



Office of
the Schools
Adjudicator

Determination

Case references: REF4241, REF4242 and REF4243

Referrer: A parent

Admission authority: The Bridge Academy Trust for High Ongar Primary School, Ongar Primary School and Chipping Ongar Primary School, Ongar, Essex

Date of decision: 26 February 2024

Determination

I have considered the admission arrangements for September 2024 for High Ongar Primary School, Ongar Primary School and Chipping Ongar 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 of summer born children, 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), objections have been referred to the adjudicator by a parent (the referrer), about the admission arrangements for September 2024 (the arrangements) for High Ongar Primary School, Ongar Primary School and Chipping Ongar Primary School (the schools). The schools provide education for children aged four to eleven and are in or near the town of Ongar in Essex.

2. The referrer brought to my attention paragraphs 2.17, 2.18, 2.19 and 2.20 of the School Admissions Code (the Code). She also made reference to the Department for Education (DfE) guidance, 'Summer born children starting school: advice for parents' published April 2023. She explained that her concerns were as below.

- a) The arrangements say that parents may 'request' part time education before their child reaches compulsory school age when this is a right.
- b) The process for requesting delayed entry (that is for a summer born child to join reception year (YR) rather than year 1 (Y1) when the child reaches compulsory school age) is not clear.
- c) The arrangements imply that professional evidence is required with every request for delayed entry, when this is not a requirement.
- d) The arrangements say that the professional evidence provided must say that the summer born child must have admission to YR when the child reaches compulsory school age rather than Y1 when it is not the role of a medical or other professional to make this judgement.

3. The parties to the case are the referrer, the Bridge Academy Trust, which is the admission authority for the schools (the trust), and Essex County Council, which is the local authority for the area in which the schools are situated (the local authority).

4. When the arrangements were brought to my attention, I considered that there were additional matters which did not, or might not, conform with the requirements for admission arrangements and brought them to the attention of the trust and the local authority. I consider these further below.

Jurisdiction

5. These arrangements were determined under section 88C of the Act by the trust on 13 December 2022. The referrer submitted an objection to these determined arrangements on 16 January 2024. 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 cases cannot be treated as objections. 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 objections as referrals. The referrer has asked to have their identity kept from the other parties and this request has been agreed by the Chief Adjudicator.

6. As the arrangements for the three schools are similar (aside from the names of the schools, that the schools have different published admission numbers (PANs) and the matters I detail below), and there is one admission authority, I have decided to address the referrals in one determination.

Procedure

7. 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, additional information and further communications from the referrer;
- b) copies of the minutes of the meeting of the trust at which the arrangements were determined and the determined arrangements;
- c) the DfE guidance, 'Summer born children starting school: advice for parents' (the DfE guidance for parents); the DfE guidance for parents 'Making a request for admission out of the normal age group' (the DfE guidance for parents on process), and 'Guidance on handling admission requests for summer born children' for admission authorities (the DfE guidance for admission authorities), all dated April 2023;
- d) comments by the trust on the matters raised; and
- e) information available on the websites for the trust and the DfE.

8. The local authority acknowledged the communications on the matters considered in this determination but made no comments of its own on these.

Background

9. The referral is largely concerned with the admission to school of children who reach compulsory school age between 1 April and 31 August and who therefore reach compulsory school age at the beginning of the school term following their fifth birthday. Such children are often referred to as a 'summer born children.' Section 8 Education Act 1996 and the Education (Start of Compulsory School Age) Order 1998 set out what constitutes compulsory school age. The Code explains compulsory school age in footnote 56 of the Code which says,

"A child reaches compulsory school age on the prescribed day following his or her fifth birthday (or on his or her fifth birthday if it falls on a prescribed day). The prescribed days are 31 December, 31 March, and 31 August."

10. Footnote 57 of the Code explains the references to summer born children and says,

"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."

