaches compulsory school age. The school will hold any deferred place for the child, although, in the majority of cases, we find that children benefit from starting at the beginning of the school year, rather than part way through it.
- that the date their child is admitted to school is deferred until the term after the child reaches compulsory school age.”

24. Paragraph 2.17 of the Code is clear that for children who have not reached compulsory school age, deferment or part-time attendance at school is not something which has to be requested in writing or requested at all. It is for parents to decide, within the constraints set out in paragraph 2.17, when and how their child starts school; schools must accept parents’ decisions. The diocese said that the wording was intended to set out how parents confirm they wish to defer admission.

25. One of the constraints to deferring a child starting at school found in paragraph 2.17 of the Code is that it cannot be “beyond the beginning of the final term of the school year”. This means that a child born between April and August, who will not be of statutory school age until the following September, must take up their place at the start of the summer term. This constraint is not reflected in the last bullet point.

26. The arrangements do go on to explain that if parents of a summer born child do not want them to start school until they are of statutory school age in September, they must make an in-year application for a place in Year 1. The arrangements also explain that it is also possible for parents of summer born children to apply for them to join the next reception class outside of their normal age group and how this should be done. Paragraph 2.18 says that admission authorities must make the process of applying for admission outside of the normal age group clear in their arrangements. Admission outside of the normal age group also includes a child being admitted to an older age group; the process for doing this is not in the arrangements.

Summary and next steps

27. There are several indications in these arrangements which leave the impression that the arrangements have not been systematically revised for some time. While the school may be undersubscribed and has not needed to apply its oversubscription criteria, that

does not relieve the governing board of its duty to determine and publish admission arrangements every year as required by the Code. The governing board is also required to consult on its admission arrangements every seven years even if no changes are being proposed. Once the governing board has determined its arrangements each year, as explained in paragraph 1.50 of the Code, it must send a copy to both the local authority and the diocese. This local scrutiny should help ensure that the arrangements remain in line with the Code.

28. I have found twelve ways in which the arrangements do not conform with the Code. The diocese has provided a copy of its model policy and an amended version of the arrangements. My jurisdiction under section 88I(5) of the Act is limited to determined admission arrangements and so I cannot formally comment on those documents. They will, however, be helpful to the governing board when it undertakes the required revision of the arrangements following this determination.

29. Paragraph 3.1 of the Code says, “The admission authority **must**, where necessary, revise their admission arrangements to give effect to the Schools Adjudicator’s decision within two months of the decision (or by **28 February** following the decision, whichever is sooner), unless an alternative timescale is specified by the Schools Adjudicator.” I have decided to set the deadline for the governing board to revise the arrangements as 28 February 2023 for the reasons set out below.

30. No consultation is required on the revisions which the governing board must make to the 2023 arrangements as a result of this determination. The necessary changes are unlikely to alter the priority which parents assign to their application on the CAF, or which children will be offered places at the school for September 2023. The usual two-month period from the date of this determination would end in February 2023 and the governing board must determine its arrangements for 2024 by 28 February 2023. Aligning these two processes may be helpful.

31. While no consultation is required on changes to the 2023 arrangements, the governing board will note that it may be required to consult on its arrangements for 2024 if it has not consulted in the last seven years; the timescale set out in paragraph 1.46 of the Code would require it to take prompt action. If the governing board has consulted on its arrangements within the last seven years and is not proposing changes to the revised arrangements for 2023, no consultation is required.

Determination

32. I have considered the admission arrangements for September 2023 for Wark Church of England Primary School, Northumberland in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the matters set out above, the arrangements do not conform with the requirements relating to admission arrangements.

33. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. I require the admission authority to revise its admission arrangements by 28 February 2023.

Dated: 30 November 2022

Signed:

Schools Adjudicator: Phil Whiffing