



Office of
the Schools
Adjudicator

Determination

Case reference: REF4233

Referrer: A parent

Admission authority: The governing board for Moreton Church of England Voluntary Aided Primary School in Moreton, Ongar, Essex

Date of decision: 5 January 2024

Determination

I have considered the admission arrangements for September 2024 for Moreton Church of England Voluntary Aided Primary School in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the information on the rights of parents regarding admission outside a child's normal age group, the arrangements do not conform with the requirements of the School Admissions Code. 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 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 referrer), about the admission arrangements for September 2024 for Moreton Church of England Voluntary Aided Primary School (the arrangements). Moreton Church of England Voluntary Aided Primary School (the school) provides for children aged four to eleven years and has a Church of England religious character.

2. The referral relates to the information in the arrangements concerning the right of a parent of a summer born child to request that their child is admitted to reception year (YR) in the term when their child reaches compulsory school age rather than year 1 (Y1), which would be the year group the child would be joining at that point if he or she had been admitted to YR before he or she reached compulsory school age. The referrer brought my attention to paragraphs 2.18, 2.19 and 2.20 of the School Admissions Code (the Code) which together deal with the admission of children to schools outside their normal age group.

3. Footnote 57 to paragraph 2.18 of the Code explains:

“The term summer born children relates to all children born from 1 April to 31 August. These children reach compulsory school age on 31 August following their fifth birthday (or on their fifth birthday if it falls on 31 August). It is likely that most requests for summer born children to be admitted out of their normal age group will come from parents of children born in the later summer months or those born prematurely.”

4. When the arrangements were brought to my attention, I considered that the following additional matters did not, or might not, conform with the requirements for admission arrangements (most relevant paragraph or paragraphs of the Code in brackets):

4.1. the date by which the arrangements were determined (1.49);

4.2. the definition of previously looked after children (1.7);

4.3. the definition of sibling (1.11);

4.4. information on the catchment area (1.14);

4.5. the faith-based oversubscription criteria (1.9i, 1.37 and 1.38);

4.6. the information requested in the supplementary information form (SIF) (2.4);

4.7. the reference to exceptional medical circumstances overriding oversubscription criteria (1.16);

4.8. the information on the waiting list (2.15);

4.9. the information on a child’s attendance before the child reaches compulsory school age (2.17); and

4.10. information on how the home address is defined (1.13).

5. Paragraph 14 of the Code is also 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.”

6. In addition, paragraph 1.8 of the Code requires oversubscription criteria to be reasonable, clear and objective.

7. The parties to the case are:

7.1. the parent making the objection (the referrer);

7.2. the governing board for Moreton Church of England Voluntary Aided Primary School (the governing board);

7.3. Essex County Council (the local authority); and

7.4. The Diocese of Chelmsford (the religious authority).

Jurisdiction

8. These arrangements were determined under section 88C of the Act by the governing board, which is the admission authority for the school, on 26 April 2023. The referrer submitted a form of objection concerning these determined arrangements on 9 November 2023. The Code requires objections to admission arrangements for 2024 to be made to the adjudicator by 15 May 2023. As this deadline was missed, the case cannot be treated as an objection. However, as the arrangements were brought to my attention and as it appeared to me that they may not or do not conform to the requirements relating to admissions, 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 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. The documents I have considered in reaching my decision include:

a) the referrer's form of objection;

b) a copy of the minutes of the meeting of the governing board at which the arrangements were determined and the determined arrangements; and

c) 'Guidance for Admissions Authorities of Church of England Schools in the Diocese of Chelmsford' (the guidance) provided by the religious authority to the admission authorities for schools with a Church of England religious character in its area.

11. The governing board, the local authority and the religious authority were asked for their comments on the matters raised and none were received; all parties have cooperated

in this matter and the governing board has expressed its wish to amend the arrangements so that it is acting lawfully.

Background

12. The school has a published admission number (PAN) of 30. The school's website says, "We are a one-form entry village school set in rural surroundings approximately two miles from Ongar. Moreton has a reputation for being a friendly open and caring school and our Christian Distinctiveness is very important to us."

13. The arrangements say; "In the event of oversubscription places will be allocated on the following basis:

1. Looked after children will be given first priority ahead of all other applicants.

2. Children with a sibling attending the school, and who will still continue to attend in the next academic year

3. Children living in the priority admissions area of the school.

4. Children whose parents are involved in the work and worship of the Anglican Church, subject to a reference from the Church.

