



Determination

Case reference:	REF4225
Referrer:	A parent
Admission authority:	Runwell Community Primary School Academy Trust for Runwell Community Primary School, Essex
Date of decision:	13 December 2023

Determination

I have considered the admission arrangements for September 2024 for Runwell Community Primary School, in the local authority area of Essex County Council, in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the provisions for summer born children, the arrangements do not conform with the requirements relating to admission arrangements. I have also found that 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 by 15 January 2024.

Introduction

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), an objection has been referred to the Office of Schools Adjudicator (OSA) by a parent (the referrer), about the admission arrangements (the arrangements) for Runwell Community Primary School (the school) for September 2024.
2. The referral relates to deferred entry to Reception Year (YR) for summer-born children.
3. When the arrangements were brought to my attention, I also considered that the following additional matters did not, or might not, conform with the requirements for admission arrangements: exceptional medical circumstances or special personal

circumstances; the independence of the random allocation employed as a final tie-breaker; the definition of looked after and previously looked after children; the duration of the waiting list; and information requested in the Supplementary Information Form.

4. The school is an academy school, governed by Runwell Community Primary School Academy Trust (the admission authority).

5. The school is situated in the local authority area of Essex County Council (the local authority).

6. The parties to the case are the referrer, the admission authority, the school and the local authority. Throughout my consideration of the case, the school has responded on behalf of the admission authority.

Jurisdiction

7. The terms of the academy agreement between the admission authority 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 maintained schools. These arrangements were determined under section 88C of the Act by the governing board of the admission authority on 24 January 2023 on that basis.

8. The referrer submitted an objection to these determined arrangements on 29 June 2023. The School Admissions Code (the Code) requires objections to admission arrangements for 2024 to be made to the Office of the Schools Adjudicator by 15 May 2023. 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.

9. The referrer has asked to have their identity kept from the other parties and this request has been agreed by the Chief Adjudicator.

Procedure

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

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

- a) the referrer's form of objection dated 29 June 2023, and subsequent correspondence;
- b) a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- c) a copy of the determined arrangements;

- d) comments from the school on the matters raised and supporting documents;
- e) comments from the local authority on the matters raised;
- f) information taken from the websites of the school, the local authority, the Department for Education (including Get Information About Schools (GIAS) pages);
- g) Department for Education document ‘Admission of summer born children: advice for local authorities and school admission authorities’ (updated 21 July 2022); and
- h) Department for Education document ‘Guidance on handling admission requests for summer born children’ (published 27 April 2023).

The Referral

12. The referral relates to deferred entry to YR for summer-born children. The referrer has raised a concern that the relevant parts of the arrangements may not comply with the Code in three ways. First, the arrangements appear to imply that deferred entry for summer born children will only be considered where professional evidence is submitted in support of the request. Second, the arrangements appear to place an impermissible deadline on a request for deferred entry for a summer born child. Third, the deferred entry for summer born children aspect of the arrangements may be unclear.

13. The relevant parts of the Code are:

- a. Paragraph 2.17 – “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: [...] ; (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; [...]”;
- b. Paragraph 2.18 – “[...] 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”;
- c. Paragraph 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 or the school concerned”; and

- d. Paragraph 14 – “Admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective”.

14. The referrer asked me to look at two guidance documents - Department for Education document ‘Admission of summer born children: advice for local authorities and school admission authorities’ (updated 21 July 2022) and Department for Education document ‘Guidance on handling admission requests for summer born children’ (published 27 April 2023). I note that each guidance document describes itself as non-statutory guidance with the purpose of assisting admission authorities to understand the framework within which they must operate when responding to parental requests for summer born children to be admitted out of their normal age group and fulfilling their relevant duties under the Code. I also note that they are essentially two different iterations of the same guidance document. The first, as updated on 21 July 2022. The second, as published on 27 April 2023. As the arrangements were determined on 24 January 2023, but their operation has lasted beyond 27 April 2023, it is appropriate for me to consider both guidance documents.

15. The referrer drew my attention to the following parts of the earlier version of the guidance (21 July 2022):

- a. “[...] it is not necessary for a child to have medical or special educational needs in order for it to be in their interests to start reception age 5” (section 6);
- b. “In some cases, parents may have professional evidence that it would be appropriate for them to submit this, for example, when a child receives support from a speech and language therapist. However, there should be no expectation that parents will obtain professional evidence that they do not already have. Admission authorities must still consider requests that are not accompanied by professional evidence. In such cases the supporting information might simply be the parent’s statement as to why they have made their request. A lack of professional evidence, or limited evidence, does not mean that requests should be refused outright” (section 8); and
- c. “The code requires admission authorities to make decisions in the best interests of the child in any circumstances where the parent requests admissions outside the child’s normal age group – this includes instances where the application is made outside of the authority’s published deadlines” (section 11).