11. The parents of a summer born child have the right to postpone the admission of their child to school until after 31 August, which would mean the September in the year following when the child could have joined a school. Such a child would join Y1, unless the parents requests and the admission authority agrees, that the child should join YR. The referrer's concern is that the arrangements of the three schools do not reflect the Code's requirements or follow the relevant DfE guidance in relation to the admission of children before they reach compulsory school age.

12. The schools are in close proximity to each other and all were judged to be good by Ofsted at their most recent inspection. High Ongar Primary School (High Ongar) has a PAN of 20. Chipping Ongar Primary School (Chipping Ongar) has a PAN of 30 and Ongar Primary School (Ongar) has a PAN of 25. The oversubscription criteria for Chipping Ongar and Ongar are (in summary):

1. Looked after children and previously looked after children
2. Children with a sibling attending the school
3. "Children living in a straight-line distance

In the event of oversubscription 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."

13. The third oversubscription criterion for High Ongar is, ""Pupils who live with parents, guardians or carers, who are employees of Bridge Academy Trust, provided that the employee has been employed by the School for a minimum of two years at the date of application for admissions". The fourth oversubscription criterion for High Ongar is "straight line distance." In all other regards the oversubscription criteria for the three schools are the same. Unless otherwise stated, all references to the arrangements are based on the arrangements for the three schools.

Consideration of the arrangements

The referral – right to part time education

14. The referral said that the arrangements say "that parents can 'request' that their child attends part-time until they reach compulsory school age (CSA). The word request implies that this is something the school can refuse, even though this is a parental right under S.17 of the Code."

15. 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."

16. Paragraph 2.17 of the Code says,

“The authority **must** make it clear in their arrangements that where they have offered a child a place at a school:...

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. I agree that the use of the word ‘request’ implies that a parent must ask if their child can attend school part time until the child reaches compulsory school age and so, as it is a request, the request can be refused. The arrangements do not make it clear that the parent has the right to decide that their child will attend part time until they reach compulsory school age. The arrangements therefore do not comply with paragraph 2.17c) of the Code which requires that the arrangements make this right to part-time education clear.

The referral – clearly stating the process for requesting delayed entry to YR

18. Paragraph 2.18 of the Code says

“Parents may seek a place for their child outside of their normal age group, for example, if the child is gifted and talented or has experienced problems such as ill health. In addition, the parents of a summer born child may choose not to send that child to school until the September following their fifth birthday and may request that they are admitted out of their normal age group – to reception rather than year 1. Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.”

19. The referrer said, “In relation to summerborn children starting school in Reception at CSA, the Trust say you can request a delayed entry but the process is not clear. Going through this experience myself, it is not clear who or where formal requests need to be directed to, or how requests will be considered.” The relevant section of the arrangements say,

“ Where a parent of a ‘summer-born’ child (1 April-31 August) wishes their child to start school in the autumn term following their fifth birthday, they will need to apply for a place at the correct time for the normal admission round for the following academic year. Supporting evidence from relevant professionals working with the child and family stating why the child must be placed outside their normal age appropriate cohort should be submitted. The admission authority for the school will decide whether the application for a Reception place will be accepted or whether it will be treated as an application for a Year 1 place, the child’s normal age appropriate cohort. If the application for a Reception place is not accepted this does not constitute a refusal of the place and there is no right to an independent statutory appeal.”

20. I was surprised by wording in the arrangements which appeared to me to be at odds with DfE’s guidance. It is usual for parents who are considering requesting the admission of

their child to YR rather than Y1 to make their application at the time that they could apply for YR and ask then if the admission authority would permit their child to join YR in the following year. In other words, the parent asks at the normal time of application to YR whether the admission authority will agree that the child could be admitted to YR when the child reaches compulsory school age rather than to Y1 which would be their cohort otherwise. If the admission authority were to agree to admit the child to YR rather than Y1 then the parent could withdraw their application (if they decided to defer the admission) and apply for YR the following year. The application would be considered with all other applications for YR and in line with the oversubscription criteria.