5. Children whose parents are involved in the work and worship of a non- Anglican Christian denomination, subject to a reference from the Church.

6. All other applicants".

14. If there is oversubscription within any criterion, priority is decided on distance between the home and school in a straight line with the nearest having priority.

Consideration of the arrangements

The referral - admission of children outside their normal age group

15. The referral said that the arrangements do not include the information required by paragraphs 2.18, 2.19 and 2.20 of the Code, "which explain the right to request admission out of normal age group for a summer born child." These paragraphs say,

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."

16. The arrangements do not provide the information required by paragraph 2.18, which the Code says **must** be provided. I repeat it here for ease of reference, "Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group." As the arrangements do not make clear the process for requesting admission out of the normal age group, the arrangements do not comply with the Code in this regard.

17. I turn now to the referrer's concern that the arrangements do not, in effect, repeat what is said in paragraphs 2.19 and 2.20. These paragraphs deal with how admission authorities are to consider requests for out of normal year admissions. While the Code does require, in paragraph 2.18, that the process for parents to make such a request be included in arrangements, the Code does not require admission authorities to explain in their arrangements how they make their decision. A parent needs to know how to make a request; knowing how that request will be handled is certainly of interest to parents, but that is not the same as needing to set it all out in admission arrangements. Paragraphs 2.19 and 2.20 are essentially instructions for admission authorities; they are not constituted as mandatory components of admission arrangements. For the avoidance of doubt, and bearing in mind that this is not the case here, an admission authority might well decide to include information in its arrangements about its process for considering out of normal age group applications. It is free to do so if the process so described is in line with the requirements of paragraphs 2.19 and 2.20.

Date of determination of the arrangements

18. Paragraph 1.49 of the Code says, “All admission authorities **must** determine their admission arrangements, including their PAN, every year, even if they have not changed from previous years and a consultation has not been required by 28 February in the determination year.” The arrangements were determined on 26 April 2023 and so the governing board did not comply with the Code in this matter.

Definition of previously looked after children

19. Paragraph 1.17 of the Code says,

“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, including those children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted. Previously looked after children are children who were looked after but ceased to be so because they were adopted (or became subject to a child arrangements order or special guardianship order). All references to previously looked after children in this Code mean such children who were adopted (or subject to child arrangements orders or special guardianship orders) immediately following having been looked after and those children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted. Oversubscription criteria **must** then be applied to all other applicants in the order set out in the arrangements.”

20. There are footnotes to paragraph 1.7 which provide further information. The arrangements say, “Looked after children will be given first priority ahead of all other applicants.” This does not include giving first priority to previously looked after children as required by the Code.

21. There is a definition of looked after children provided in the arrangements which does include previously looked after children. However, the definition does not include children “who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted.” The arrangements are therefore unclear and do not comply with paragraphs 1.4, 1.7 and 1.8 in this regard.

22. I also note that the first priority is not clear because it says that “Looked after children will be given first priority ahead of all other applicants”. In fact, the oversubscription criteria will only be applied once those children with an education, health and care plan which names the school have been admitted as explained in paragraph 1.6 of the Code.

Definition of sibling

23. The second oversubscription criterion is “Children with a sibling attending the school, and who will still continue to attend in the next academic year.” 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 siblings in the arrangements, and this makes the arrangements unclear. The arrangements therefore do not comply with paragraphs 14, 1.8 and 1.11 of the Code.

Definition of catchment area

24. Paragraph 1.14 of the Code says, "Catchment areas **must** be designed so that they are reasonable and clearly defined." The third oversubscription criterion for admission is, "Children living in the priority admissions area of the school." It is my understanding that that the 'priority admissions area' for the school is its catchment area and those living within it have a higher priority than those who do not. As the catchment area is part of the arrangements it must be published so parents and others can understand what it is and whether their child lives within it or not. The information on the school's website regarding its catchment area under the admissions' section is, "Our school's catchment area extends from Stanford Rivers and Toot Hill in the south up to Magdalene Laver in the north, also taking in High Laver and, of course, Moreton. However, children travel from as far afield as Chipping Ongar, Shelley, Matching and Harlow (some even further!) to come to our school."

25. A parent looking at this information may not be clear whether they live in the catchment area or not. Because the catchment area is not defined clearly, I am unable to determine whether it has been established on reasonable grounds. The arrangements are not clear in this regard and do not comply with paragraphs 14, 1.8 and 1.14 of the Code.