Background

16. The school is a coeducational primary school for children aged two to eleven. It is situated in the village of Runwell, near Wickford, in Essex.

17. The published admission number (PAN) for YR is 60.
18. The oversubscription criteria can be summarised as follows:
 - a. Looked after and previously looked after children;
 - b. Children living in the priority admission area and with a sibling attending the school;
 - c. Children living in the priority admission area;
 - d. Children attending the school's nursery who are in receipt of pupil premium funding;
 - e. Children living outside of the priority admission area and with a sibling attending the school;
 - f. All other applicants.
19. Proximity of the applicant's home to the school (measured as straight line distance) is employed as a tie-breaker within each oversubscription criterion, and random allocation is employed as a final tie-breaker where distance is equal.
20. The arrangements make clear that any applicant with an Education, Health and Care Plan (EHCP) will be admitted to the school, irrespective of whether they fall within any of the oversubscription criteria.
21. Page 1 of the arrangements provides that exceptional medical circumstances or special personal circumstances may override the oversubscription criteria (other than those relating to looked after children and those with an EHCP) at the discretion of the school.
22. Page 2 of the arrangements includes a section headed "Summer Born Children". It states:

"If your child is summer born (defined as born 1st April – 31st August) and you want them to start school in a Reception class in September 2024 (rather than starting in the 2023-24 academic year) you must first of all contact the school and seek the Headteacher's views of the delayed admission request in writing by the 30th November 2022. Parents are then requested to submit the written response from the Headteacher with the formal application.

A request to defer entry will not be granted automatically and each case will be considered individually by the admission committee of the governing body based on the professional evidence submitted. If the request to defer your application is granted, this will entitle you to apply for a reception place in the September 2024 admission intake. You will need to make a paper application for a school place for the 2024-25 academic year".

Consideration of Case

23. As set out above, the relevant parts of the Code are paragraphs 2.17, 2.18, 2.19 and 14. Having reviewed the ‘Summer Born Children’ section of the arrangements, and the referrer’s concerns about evidence, deadlines and clarity, I was concerned that the arrangements may not comply with the Code in the following ways:

- a. Given that only “the professional evidence submitted” is referred to, I was concerned that the admission authority may not be taking into account the information that the Code requires it to take into account when making decisions about applications for admission outside of the normal age group, contrary to paragraph 2.19 of the Code;
- b. It was not clear to me what the admission authority meant by “professional evidence” in this context because no details or definitions are provided. For that reason, I was concerned that this aspect of the arrangements might be unclear contrary to paragraph 14 of the Code;
- c. Given that the arrangements give the impression that only applications that are accompanied by “professional evidence” will be considered, I was concerned that this aspect of the arrangements might indicate an approach that was unfair, contrary to paragraph 14 of the Code;
- d. The apparent lack of clarity about what factors would be taken into account by the admission authority and whether (and, if so, what) documentation is required to be submitted alongside any request, meant that I was concerned that the arrangements might not make clear the process for requesting admission outside of the normal age group, contrary to paragraph 2.18 of the Code; and
- e. The arrangements appeared to impose a deadline of 30 November 2022 for any request for admission outside of the normal age group in the academic year 2024 to 2025. I had two concerns about this. First, I was concerned that fixing any deadline might suggest that the admission authority was not treating each application individually, considering the best interests of the child concerned. Second, the deadline of 30 November 2022 had already passed when the arrangements were determined on 24 January 2023 so I was concerned that it may operate in a way that was not objective or fair, contrary to paragraph 14 of the Code.

24. I took into account the parts of the guidance document that the referrer drew my attention to, along with the equivalent sections of the updated guidance document (27 April 2023) which were as follows:

- a. “There do not need to be exceptional circumstances, and a child does not need to have a medical need or SEND for it to be in their best interests to be admitted out of their normal age group” (in the section titled ‘Making a decision');

- b. “Admission authorities should not expect parents to get evidence they do not already have, and must still consider requests that are not accompanied by evidence from professionals. Authorities should not refuse a request solely because it is not accompanied by professional evidence” (in the section titled ‘Evidence provided by parents’); and
- c. “For primary school admissions, we recommend that the process: expects parents to make an application for a school place in their child’s normal age group at the usual time; enables parents to submit a request for admission outside the normal age group at the same time; ensures parents receive the response to their request before primary national offer day. [...] Admission authorities must still consider requests that are made outside of the timescales set out in the process” (in the section titled ‘Handling requests for admission out of normal age group’).

