



Office of
the Schools
Adjudicator

Determination

Case reference: ADA4102

Objector: A parent

Admission authority: Transform Trust

Date of decision: 13 July 2023

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2024 determined by Transform Trust for Whitegate Primary and Nursery School, Nottingham.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

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 parent (the objector), about the admission arrangements for Whitegate Primary and Nursery School, Nottingham (the school), an academy primary school for pupils aged 3 to 11 for September 2024. The objection is:

"The admissions policy of Whitegate Primary and Nursery school relating to admissions for summer born children outside of their normal age group, is unclear and inconsistent with the School Admissions Code 2021. The admissions policy for the school states that requests for admissions outside of a child's normal age group will be considered if there is

“significant evidence” that it is in the child’s best interests. It is unclear what “significant evidence” is but in a response from the academy dated 31.08.2022... we were told; “Whilst I acknowledge your detailed representations, I have not been able to ascertain any specifics that would persuade me to place this child in a lower age cohort – for example a special educational need, a lengthy illness, etc.

There is no distinction made between parents applying for admission outside of a child’s normal age group because of medical needs and those exercising their right not to send their summer born child to school until Compulsory School Age”.

2. The local authority (LA) for the area in which the school is located is Nottingham City Council. The LA is a party to this objection. Other parties to the objection are the objector and the admission authority.

Jurisdiction

3. The terms of the Academy agreement between Transform Trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to foundation and voluntary aided schools, and with equalities law. These arrangements were determined by the academy trust, which is the admission authority for the school, on that basis. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

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

- a. a copy of the minutes of the meeting of the admission authority at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector’s form of objection dated 9 January 2023 and supporting documents;
- d. the Trust’s response to the objection.
- e. Department for Education Guidance on handling admission requests for summer born children (April 2023).

Background

6. The school is an academy falling within Transform Trust, a multi-academy trust. The school has a published admission number (PAN) of 60. The school’s oversubscription criteria (in shortened form) are:

“1. Places will first be allocated to a ‘looked after child’ or a child who was previously looked after but immediately after being looked after became subject to an adoption, child arrangements, or special guardianship order including children who were previously in state care outside of England and who ceased to be in state care as a result of being adopted.

2. Places will then be allocated to pupils who, at the closing date for applications, live within the catchment area of the academy, whose parents have requested a place at the academy and who, at the time of admission, will have a brother or sister attending the academy.

3. Places will then be allocated to other pupils who, at the closing date for applications, live within the catchment area of the academy and whose parents have requested a place at the academy.

4. Places will then be allocated to pupils who live outside the catchment area of the academy, whose parents have requested a place at the academy and who, at the time of admission, will have a brother or sister attending the academy.

5. Places will then be allocated to other pupils who live outside the catchment area of the academy whose parents have requested a place at the academy.”

There is also provision for priority to be given to specified classes of vulnerable pupils.

7. This issue arose for the objector as a result of her personal experience with seeking admission of her child out of the child’s normal age group. I wish to make it clear that it is outside my jurisdiction to consider the circumstances around that application. The role of the adjudicator is to consider the wording of the determined and published admission arrangements, not to consider the application of those arrangements in practice. Consequently, although I have looked at all the information submitted, some information is not relevant to the issues which it is my role to consider.

Consideration of Case

8. The objection is set out in full above.

9. The relevant provisions of the School Admissions Code (the Code) are paragraphs 2.18 and 2.19:

“Admission of children outside their normal age group

2.18 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.

2.19 Admission authorities **must** make decisions on the basis of the circumstances of each case and in the best interests of the child concerned. This will include taking account of the parent's views; information about the child's academic, social, and emotional development; where relevant, their medical history and the views of a medical professional; whether they have previously been educated out of their normal age group; and whether they may naturally have fallen into a lower age group if it were not for being born prematurely. They **must** also take into account the views of the head teacher of the school concerned. When informing a parent of their decision on the year group the child should be admitted to, the admission authority **must** set out clearly the reasons for their decision.

2.20 Where an admission authority agrees to a parent's request for their child to be admitted out of their normal age group and, as a consequence of that decision, the child will be admitted to a relevant age group (i.e. the age group to which pupils are normally admitted to the school) the local authority and admission authority **must** process the application as part of the main admissions round, unless the parental request is made too late for this to be possible, and on the basis of their determined admission arrangements only, including the application of oversubscription criteria where applicable. They **must not** give the application lower priority on the basis that the child is being admitted out of their normal age group. Parents have a statutory right to appeal against the refusal of a place at a school for which they have applied. This right does not apply if they are offered a place at the school, but it is not in their preferred age group".