Faith based oversubscription criteria and the information requested on the SIF

26. Paragraph 1.36 of the Code explains that schools designated by the Secretary of State as having a religious character can use faith-based oversubscription criteria. The school is designated to have a Church of England religious character and so can do so. 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." The two relevant oversubscription criteria in the arrangements are:

4. Children whose parents are involved in the work and worship of the Anglican Church, subject to a reference from the Church.

5. Children whose parents are involved in the work and worship of a non-Anglican Christian denomination, subject to a reference from the Church."

27. There is no definition of what "involved in the work and worship" of an Anglican or non-Anglican church means. The arrangements do say that to meet these criteria, the SIF "must be completed and a reference obtained." The SIF asks for information regarding the principal place of worship, which family members attend, "how regularly do you attend" and that the applicant "list all aspects of your lay involvement (apart from Sunday worship) in the life and work of your church."

28. There is then a section for the minister to confirm these details and to “add any comments you think may be helpful for the school to understand the Christian commitment of this family,” before passing onto the school. This ‘reference’ as it is referred to in the oversubscription criteria, gives me concern. An open ended request like this will lead to subjective responses and this will not comply with paragraphs 14 and 1.8 of the Code, which require that admission arrangements and oversubscription criteria are objective.

29. Notes to the SIF include that in the event of oversubscription in either of the two faith-based criteria, “the following will determine the order of priority:

1. Children whose parents (or one parent) attend church at least monthly. In the event of over subscription in this category, priority will be given to those who have lay involvement in the life and work of the church.

2. Children whose parents (or one parent) attend church at less than monthly. In the event of over subscription in this category, priority will be given to those who have lay involvement in the life and work of the church.”

30. The SIF further explains that if there is oversubscription in these two categories then priority will be determined by the distance in a straight line between home and school with the closest having the highest priority.

31. There are a number of concerns. First, there is no indication as to the duration of attendance required to satisfy the criteria. Is it necessary to have attended monthly or less than monthly as the case may be for six months, for a year or for longer? Would attending once a year for five years satisfy the requirement to “attend church at less than monthly”? Second, there is no definition or guide as to what is meant by “involvement in the work and worship” of a Christian church. It could mean attendance more frequently than monthly or it could mean something else entirely. For all of these reasons it would not be possible for a parent to know if their child would meet the faith-based criteria. These criteria are therefore unclear and not easily understood and so do not satisfy the requirements of paragraph 1.37 of the Code.

32. Paragraph 1.9i of the Code says, “It is for admission authorities to formulate their admission arrangements, but they **must not**:... prioritise children on the basis of their own or their parents’ past or current hobbies or activities (schools which have been designated as having a religious character may take account of religious activities, as laid out by the body or person representing the religion or religious denomination)”.

33. The arrangements could, therefore, take account of religious activities but only if “laid out” by the religious authority. The relevant section in the guidance provided by the religious authority says,

“‘Membership of’ or ‘commitment to’ a church is difficult to define objectively and apply fairly and consistently. DBE advice is that only frequency of attendance at public worship should be used as a determinant of membership of a Church or religious community... Other religious activities within the church for a social purpose

may not be compliant such as flower arranging, leading a music group or service on the PCC etc...

Governors will need to make clear what they mean by attendance at a church (or other place of worship). Regular attendance is too imprecise. Policies must spell out:

- The frequency of required attendance (e.g. not less than 8 times in...., not less than monthly/fortnightly)
- The required period of attendance (e.g. not less than 12 months prior to the closing date specified on which the application is submitted)
- The date from which attendance is being counted (normally the date of the application) and
- Whose attendance is being counted; reference to 'family' attendance is not clear enough."

34. The governing board must have regard to this guidance, and it has given me no reason to understand that it has considered the guidance and had clear and proper reasons for not following it, for example by setting out clearly the frequency of required attendance at worship over a set period of time. The guidance clearly sets out what the governing board should consider when determining its faith-based criteria. The governing board has not followed the guidance.

35. More fundamentally still, the guidance does not lay out as permitted activities "lay involvement in the life and work of the Church". These are, however, used in the faith-based oversubscription criteria used by the school. Because "lay involvement in the life and work of the Church" are not laid out they may not be so used as permissible activities, and for these reasons the arrangements do not comply with paragraph 1.9i of the Code. I should add that even if "lay involvement in the life and work of the Church" were laid out by a faith body, which is clearly not the case here, such a term would be insufficiently clear and objective on its own to be used in oversubscription criteria.