21. The arrangements imply that the parent has already decided to defer the admission of their child and simply applies a year later and can be admitted to YR or Y1 depending on the decision of the admission authority at that time. The DfE guidance for parents 'Making a request for admission out of the normal age group' says, "You will normally be expected to make your request alongside an application for your child to be admitted to reception at age 4. This is so you can keep open the option of sending your child to school at age 4 in case your request is refused." It therefore appears, as noted above, that the arrangements are not in line with this DfE guidance.

22. The DfE guidance for admission authorities says,

"We acknowledge that it will not always be easy for admission authorities to make a decision about a child more than a year before the point at which they may be admitted, particularly as it is difficult to know what progress they may make in the intervening period. Nonetheless, parents should know the outcome of their request for admission out of the normal age group in time to make an informed decision about whether their child will start school before compulsory school age. We therefore recommend that the process local authorities and admission authorities put in place:

- requires the parent to make an application for their child's normal age group at the usual time, but enables them to submit a request for admission outside the normal age group at the same time
- ensures that the parent receives the response to their request before primary national offer day."

23. The arrangements are not in line with the DfE guidance for admission authorities as this is not followed. The DfE guidance is just that, guidance and not a set of mandatory requirements such as those imposed by the Code. However, the referral raised the lack of clarity required by paragraph 2.18, which I repeat here, "Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group." Firstly it is not clear when the request for admission out of the normal age group should be made. As the DfE guidance states, parents should know the outcome of their request before making their decision; this does not appear to be possible based on what the arrangements say.

24. Another matter here is to what body should the request be sent. In support of her argument the referrer provided her email correspondence with the trust as evidence of her experience on this matter and from this correspondence it would appear that the trust was not clear on its process. The DfE guidance for parents says, “If you do not want your child to miss their reception year, you should submit a request for admission out of the normal age group to the school’s admission authority at the same time.” The arrangements do not make it clear if the submission should be to the local authority (to pass onto the trust) or to the trust. Certainly the trust advised the referrer, after several emails, that the submission should be made to the headteacher for the school concerned. I conclude that the arrangements are not clear regarding “the process for requesting admission out of the normal age group” and so do not comply with paragraph 2.18 of the Code.

25. In addition, the arrangements do not comply with paragraph 14 of the Code which 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.”

Referral – the professional evidence required

26. The arrangements say,

“Supporting evidence from relevant professionals working with the child and family stating why the child must be placed outside their normal age appropriate cohort should be submitted.”

27. The implication of this sentence is that supporting evidence must be submitted. Paragraph 2.19 of the Code says,

“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.”

28. The DfE guidance for local authorities says,

“It is reasonable for admission authorities to expect parents to provide them with information in support of their request – since without it they are unlikely to be able to make a decision on the basis of the circumstances of the case. This should demonstrate why it would be in the child’s interests to be admitted to reception rather than year one. 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."

29. The arrangements do not conform with paragraph 2.19 of the Code because they imply that professional evidence must be provided when the Code states that this will only be when relevant. Nor do the arrangements make it clear that decisions will be made in the best interests of the child and the circumstances of each case. The Code does not require that this is said but, in this context, the omission implies that decisions are only made on the basis of the advice of professionals. The arrangements are unclear in this regard and so do not meet the requirements of paragraph 14 of the Code.

Referral – the place of professional judgement

30. The arrangements say, as quoted above but provided here for ease of reference, that,

"Supporting evidence from relevant professionals working with the child and family stating why the child must be placed outside their normal age appropriate cohort should be submitted."

31. This appears to say that the relevant professionals not only should provide evidence (as discussed above) but that evidence should state that the child must be placed in YR rather than Y1. The referrer stated her view that "The implication of the [trust's] admissions policy is that without professional evidence a request would be refused" and that "It is not for most professionals to dictate what "must" be done, although professionals such as pre-school or nursery staff for example, who know the child well, could suggest what they believe to be in the child's best interests."

32. There is no reference in the arrangements to any decision being made in the best interests of the child. The wording in the arrangements does not make it clear the Code's requirement in paragraph 2.19 to make a decision in the best interests of the child and, "where relevant, their medical history and the views of a medical professional" (underline added for emphasis) should be taken into account.