10. Also relevant are the overall principles behind setting arrangements set out at paragraph 14 of the Code:

"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".

11. The relevant provision of the school's admission arrangements reads:

"Requests for admission outside of a child's normal age group

Parents/carers may request admission for their child outside their normal age group. In general, it is considered that children should be educated in their normal age group, with the curriculum differentiated as appropriate, and they should only be educated out of their normal age group in very limited circumstances. However, applications made on this basis will be considered if there is significant evidence that it is in the child's best interests".

12. The issues I have identified are considered in the following paragraphs:

13. **Do the admission arrangements “make clear in their admission arrangements the process for requesting admission out of the normal age group”?** I find that this is not made clear in the admission arrangements. The process for making an application is not set out and consequently, the wording as it stands is not compliant with the requirements of the Code. The admission authority accepts that the process should be made clear and will now be required by this determination to amend the wording appropriately.

14. **Are the criteria for admitting children outside their normal age group set out in the admission arrangements compliant with the relevant provisions of the Code?** I find that the provisions set out in the school’s admissions arrangements do not accord with the provisions of paragraph 2.19 of the Code. The statement that children “should only be educated out of their normal age group in very limited circumstances” may limit the admission authority’s consideration of an application to a greater degree than is required by the Code that “Admission authorities **must** make decisions on the basis of the circumstances of each case and in the best interests of the child concerned”. I find that the wording is not compliant with the provisions of the Code.

15. The admission authority has expressed a willingness to amend the wording to follow that of the recently updated Department for Education Guidance on handling admission requests for summer born children (available [here](#)). The admission authority is required to amend the wording to comply with the Code. As the admission authority suggests, it may be helpful to adopt wording from the guidance and the Code.

16. I would also point out that summer born children whose parent has chosen not to send them to school until after their fifth birthday are not a separate group but one example of cases where a parent may seek a place out of the child’s normal age group. As such a school’s admission arrangements are not required to specify different arrangements for considering such applications.

Other Matters

17. Having considered the arrangements as a whole it would appear that the following matters also do not conform with requirements. I have accordingly exercised my powers under section 88I of the Act to consider the arrangements as a whole and whether they conform with the requirements relating to admissions.

18. Under the heading “Applications outside the normal year of entry” the admission arrangements state: “If the respective year group total is full, the child will be only offered a place if there are very exceptional circumstances and if the governors decide that the education of pupils in that year group will not be detrimentally affected by the admission of an extra pupil”. The Code, at paragraph 1.4 states “The PAN only applies to the relevant age group. This means that admission authorities may not refuse admission to other age groups on the grounds that they have already reached their PAN. They may, however, refuse admission where the admission of another child would prejudice the provision of

efficient education or efficient use of resources”. This is based on the provisions of primary legislation. This provision in the admission arrangements does not accurately reflect the statutory test as set out in the Code. Consequently, the admission authority is required to amend the wording to comply with the Code, which it has agreed to do.

19. Under the heading “Waiting List” the admission arrangements have the words “Children who are the subject of a direction by a Local Authority to admit”. As the school is an academy any direction to admit would come from the Secretary of State rather than the Local Authority (paragraph 3.29 of the Code). The admission authority has agreed to amend the admission arrangements.

20. Under the heading “Residence” the admission arrangements state “If the child lives at two separate homes for an equal length of time, the child’s permanent place of residence will be taken as the address shown on the child benefit letter”. The legislation governing child benefit does not require a child to be ordinarily resident (or resident at all) at the address of the person claiming the benefit. In most cases the child will be resident at the same address as the recipient, but not always. In most circumstances child benefit will be indicative of a child’s home address but it may not be compliant with the Code for it to be absolutely determinative. The admission authority has agreed to amend the admission arrangements.

21. Under the heading “Brothers or sisters – sibling connection” the admission arrangements state: “a step brother or step sister, where two children are related by a parent’s marriage;”. This appears to exclude children in similar circumstances whose parents are in a civil partnership or are living together as a couple. This is not compliant with paragraph 1.9 f) of the Code which states that “It is for admission authorities to formulate their admission arrangements, but they must not: ...f) give priority to children according to the occupational, marital, financial, or educational status of parents applying”. The admission authority has agreed to amend the admission arrangements.

Determination

22. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2024 determined by Transform Trust for Whitegate Primary and Nursery School, Nottingham.

23. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

24. 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: 13 July 2023

Signed:

Schools Adjudicator: Tom Brooke