36. In summary, the faith-based criteria do not comply with the Code because they are unclear so a parent will not easily know if their child meets the criteria or not; the governing board has not followed the guidance provided by the religious authority and has given no reason for not so doing; and the governing board has included in its oversubscription criteria activities not laid out by the faith body.

Exceptional medical circumstances overriding oversubscription criteria

37. 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 include oversubscription criteria as required by the Code. But the arrangements also say, following the oversubscription criteria, "Exceptional medical circumstances (supported by medical evidence) may override the above."

38. The Code permits the use of social and medical need as an oversubscription criterion and says in paragraph 1.16, “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.”

39. The statement, “Exceptional medical circumstances (supported by medical evidence) may override the above”, is not part of the oversubscription criteria. It is therefore unclear how it would be applied. It could not override the requirement to give first priority to looked after and previously looked after children but this would not be clear to those not familiar with the Code. If an admission authority wishes to give priority on the basis of a medical need, then such priority must be part of the oversubscription criteria.

40. In addition, if an admission authority wishes to include such an oversubscription criterion, then it must also comply with paragraph 1.16 (above) and define what it would consider as an exceptional medical need and state what evidence is required to support such an application. The reference to ‘supported by medical evidence’ is not sufficient to make this clear. The arrangements do not comply with paragraphs 14, 1.6, 1.7, 1.8 and 1.16 in this regard.

Information on the waiting list

41. 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”. The arrangements say, “The school will hold a waiting list for children for whom no place is immediately available until the end of the term in which they apply to join the school.” This does not make it clear that the waiting list will be maintained until 31 December in the admission year. The arrangements therefore do not comply with paragraphs 14 and 2.15 in this regard.

Information on a child’s attendance before the child reaches compulsory school age

42. 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.”

43. The arrangements do make it clear that a child is entitled to a full-time place in the September following their fourth birthday and that a parent can choose to defer the child joining the school until the child reaches compulsory school age. However, the arrangements say, “Parents can also request that their child attends part-time until the child reaches compulsory school age. Any parents interested in taking up a part-time place initially should contact the school for further details as to what this would entail.”

44. The use of the word, ‘request’, implies that the choice to attend part time until the child reaches compulsory school age is not a right, which it is, but something that can be refused. I can understand that the school would wish to discuss the practicalities of part time attendance, however, that is a separate matter. The arrangements do not make it clear that a parent can decide that their child will attend part time until the child reaches compulsory school age and the arrangements do not comply with paragraphs 14 and 2.17c) of the Code in this regard.

Information on how the home address is defined

45. The arrangements use distance from home as a means of deciding priority when needing to prioritise within an oversubscription criterion. Paragraph 1.13 of the Code says,

“Admission authorities **must** clearly set out how distance from home to the school and/or any nodal points 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 or nodal points 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.

46. The relevant section in the arrangements says, “priority will be determined by straight line distance from home to school, those living closest being given the highest priority. Distance will be measured using the Local Authority’s geographical Information System.” This provides no information on how the home address will be determined; referring to the “Local Authority’s geographical Information System” does not clarify this. Similarly, there is no clarity on from what point or points the distance from the school will be measured. This could be the front gate or the centre of the school, for example.

47. The arrangements contain no provision for where a child’s parents live in different homes and they both care for the child, so the child spends some time at both addresses. Many admission authorities state that the definition of the home address is where the child sleeps the majority of the school week. Of course, some parents share the care of their child equally and so, for example, the child might spend one week with one parent and the next with the other, alternating care, or some similar arrangement. In such cases, most parents will tell the admission authority which home is regarded as the primary home but

the arrangements do not address the requirement of the Code to make “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.” The arrangements therefore do not comply with paragraphs 14, 1.8 and 1.13 of the Code.

Changing the arrangements

48. Paragraph 3.6 of the Code permits variations, that is changes, to determined admission arrangements, “to give effect to a mandatory requirement of this Code, admissions law, a determination of the Schools Adjudicator”. The governing board can therefore address the matters I have described above as not complying with the Code and does not need to consult before doing so. 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”. In this case I specify that the arrangements must be revised within two months of the date of this determination.

Determination

49. I have considered the admission arrangements for September 2024 for Moreton Church of England Voluntary Aided Primary School in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the information on the rights of parents regarding admission outside a child’s normal age group, the arrangements do not conform with the requirements of the School Admissions Code. 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.

50. 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: 5 January 2024

Signed:

Schools Adjudicator: Deborah Pritchard