



Determination

Case reference:	REF4100
Referrer:	a member of the public
Admission authority:	Thinking Schools Academy Trust for All Faiths, Cedar, Gordons Infant and Gordons Junior Children's Academies in the local authority area of Medway
Date of decision:	21 February 2023

Determination

I have considered the admission arrangements for September 2023 for All Faiths, Cedar, Gordons Infant and Gordons Junior Children's Academies 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.

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 and other matters in the arrangements

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 All Faiths, Cedar, Gordons Infant and Gordons Junior Children's Academies (the schools) for September 2023. The admission authority is The Thinking Schools Academy Trust (the trust).
2. The referral relates to the information in the arrangements regarding the process for requesting admission out of the normal age group. The requirements relating to this are set out in paragraph 2.18 of the Code.
3. When I considered the arrangements, I identified a number of respects in which the arrangements appeared not to conform with the requirements relating to admissions. The case manager wrote to the trust on my behalf and explained my concerns on the following matters (with relevant paragraphs of the Code in brackets):

- 3.1. Admission of children below compulsory school age (14 and 2.17)
 - 3.2. How applications will be ranked when there is oversubscription within a criterion (14, 1.6 and 1.8)
 - 3.3. Definition of siblings (14 and 1.11)
 - 3.4. Definition of children of staff (14, 1.8, 1.39 and 1.40)
 - 3.5. Priority for children from multiple births (14, 1.8)
 - 3.6. How distance of the home from the school is measured (14 and 1.13)
 - 3.7. Provision of a tie-breaker (14 and 1.8)
 - 3.8. Information on the waiting list (14 and 2.15).
4. The parties to the case are:
 - 4.1. the referrer;
 - 4.2. the trust; and
 - 4.3. Medway Council (the local authority) which has not commented.

Jurisdiction

5. The referrer's objection is dated 30 November 2022. The School Admissions Code (the Code) requires objections to admission arrangements for 2023 to be made to the adjudicator 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 my attention, I 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 I am treating the objection as a referral.

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) the referrer's form of objection;
 - b) copies of the minutes of the meeting of the trust at which the arrangements were determined and a copy of the determined arrangements;
 - c) comments from the trust on the matters raised; and

- d) information available on the websites for the schools, the trust and the Department for Education (DfE).

Background

8. The DfE website 'Get information about schools', says that the trust is the admission authority for 21 schools. The trust has determined individual arrangements for many of these schools which are in various parts of the country. The four schools that are the subject of the referral are all situated in the local authority area of Medway Council and are primary schools. The schools comprise two primary schools (All Faiths and Cedars) and one infant school (Gordons Infants) and one junior school (Gordons Juniors). I note that the infant and junior schools are referred to as 'Gordons' on the DfE websites and 'Gordon' on the website for the schools. I have used the term used by the DfE in this determination.

9. On reading the arrangements for the schools it appeared to me that the arrangements were very similar to each other (with the exception of the fact that children at the infant school have priority for places at the junior school) and the trust agreed that was appropriate to consider them together rather than separately. The schools have different published admission numbers (PANs) and the arrangements are published separately except that the arrangements for "Gordons Children's Academy" are published together and read as if the infant and junior schools were one school with two years of entry (reception year and year 3), although they are two separate schools and each has its own unique reference number.

10. The case manager wrote on my behalf to the trust on 6 December 2022. She provided the referral and asked for a copy of the arrangements and evidence that they had been determined. Following reminders, a copy of the arrangements and evidence of determination was received on 12 January 2023. The case manager wrote again to the trust on 16 January 2023 asking for comments on the referral and other matters that I thought may not meet the requirements of the Code. Following reminders, a response was received from the trust on 1 February 2023.

11. The oversubscription criteria for each of the schools are, in summary:

- 1) Looked after and previously looked after children
- 2) A child with a sibling at the school
- 3) Children of staff employed by the trust/school
- 4) Children with health reasons to attend the school
- 5) Children from multiple births
- 6) Nearness of the child's home to the school.

12. For the junior school, the second criterion is attendance at the infant school and then the criteria continue as above so the junior school has seven oversubscription criteria.

Consideration of the arrangements

Admission outside the normal age group

13. This is the matter raised in the referral. Paragraph 2.18 of the Code is concerned with admissions outside their normal age group and says,

“Parents may seek a place for their child outside of their normal age group, for example, if the child is gifted and talented or has experienced problems such as ill health. In addition, the 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. Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.”

14. The relevant section in the arrangements says,

“Parents/carers of children with summer term birthdays (1 April to 31 August 2019) may ask to start their child in Year 1 in September 2024 but the Reception place will not be saved. Parents/carers will have to reapply for a Year 1 place. Parents/carers are not able to defer entry beyond the beginning of the term after the child’s fifth birthday.”

15. The referrer said, “The arrangements do not mention admission of children outside their normal age group, there is also no clear explanation in the arrangements of the process for requesting admission out of the normal age group.”

