



Office of
the Schools
Adjudicator

Determination

Case reference: REF4238

Referrer: A parent

Admission authority: The governing board for St Andrew's Church of England Primary School, North Weald, Epping, Essex

Date of decision: 5 January 2024

Determination

I have considered the admission arrangements for September 2024 for St Andrew's Church of England Primary School in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to information on admission outside the 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 (the arrangements) for St Andrew's Church of England Primary School (the school).
2. The referral relates to the information provided in the arrangements regarding admission other than to the normal age group and specifically to the admission of summer born children. The referrer brought to my attention paragraphs 2.18 to 2.20 of the School Admissions Code (the Code).

3. The school provides education for children aged three to eleven and is in the village of North Weald near the town of Epping in Essex. It is a school with a Church of England religious character. The school is voluntary aided and its governing board is its admission authority.
4. The parties to the case are the referrer, the governing board for the school (the governing board), Essex County Council which is the local authority for the area in which the school is situated (the local authority) and the Diocese of Chelmsford which is the religious authority for the school (the faith body).
5. When the arrangements were brought to my attention, I considered that the additional matters listed below did not, or might not, conform with the requirements for admission arrangements and brought them to the attention of the governing board, the local authority and the faith body. Paragraph 14 of the Code is relevant and 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. The matters I brought to the attention of the governing board were (relevant paragraph or paragraphs of the Code in brackets):
- a) the right to defer full time education until compulsory school age is reached (2.17b);
 - b) the right to part time education until compulsory school age is reached (2.17c);
 - c) the application of the oversubscription criteria (1.6);
 - d) the use of exceptional medical circumstances to override oversubscription criteria (1.16);
 - e) the definition of looked after children (1.7);
 - f) the priority given to previously looked after children (1.7);
 - g) the definition of siblings (1.11);
 - h) information on the catchment area (1.14);
 - i) how distance is measured (1.13);
 - j) the reference to statements of educational need (14);
 - k) information on the tie-breaker (1.8) and
 - l) information on waiting lists (1.18).

Jurisdiction

7. These arrangements were determined under section 88C of the Act by the governing board on 30 November 2022. The referrer submitted an objection to these determined arrangements on 29 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 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. The referrer has asked to have their identity kept from the other parties and this request has been agreed by the Chief Adjudicator.

Procedure

8. In considering this matter I have had regard to all relevant legislation and the Code. The documents I have considered in reaching my decision are:

- a) the referrer's form of objection;
- b) copies of the minutes of the meeting of the governing board at which the arrangements were determined and a copy of the determined arrangements;
- c) comments from the governing board on the matters raised; and
- d) "Guidance for Admissions Authorities of Church of England Schools in the Diocese of Chelmsford" (the guidance) provided by the faith body.

9. The local authority and the faith body did not comment on the matters raised.

Background

10. The school has a published admission number (PAN) of 60. The arrangements for the school say, so far as is relevant here:

"Where the number of applications exceeds the number of places available, the following criteria will be applied in the order set out below to enable the Governors to decide which children to admit:

1. Looked after children
2. Children with a sibling attending the school.
3. Children living in the priority admissions area
4. Other applications

(Priority admissions area map is available in the school office)

In the event of over-subscription within any of the above criteria, priority will be determined by straight line distance from home to school, those living closest being given the highest priority. Straight line distances are calculated by the Local Authority as described in the Primary Education in Essex booklet.

Exceptional medical circumstances (supported by medical evidence) may override the above if, in the view of the Governing Body, St Andrews is the only school, within a reasonable distance, that can meet the child's needs.

If a child has a Statement of Special Educational Needs or Education, Health and Care Plan and the school is named on the Statement or Plan, the child will be admitted irrespective of criteria."

11. The governing board said that it was consulting on its arrangements for 2025.

Consideration of the arrangements

The referral - admission of children outside their normal age group

12. 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.”

13. The arrangements do not provide the information required in 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.

14. 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. If an admission authority decides to include information in its arrangements about its process for considering out of normal age group applications it is free to do so provided this is in line with paragraphs 2.19 and 2.20 of the Code.

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

The right to defer full time education until compulsory school age is reached

16. 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.”

17. The arrangements say, “The school normally admits all children full time in the September following their 4th birthday. Parents may request that the date their child is admitted to the school is deferred until a later term in the school year for which the original application was accepted or until the term in which the child reaches compulsory school age.” I queried with the governing board if this made it clear that a parent had a right to choose to defer their child’s admission until the child reaches compulsory school age. The governing board expressed the view that “the phrase ‘may request deferment’ clearly tells parents that they have a right to do this”.

18. I do not agree. It is my view that a request is something that can be denied and so the use of the word implies that the choice is the school’s, not the parents. Paragraph 2.17b) requires that this right to defer is made clear in the arrangements; it is not. The arrangements therefore do not comply with paragraph 2.17b.

The right to part time education until compulsory school age is reached

19. Similarly the arrangements say, “Parents may also request that their child attends part time until the term in which the child reaches compulsory school age.” Again this does not make it clear, as required by paragraph 2.17c) that “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.” The use of the word “request” implies that the right of parents to choose is at the discretion of the school; this is not the case. The arrangements therefore do not comply with paragraph 2.17c) of the Code.

The application of the oversubscription criteria

20. 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.”

21. The arrangements say, “Where the number of applications exceeds the number of places available, the following criteria will be applied in the order set out below to enable the Governors to decide which children to admit:” This wording could imply that the governing board has some discretion, which it does not once it has determined the oversubscription criteria. The arrangements also say, “Exceptional medical circumstances (supported by medical evidence) may override the above if, in the view of the Governing Body, St Andrews is the only school, within a reasonable distance, that can meet the child’s needs.”