33. Paragraph 2.19 of the Code requires that the admission authority makes its decision on the "basis of the circumstances of each case". The arrangements do not make that clear because they state that professional evidence must be provided and that evidence must state that the child must be educated in YR rather than Y1. There is no reference to any other evidence being taken into account in the decision of the admission authority. This makes the arrangements unclear as the decision must take into account the matters detailed in paragraph 2.19, including the parent or parents' views. As a result the

arrangements do not meet the requirements of paragraph 14 to be clear and so do not comply with the Code in this regard.

Other matters in the arrangements

Administrative information

34. The first two pages of the arrangements (following the title page) are concerned with recording matters such as document formatting, agenda and other process matters. These matters are not part of the arrangements but are published as if they were. In addition, this section appears to say that the arrangements apply from 1 September 2024. The closing date for applications for 2024 was 15 January 2024 and national offer day is 16 April 2024. The offers made on national offer day are based on these arrangements and so it is incorrect to say that the arrangements apply from 1 September 2024; they apply from when they are determined and to children who will be admitted during the September 2024 to August 2025 school year. The arrangements are therefore unclear and do not meet the requirement of paragraph 14 of the Code to be clear.

35. The administrative records appear to say that the arrangements will be published on 1 September 2023. Paragraph 1.50 of the Code says, “Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on the school’s website ...by 15 March in the determination year and continue displaying them for the whole offer year (the school year in which offers for places are made).” It may be that the arrangements were published by the 15 March 2023 and thus are inaccurate or unclear, or that the arrangements were not published as required. If either of these cases apply, the arrangements do not meet the requirements of the Code.

The oversubscription criteria

Looked after and previously looked after children

36. The first oversubscription criterion is “Looked after children and previously looked after children”. This is in line with paragraph 1.7 of the Code that requires that these children have first priority. However the definition provided says,

“The definition for a Looked After Child will be the same as the Local Authority”.

37. It is not appropriate to say that the definition of looked after children “will be the same as the Local Authority” as this implies that the reader needs to find the local authority’s definition in a separate document. It is for the admission authority to define its terms and not refer to another organisation.

38. The definition then continues,

“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 will be given first priority in oversubscription criteria ahead of all other applicants in accordance with the School Admissions Code 2014. 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 (as defined in Section 22(1) of the Children Act 1989).”

39. The definition of previously looked after children refers to “the School Admissions Code 2014”. The Code in force is that dated 2021 so this reference is out of date and renders the arrangements unclear. The definition of previously looked after children in paragraph 1.7 of the Code is,

“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.”

40. As the arrangements make no reference to children who were in state care outside of England prior to being adopted, the definition in the arrangements is not in accordance with the Code and is also unclear. The arrangements therefore do not meet the requirements of paragraphs 1.7 or 14 of the Code. Paragraph 1.8 of the Code requires oversubscription criteria to be clear and so is also not met.

The priority for children of staff

41. As explained above, the oversubscription criteria for High Ongar include, as the third criterion,

“Pupils who live with parents, guardians or carers, who are employees of Bridge Academy Trust, provided that the employee has been employed by the School for a minimum of two years at the date of application for admissions”.

42. The Code permits the giving of priority to children of staff in certain circumstances as explained in paragraphs 1.39 which says,

“1.39 Admission authorities may give priority in their oversubscription criteria to children of staff in either or both of the following circumstances:

a) where the member of staff has been employed at the school for two or more years at the time at which the application for admission to the school is made; and/or

b) the member of staff is recruited to fill a vacant post at the school for which there is a demonstrable skill shortage.”

43. Applying those requirements to this case, the priority can lawfully be given to staff employed by the trust and working at the school. The trust would be the employer of any staff at the school who were not, for example, staff of contractors. I find that this criterion is unclear because it refers to the people concerned being employed both by the trust and by the school and does not comply with paragraphs 14 and 1.8.