16. In its letter dated 1 February 2023 the trust said, “We acknowledge that from the Complaint made to the adjudicator that our current admissions arrangements do not meet paragraph 2.18 of the Code.” The letter also explained that the trust was working to address this matter.

17. Paragraph 14 of the Code is relevant. It 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.” The arrangements do not make clear the process for requesting admission out of the normal age group and so do not comply with paragraphs 14 and 2.18 of the Code in this regard.

18. I turn now to consider other parts of the arrangements which I thought might not comply with the requirements of the Code and which I have listed above.

Admission of children below compulsory school age

19. The arrangements say,

“1. Children reach compulsory school age at the start of the term following their fifth birthday. [The school] will admit 4 year-olds into its Foundation Stage class, ie those children born between 1 September 2018 and 31 August 2019...

3. Parents/carers are not obliged to start their child at school until the beginning of the term after the child is 5. Therefore, parents/carers who have been offered a September place may ask to defer their child’s admission until later in the school year or until the child reaches compulsory school age in that school year without losing the offer of a place. Parents/carers can also request that their child attends part-time until the child reaches compulsory school age.”

20. 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 [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.”

21. I raised with the admission authority that I did not think it was clear in the arrangements that:

21.1. a child is entitled to a full time place in the September following their fifth birthday (because this is not stated);

21.2. parents had the right to defer admission until the child had reached compulsory school age (because the arrangements say a parent can ask to do so which implies that such a request might be refused, which it cannot); and

21.3. parents have a right to part-time education until their child reaches compulsory school age (because the arrangements say a parent can ask for part-time education and again this suggests that a request might be refused which it cannot).

22. The trust said that there was sufficient explanation of the rights of parents as established in paragraph 2.17 and brought my attention to where the arrangements say,

“Parents/carers are not obliged to start their child at school until the beginning of the term after the child is 5.”

The trust acknowledged that “a change of wording may make this clearer to parents.” It remains my view that there is ambiguity in the wording which therefore makes the arrangements unclear and not compliant with paragraphs 14 and 2.17 of the Code.

How applications will be ranked when there is oversubscription within a criterion

23. 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.” The arrangements set out the oversubscription criteria for the schools in a clear order. However, I questioned whether the arrangements provided an explanation of how applicants would be ranked within each oversubscription category. For the category which considers the nearness of children’s home to the school, this can perhaps be considered to be self-explanatory and clear. One could expect any of the schools to be able to accommodate all those seeking places under the criteria that are higher than distance. However, that may not always be the case and it is a requirement that all applicants can be ranked. So, for example, it must be possible to rank all those seeking priority on the basis of having a sibling at the school against each other.

24. The trust explained that the oversubscription criteria addressed this in combination with the tie-breaker which says,

“In the unlikely event that two or more children in all other ways have equal eligibility for the last available place at the school, the names will be issued a number and drawn randomly to decide which child should be given the place.”

25. I do not agree that this addresses adequately the fundamental question of ranking all applicants, not least as it refers to “equal eligibility for the last available place”. Paragraph 1.8 says, “Admission arrangements **must** include an effective, clear, and fair tie-breaker to decide between two applications that cannot otherwise be separated.” This is different from a method of ranking all of the applicants. It is my view that a tie-breaker is not designed for this. It does not, for example, make clear how siblings will be prioritised against other siblings. It may be unlikely that there will ever be a case where all siblings cannot be admitted, but the arrangements need to make it clear what will occur when it does. The arrangements do not comply with the Code in this regard.

Definition of siblings

26. The oversubscription criteria include a criterion for “Current family association (a sibling in the school at the time of application and still attending in September 2023).” Paragraph 1.11 of the Code says, “Admission authorities **must** state clearly in their arrangements what they mean by ‘sibling’ (e.g. whether this includes step siblings, foster siblings, adopted siblings and other children living permanently at the same address or

siblings who are former pupils of the school).” There is no definition of sibling in the arrangements and so the arrangements do not comply with the Code in this regard.

Children of staff

27. The oversubscription criterion for children of staff is:

“Children of staff employed by the Trust: following the criteria above, priority will be given to the child of a person (1) who has been employed by the Academy for two or more years at the time the application was made and/or (2) where the person was employed by the Trust to fill a vacant post for which there is a demonstrable skills shortage.”

28. Paragraph 1.39 of the Code permits priority being given to children of staff at the school. It 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.”