25. I asked the other parties for comments on the matters raised by the referrer.

26. The local authority responded on 25 September 2023 stating “I confirm that we understand the comments made by the adjudicator in this respect. I am sure the academy trust, as the admission authority, will respond further advising on what steps, if any, the trust will be taking to add clarity to these aspects of the admission arrangements”.

27. On 20 November 2023 the school responded stating “I confirm we understand the comments made by the adjudicator in this respect. As a school we have now reviewed our admission policy making appropriate changes”. The school appended an amended version of the arrangements, including proposed changes.

28. Having given careful consideration to the arrangements, the Code, the relevant guidance documents, and the representations of the parties, I have come to the following conclusions:

- a. The first sentence of the second paragraph about summer born children in the arrangements reads “A request to defer entry will not be granted automatically and each case will be considered individually by the admission committee of the governing body based on the professional evidence submitted”. This gives the impression that the decision about a request for deferred entry will be made purely on the basis of professional evidence submitted, with the implication being that a request made without any professional evidence would be without any information on which the admission authority could consider the request. As appears to be acknowledged by the school and the local authority, this is in breach of the requirement at paragraph 2.19 of the Code that the decision must be taken “on the basis of the circumstances of each case” because it limits the circumstances under consideration to only those put forward in professional evidence submitted. This could ignore other important information, for example, the parent’s views, which paragraph 2.19 of the Code requires is taken into account. The guidance document referred to above also makes it clear that

“Admission authorities [...] must still consider requests that are not accompanied by evidence from professionals”. In addition, it would be unfair, contrary to the requirement of fairness at paragraph 14 of the Code, because it would rule out certain requests for deferred entry on an unjustifiable basis. Accordingly, I find that this aspect of the arrangements is in breach of paragraphs 2.19 and 14 of the Code and must be revised.

- b. The arrangements refer to “professional evidence” but do not provide any definition of what this means or examples of the type of professional evidence intended to be included. As appears to be acknowledged by the school and the local authority, this is in breach of the requirement at paragraph 14 of the Code that the arrangements must be clear because it will be difficult for parents to understand what they should or could be providing to support their request for deferred entry. Accordingly, I find that this aspect of the arrangements is in breach of paragraph 14 of the Code and must be revised.
- c. The lack of clarity about what factors will be taken into account by the admission authority and whether (and, if so, what) documentation is required to be submitted alongside any request, means that the arrangements do not fulfil the requirement set out at paragraph 2.18 of the Code that the process for requesting admission outside of the normal age group must be made clear in the arrangements. Accordingly, I find that this aspect of the arrangements is in breach of paragraph 2.18 of the Code and must be revised.
- d. The arrangements included a deadline of 30 November 2022 for written submission of a request for deferred entry. As this date pre-dated the date when the arrangements were determined, on 23 January 2023, I have drawn an inference that this must have been a typographical error. The inclusion of such an error in the arrangements renders that part of the arrangements unclear. Accordingly, I find that this aspect of the arrangements is in breach of paragraph 14 of the Code and must be revised.
- e. The inclusion of any deadline for the submission of a request for deferred entry or other kind of admission outside of the normal age group is not explicitly permitted by the Code and I take the view that it is contrary to the requirements at paragraph 2.19 of the Code that the admission authority must make decisions on the basis of the circumstances of each case and in the best interests of the child concerned. This is because, if a request is ruled out simply on the basis of whether the request is submitted by a particular cut-off date, a meritorious request may be arbitrarily refused without the best interests of the child having been given any consideration. This position is supported by the fact that the latest version of the Department for Education guidance sets out a recommended timetable but stresses that “Admission authorities must still consider requests that are made outside of the timescales set out in the process”. Accordingly, I find that

this aspect of the arrangements is in breach of paragraph 2.19 of the Code and must be revised.

Other Matters

29. Having considered the arrangements as a whole, I was concerned that a number of other aspects of the arrangements did not, or may not, conform with requirements for admission arrangements.

30. I invited comments from the parties on these matters.

31. In relation to my concern that the school's Supplementary Information Form may be seeking state benefits information about the family of the applicant unnecessarily, the local authority stated in its response dated 25 September 2023, "the Council does not confirm Pupil Premium Eligibility for the purposes of an 'own admission authority' administering its admission arrangements. As such, the trust may consider it necessary to seek information and evidence of this eligibility from parents in order to apply its oversubscription criteria". The school commented, in its response dated 20 November 2023, that "the Council does not confirm Pupil Premium Eligibility for the purposes of an 'own admission authority' administering its admission arrangements. As such, it is necessary for the school as its own admissions authority to seek information and evidence of this eligibility from parents in order to apply its oversubscription criteria".