Distance of the home from the school

44. Paragraph 1.13 of the Code says,

“Admission authorities **must** clearly set out how distance from home to the school... used in the arrangements will be measured. This **must** include making clear how the ‘home’ address will be determined and the point(s) in the school...from which all distances will be measured. This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent.”

45. The third oversubscription criterion for Ongar and Chipping Ongar is “Children living in a straight-line distance” and the fourth oversubscription criterion for High Ongar is, “Straight line distance.” No definitions are provided. The arrangements for Ongar and Chipping Ongar say (before the oversubscription criteria) “In the event of oversubscription 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.” This could, for these schools, encourage the reader to think that distance for the third criterion will be measured in a straight line with the nearest having priority but the arrangements do not explain this. There is no such explanation included for High Ongar as I will discuss below.

46. It is not clear from which point in any of the schools measurement will be taken or from which point in the home. The arrangements therefore do not meet the requirements of paragraphs 14, 1.8 and 1.13 as they are not clear.

47. Furthermore, the arrangements include no “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.” This is a requirement of paragraph 1.13 of the Code. The arrangements therefore again do not meet the requirements of paragraphs 14 and 1.13 of the Code.

Oversubscription within an oversubscription criterion category

48. I explained above that the arrangements for Ongar and Chipping Ongar include an explanation for what happens when there is what the arrangements call “oversubscription within a criterion”. This is a reference to what might more accurately be described as what happens when the PAN is reached and exceeded within a given oversubscription criterion category. There is no such explanation in the arrangements for High Ongar and therefore the arrangements for High Ongar are not clear in this regard and do not meet the requirements of paragraphs 14 and 1.8 of the Code.

Reference to a catchment area

49. The arrangements for Ongar include a sentence which says, “There is no guarantee of a place for children living in the priority admission area.” My understanding is that “priority admission area” means what the Code refers to as a catchment and that a child living in such an area will have a degree of priority for admission. However, the arrangements for Ongar do not include any catchment or “priority admission area” and the oversubscription criteria do not include any reference to priority based on living in such an area. I therefore assume that the sentence is redundant. Its inclusion, however, makes the arrangements unclear and therefore not compliant with paragraph 14 of the Code.

General matters within the arrangements

Tie-breaker

50. Paragraph 1.8 of the Code says, “Admission arrangements **must** include an effective, clear, and fair tie-breaker to decide between two applications that cannot otherwise be separated.” There is no such tie-breaker in the arrangements and so they do not comply with paragraph 1.8.

Statements of Special Educational Needs

51. The arrangements refer to “Statements of Special Educational Need”, these no longer exist. The reference makes the arrangements unclear and so not compliant with paragraph 14 of the Code.

Waiting list

52. 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.”

53. The arrangements say,

“The school will maintain a waiting list. Applicants will be ranked on these waiting lists in priority order, according to the school’s admission criteria. Each added child will require the list to be ranked again in line with the published oversubscription criteria. The Local Authority will not maintain waiting lists beyond the first week of the autumn term, however parents will have the opportunity to register their continued interest in a place.”

54. It is not clear for how long the waiting list will be maintained and so the arrangements do not meet the requirements of paragraph 14 of the Code.

The trust's response to these matters

55. When I raised these matters with the trust, the trust responded, "Bridge Academy Trust acknowledges the observations made by the Adjudicator and agrees that there is a lack of clarity included in the policy and confirms that this will be rectified in the 2025/2026 policies. In relation to the straight-line distance observation, the Trust is in communication with the Local Authority and confirms that this will also be reflected in the 2025/2026 policies."

56. I appreciate this acknowledgement by the trust but bring to its attention that I have considered the arrangements for 2024 and the ways in which those arrangements do not meet the requirements of the Code. It will not be sufficient to adjust the arrangements for 2025, the arrangements for 2024, which are being applied, **must** meet the requirements of the Code and thus **must** be amended as required by this determination.

57. 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 trust 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

58. I have considered the admission arrangements for September 2024 for High Ongar Primary School, Ongar Primary School and Chipping Ongar 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 of summer born children, 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.

59. 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:

Signed:

Schools Adjudicator: Deborah Pritchard