29. The words in the criterion have close similarities with those used in the Code but by saying both, “Staff employed by the trust” and “employed by the academy” it is not clear what is meant. It also appears to extend the priority beyond what is permitted by the Code. While in the case of an academy, it is likely that the staff employed at the school (the term used in the Code) are employed by the trust, the trust is not permitted by the Code to give priority, for example, to a child wishing to attend All Faiths on the basis of a parent’s employment at Cedars. The priority is restricted to the school at which the parent is employed as is set out in paragraph 1.39 of the Code. It could appear from the arrangements that the child of any member of staff employed by the trust could meet this criterion. If, on the other hand, the trust does mean to limit the criterion to what the Code permits, that is, those who work at the school concerned, then the wording of its oversubscription criteria do not make this clear and so fail to meet the requirements as to clarity set out in paragraphs 14 and 1.8. It must be clear that the priority is for those employed at the school as specified by the Code. This is not the case.

Children from multiple births

30. The oversubscription criteria include a criterion which says, “Multiple birth children as defined in the Medway co-ordinated admission scheme.” This is elaborated on in the admission arrangements for All Faiths Children’s Academy which say, “Multiple birth children, as defined in the Medway co-ordinated admission scheme. If All Faiths Children’s

Academy is oversubscribed and the final qualifying place is for a child of a multiple birth, for who we are the closest school, the Council will give that multiple birth application a higher priority than other applications with the exception of children in public care.”

31. Paragraph 1.8 of the Code requires that oversubscription criteria are clear. This criterion is not clear because parents would need to look at another document that is not part of the arrangements in order to understand what is meant and it is not clear what is meant. It is common in primary school admission arrangements that paragraph 2.16g) is referred to in the arrangements. Paragraph 2.16g) says,

“Infant classes (those where the majority of children will reach the age of 5, 6 or 7 during the school year) must not contain more than 30 pupils with a single school teacher. Additional children may be admitted under limited exceptional circumstances. These children will remain an ‘excepted pupil’ for the time they are in an infant class or until the class numbers fall back to the current infant class size limit. The excepted children [include]: g) children whose twin or sibling from a multiple birth is admitted otherwise than as an excepted pupil.”

32. As it is, the criterion does not meet the requirements of the Code to be clear.

Distance

33. The final oversubscription criterion is, “Nearness of child’s home to school measured using Medway Council’s criteria.” The arrangements also say, “Where criteria involves (sic) measuring distance to a child’s home, the Local Authority’s procedures for ascertaining the shortest available safe route between home and the school will be used.”

34. Paragraph 1.13 of the Code says (as far as is relevant here), “Admission authorities **must** clearly set out how distance from home to the school...used in the arrangements will be measured. This must include making clear how the ‘home’ address will be determined and the point(s) in the school...from which all distances will be measured. 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.”

35. The arrangements do not meet the requirements of the Code because the arrangements do not say how the distance from the home to the school will be measured. Referring to the local authority’s procedures is not sufficient to meet this requirement. The same procedures could be followed but they must be described in order for the arrangements to comply with the Code. This would include whether this is distance by a straight line, walking route or other method for example. It would also include from what point in the school and the home the distance is measured – the front gate, the centre or other point.

36. The information on how distance will be measured also does not 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.” There is no

information on this matter. This makes the arrangements unclear and so the arrangements do not comply with paragraphs 14 and 1.13 of the Code in this regard.

Tiebreaker

37. Paragraph 1.8 of the Code says, "Admission arrangements **must** include an effective, clear, and fair tie-breaker to decide between two applications that cannot otherwise be separated." The arrangements say that random allocation will be used. Paragraph 1.35 of the Code requires that random allocation "**must** be supervised by someone independent of the school." This is not clear in the arrangements and so does not meet the requirements of paragraph 14 of the Code.

Waiting list

38. 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. Priority **must not** be given to children based on the date their application was received, or their name was added to the list."

39. There is no information on any waiting list in the main section of the arrangements. However the arrangements do say, under the heading, "Casual Admissions",

"If no places are available at the time of application, a waiting list will be maintained. Names are kept in priority order according to the oversubscription criteria and not according to how long a child's name has been on the list.

Any place that becomes available will be offered to the child at the top of the list."

40. The placing of this information under casual admissions would imply that this only applies to casual (which I take to mean in-year) admissions and not to when the school is oversubscribed at the normal point of admission. This would not meet the requirements of the Code as provided above. It is also not clear for what period any waiting list would be maintained or that every time a child is added to the waiting list that the list will be re-ranked in line with the oversubscription criteria. The arrangements do not meet the requirements of paragraphs 14 and 2.15 of the Code in this regard.

Conclusion

41. Information required by the Code to be included in admission arrangements has not been included and the arrangements are unclear in the respects described above and so the trust has not met the requirements of the Code and must address these matters accordingly. Paragraph 3.6 of the Code explains that admission authorities are permitted to revise their determined arrangements where "such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, [and] a determination of the Schools Adjudicator." The trust has acknowledged that amendments are necessary and this is welcomed.

Determination

42. I have considered the admission arrangements for September 2023 for All Faiths, Cedar, Gordons Infant and Gordons Junior Children's Academies 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.

43. 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: 21 February 2023

Signed:

Schools adjudicator: Deborah Pritchard