32. In relation to the remaining matters that I had raised, the local authority indicated that it recognised "the reasoning behind these comments and that the trust could make the arrangements clearer". The school commented "we recognise the reasoning behind these comments and that the trust could make the arrangements clearer. We have therefore reviewed the school policy making the required changes". The school appended an amended version of the arrangements, including proposed changes.

33. Taking into account my review of the arrangements as a whole and the comments of the parties, I made the following findings in relation to the additional matters of concern:

- a. Exceptional medical or special personal circumstances - On page 1 of the arrangements, following the oversubscription criteria and a sentence about children with Education Health and Care plans, is the following provision: "Exceptional medical circumstances (supported by evidence) or special personal circumstances relating to the child which necessitate attendance at Runwell Community Primary School (supporting written evidence will be required from a professional e.g. social worker) may override the above (other than Looked After Children and those with an Education Heath Care Plan) at the discretion of the School Admissions Committee". Paragraph 14 of the Code requires that the criteria used to decide the allocation of school places must be fair, clear and objective. As this criterion appears to sit outside of the stated oversubscription criteria, and leaves the circumstances of its use at the complete discretion of the admission authority, I find that this aspect of the arrangements is unfair, unclear

or not sufficiently objective, contrary to paragraph 14 of the Code. It must be revised. This does not mean that the school cannot give a degree of priority to children on the basis of medical or special circumstances. It means only that if the school chooses to do so, it must be by means of a clear and objective oversubscription criterion.

- b. Random allocation - The arrangements provide that, in the event that a final tie-breaker is required, random allocation is employed. That is permitted by paragraph 1.35 of the Code but only where the random allocation is supervised by someone independent of the school. As the arrangements do not make it clear that the random allocation would be supervised by someone independent of the school, this aspect of the arrangements is contrary to paragraph 1.35 of the Code. It must be revised.
- c. Looked after and previously looked after children - Page 2 of the arrangements includes a definition of "Looked after child" but does not include a definition of "previously Looked After Children". The absence of such a definition means that it is unclear whether the arrangements give the highest priority to looked after children and previously looked after children (including children who have been in state care outside of England and ceased to be in state care as a result of being adopted) in accordance with the requirement to do so at paragraph 1.7 of the Code. It must be revised.
- d. Waiting List – Paragraph 2.15 of the Code requires the admission authority to maintain a clear, fair and objective waiting list until at least 31 December of each school year of admission. As the arrangements simply provide that children will remain on the waiting list for "one term", it is unclear whether the waiting list is maintained until at least 31 December because "one term" could be interpreted as ending before 31 December in a given year. Accordingly, I find that this aspect of the arrangements is contrary to paragraph 2.15 of the Code and must be revised.
- e. Supplementary Information Form – Paragraph 2.4 of the Code makes it clear that admission authorities "must only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability". The applicant's gender is not a piece of information that is necessary for the school to request in the Supplementary Information Form because it is not needed to inform the application of any aspect of the oversubscription criteria, and therefore the inclusion of a request for that information renders this aspect of the arrangements contrary to paragraph 2.4 of the Code. It must be revised.
- f. Supplementary Information Form – I had initially queried whether, if the admission authority could obtain pupil premium eligibility information from the applicant's local authority, it was necessary for it to ask questions about the applicant family's receipt of state benefits. However, both the local authority and

the school have confirmed that the local authority does not provide the school, as its own admission authority, with any data to support it in understanding the 'Pupil Premium' eligibility of applicants for the purpose of the application of the school's oversubscription criteria. On that basis, and in view of the fact that pupil premium eligibility forms part of one of the school's oversubscription criteria, I am satisfied that it is necessary for the school to include in its Supplementary Information Form relevant questions to enable it to ascertain an applicant's eligibility for the Pupil Premium.

34. I am grateful to the school for engaging with the matters set out in the referral and the other matters identified by me in an open and constructive manner. I am confident that the school will now act upon these matters in order to bring the arrangements in compliance with the Code. I ought to make it clear that, although my role is to make a decision about whether any aspects of the arrangements fail to comply with the Code, my jurisdiction does not extend to making recommendations for the way in which the school should amend its arrangements in order to ensure compliance with the Code. The school has clearly already given this some thought and provided me with a copy of its proposed amendments to its arrangements. However, in view of the limited scope of my role, I am unable to comment upon those proposals or provide any endorsement of them.

Determination

35. I have considered the admission arrangements for September 2024 for Runwell Community Primary School, in the local authority area of Essex County Council, in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the provisions for summer born children, the arrangements do not conform with the requirements relating to admission arrangements. I have also found that there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

36. 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 by 15 January 2024.

Dated: 13 December 2023

Signed:

Schools Adjudicator: Jane Kilgannon