22. This means that if the governing body decides that there are exceptional medical circumstances that this could override the oversubscription criteria. The arrangements do not comply with paragraph 1.6 of the Code in this respect. The governing board told me that its consultation on the arrangements for 2025 included removing this aspect as, “it is very vague and difficult to define what medical circumstances this could refer to, other than on a case by case basis.”

23. The Code does permit the use of oversubscription criteria based on social or medical need. Paragraph 1.16 of the Code explains, “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.” In the arrangements as they stand, the reference to social or medical need is not an oversubscription criterion, the wording is contrary to the requirements of paragraph 1.16 and the arrangements are unclear in this regard.

The definition of looked after children

24. Paragraph 1.7 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).”

25. Footnotes to paragraph 1.7 give further definitions of the terms used, including for looked after children. Footnote 15 to paragraph 1.7 says, “A ‘looked after child’ is a child who is (a) in the care of a local authority, or (b) being provided with accommodation by a local authority in the exercise of their social services functions (see the definition in Section 22(1) of the Children Act 1989) at the time of making an application to a school.”

26. The arrangements simply state that the first priority is for looked after children and I do not believe that this is clear. The governing board said that they took this definition from the Code. As there is no definition provided, I do not agree with this view. The arrangements do not comply with paragraphs 1.4 and 1.8 which require admission arrangements and oversubscription criteria to be clear.

The priority given to previously looked after children

27. As paragraph 1.7 of the Code which I set out above makes clear, previously looked after children are to share with looked after children the highest level of priority in

oversubscription criteria. The arrangements do not mention previously looked after children in the first priority and so do not comply with paragraph 1.7 of the Code.

The definition of siblings

28. The second oversubscription criterion is “Children with a sibling attending the school”. The Code permits giving priority to a sibling of a child attending a school and says in paragraph 1.11, “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).”

29. The arrangements say, “Siblings are as defined in the Local Authority’s Primary Education in Essex booklet.” These are the admission arrangements of the governing board for the school and it is necessary for the required information to be provided, it is not sufficient to refer to the document of another body, not least in this case as that document is the local authority’s composite prospectus and is not published until several months after the date by which admission arrangements are to be published. The arrangements are not clear and so do not comply with paragraphs 14, 1.8 and 1.11 of the Code.

Information on the catchment area

30. The third oversubscription criterion is “Children living in the priority admissions area”. There is a note in the arrangements which says, “(Priority admissions area map is available in the school office)”. It is my understanding that the term, priority admissions area, means the same as catchment area. That is, if a child lives in a certain geographical area then he or she meets this priority.

31. The Code permits the use of catchment areas but if they are used, they are part of the admission arrangements and they must be published on the admission authority’s website. Providing a copy in the school office is insufficient to meet this requirement. The admission arrangements do not meet the requirements of paragraph 1.47 of the Code that requires admission arrangements to be published.

32. Paragraph 1.14 of the Code says, “Catchment areas **must** be designed so that they are reasonable and clearly defined.” As there is no published information on the catchment area I can not tell if the catchment area is reasonable. As it has not been published it is not clearly defined as part of the arrangements irrespective of whether or not the map in the school office shows it clearly defined.

Information on how the home address is defined

33. 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.

34. The relevant section in the arrangements says, "In the event of over-subscription within any of the above criteria, priority will be determined by straight line distance from home to school, those living closest being given the highest priority. Straight line distances are calculated by the Local Authority as described in the Primary Education in Essex booklet." This falls foul again of the requirement to publish by the required date on the school's website the full admission arrangements. Moreover, it 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.

35. 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 equal arrangement. In such cases, most parents will tell the admission authority which home is regarded as the primary home if asked. However, no provision is made in the arrangements for when there is shared care of the child. The arrangements therefore do not comply with paragraphs 14, 1.8 and 1.13 of the Code.

The reference to statements of educational need

36. The arrangements say, "If a child has a Statement of Special Educational Needs or Education, Health and Care Plan and the school is named on the Statement or Plan, the child will be admitted irrespective of criteria." As there have been no statements of special educational need for some years, the use of this redundant term makes the arrangements unclear and so not compliant with paragraph 14 of the Code that requires arrangements to be clear.

Information on the tie-breaker

37. Paragraph 1.8 of the Code says (as far as relevant here), "Admission arrangements **must** include an effective, clear, and fair tie-breaker to decide between two applications that cannot otherwise be separated." The arrangements do not include a tie-breaker beyond the distance from the school. Clearly it is possible, although not common, for two applicants for the last school place to live the same distance away from the school; in other words, the applications cannot be separated. The arrangements are therefore not compliant with paragraph 1.8 of the Code.

38. The governing board asked for advice on this matter. I cannot give advice but I note that many admission arrangements include a tie-breaker which is based on random allocation undertaken by an independent body.

Information on waiting lists

39. 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. Looked after children or previously looked after children allocated a place at the school in accordance with a Fair Access Protocol **must** take precedence over those on a waiting list.”

40. The arrangements say, “A Waiting List will be maintained for unsuccessful applicants until the end of the Autumn Term.” The end of the autumn term is not generally understood to be 31 December and if this is what is meant, the arrangements are not clear. The arrangements therefore either do not meet the requirement of paragraph 14 to be clear or the requirements of paragraph 2.15 of the Code.

Conclusion

41. The arrangements do not meet the requirements of the Code in the ways described above. 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

42. I have considered the admission arrangements for September 2024 for St Andrew’s Church of England Primary School in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to information on admission outside the 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.

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: 5 January 2024

Signed:

Schools Adjudicator: Deborah Pritchard