



Office of
the Schools
Adjudicator

Determination

Case reference: REF4239 Cressex Community High School, High Wycombe, Buckinghamshire

Referrer: Buckinghamshire Council

Admission authority: The Governing Body for Cressex Community High School

Date of decision: 24 July 2024

Determination

I have considered the admission arrangements for September 2024 for Cressex Community High School, High Wycombe, Buckinghamshire in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to matters set out in this determination they do not conform with the requirements relating to admission arrangements.

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 and jurisdiction

1. Buckinghamshire Council (the local authority, the LA, the referrer) submitted an objection on 4 December 2023 to the admission arrangements for Cressex Community High School, High Wycombe (the school) for September 2024. This was after the last date by which such objections could be submitted, which was 15 May 2023.
2. The objection concerned the published admission number (PAN) of 150 for admissions to Year 7, which the LA considered was unreasonably low "given the capacity of their school buildings and the local demand for places". The LA complained that this rendered the admission arrangements (the arrangements) unfair and contrary to the requirements of paragraph 14 of the School Admissions Code (the Code). The LA told me

that during the process of the school acquiring new buildings in 2010, which were built to provide an increased capacity of 1100 (or a PAN of 180 to allow for an additional form of entry), the school changed its status from a community school to a foundation school with a trust. The trust has since, the LA said, refused all requests to increase the school's PAN from 150. The LA told me that the demand for Year 7 places locally has exceeded the number of places available locally for the last two years and that this situation was forecast to continue.

3. Although the deadline for objections had been missed, I informed the school that since the arrangements had been brought to my attention, I had decided to use the power conferred under section 88I(5) of the School Standards and Framework Act 1998 (the Act) to consider whether the arrangements conform with the requirements set out in the Code. I therefore asked the school (on 14 December 2023) to provide me with a copy of the arrangements and evidence that they had been determined, and the date of that determination.

4. I was not satisfied with the initial evidence supplied to me about the determination of the arrangements, and it was not until 8 January 2024 that I was given a letter from the clerk to the school's governing body apologising for the poor wording of the minutes of a meeting of the governing body which had taken place on 6 February 2023, but confirming that determination had taken place on that date.

5. On 16 January 2024, I informed the school and the LA that Regulation 21 of The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2021 (the regulations) listed an objection about an own admission authority's decision to keep an unchanged PAN as an objection which may not be brought. I said that I was nevertheless considering whether the determined PAN was unreasonably low and contrary to paragraph 14 of the Code by making the arrangements unfair, and also whether a number of other aspects of the arrangements may not conform with the requirements of the Code. I sought the school's comments on all of these matters. Paragraph 14 of the Code states that:

“...admission authorities **must** ensure that their practices and the criteria used to decide the allocation of school places are fair, clear and objective.”

6. As part of its response, the school invited me to consider whether it was appropriate to interpret the Code (which it described as “statutory guidance”) and therefore the meaning of “unfair” in paragraph 14 “in such a way as to alter or over-ride the prescripts of the primary and secondary legislation that govern it”. In other words, it said that the prohibition on making an objection to an unchanged PAN in the regulations should take precedence over an interpretation of paragraph 14 of the Code which might find an unchanged PAN non-compliant on the grounds that it was unfair.

7. I am clear that the Code is more than statutory guidance, since in its own words at paragraph 12:

“The Code has the force of law, and where the words ‘**must**’ and ‘**must not**’ are used, these represent mandatory requirements”.

Nevertheless, in view of the specific provision described above in the regulations concerning an unchanged PAN determined by an admission authority, I came to the view that I did not have jurisdiction to consider the determined PAN in the context of paragraph 14 of the Code. I wrote to the parties on 4 April 2024 informing them of this and saying that I would nevertheless consider the other matters contained in the arrangements which may not comply with the requirements concerning them.

8. The parties to the case are the school’s governing body and the local authority.

Procedure

9. I have had regard to all relevant legislation and the School Admissions Code (the Code).

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

- a) the referrer’s form of objection dated 4 December 2023 and subsequent correspondence;
- b) copies of the minutes of the meeting of the Governing Body at which the arrangements were determined;
- c) a copy of the determined arrangements;
- d) comments from the Governing Body (or the school on its behalf) and the LA on the matters raised.

Background

11. I have given some of the background to this case above. The further background given here is intended to explain the school’s context in greater detail and the consequential importance of it having compliant admission arrangements.

12. Cressex Community High School is a mixed, non-selective Foundation School for children from the ages of 11 to 18 which is located within the centre of High Wycombe, where there are two other non-selective secondary schools. The school’s trust is the Cressex Co-operative Learning Partnership which was formed in 2010 and which includes no other schools. Buckinghamshire Council’s website says that “Buckinghamshire has both upper (all-ability) schools and grammar schools”. The GOV.UK website “Get information about schools” records the school as having 762 pupils on roll, 27.6 percent of whom are eligible for free school meals.

13. The LA has provided me with information about other local schools with similar or higher free school meal eligibility and has said that “Cressex currently has the second

lowest number of students with EHCPs [Education, Health and Care Plans] in the planning area and they make up a similar percentage of their rolls to many other schools.” The school, however, has gone to some length to point out the nature of its “diverse and disadvantaged community” (pointing out that 75 percent are of minority ethnic heritage and that 62 percent have English as an additional language) when justifying its view about the number of children which it admits, which it has summarised in the following way:

“Our view remains that [sic] existing PAN is at the right and fair level for the context of the school and the student body that it serves.” ...and... “We are committed to maintaining a good standard of education for existing students.”

14. The school has been significantly oversubscribed with children living in its designated catchment area in recent years, details of which have been provided to me by the LA. These details include how the school’s oversubscription criteria have operated in 2022 and 2023, the LA saying that in these years 61 and 119 children living in its catchment area respectively did not secure a place there, a significant proportion of whom (55 and 81 respectively) could not be offered a place at one of the other High Wycombe schools, and who were therefore “allocated a place at a school in the surrounding villages or another town”. The minutes of the meeting of the Governing Body which took place on 6 February 2023 contained a statement that 189 first preferences had been expressed for one of the 150 places at the school in September 2023.

15. Given the above, it is clearly of the greatest importance that the school’s admission arrangements, which determine which children obtain a place there (and which do not), are compliant with the requirements set out in the Code and elsewhere, particularly concerning their clarity given the high proportion of the parents reading them whose first language will not be English.

16. In summary, the arrangements contain the following:

- (i) A statement that children “with a statement of special educational needs or Education, Health and Care Plan that names the school” will be admitted. The arrangements say: “These children will therefore be admitted prior to applying the admission rules [sic]”. This statement appears prior to one which says that the “planned admission number [sic] for Year 7 is 150.”
- (ii) A statement that if there are more applications received than places available, these will be allocated “...in accordance with the published admission rules for the school.”
- (iii) Under the heading “Admission Rules”, there appears first a statement which gives priority to looked after and previously looked after children (as defined), and separately as a second priority category “Children who appear to have been in state care outside of England and ceased to be in state care as a result of being adopted”.

- (iv) After an oversubscription criterion giving priority to children having exceptional medical or social needs, the following are listed:
- a. Children of staff (as defined)
 - b. Children living within the catchment area of the school (with a reference to where a map of this is to be found)
 - c. *“For the main point of admission: Siblings [as defined] of children in Years 7 to 10 who are on the roll of the school at the time allocations are made and are expected to be on the school roll at the time of the proposed admission.*

For immediate casual admissions after the normal point of entry: Siblings of children who are in Years 7 to 11 at the time of admission.”
 - d. A statement that any further places will be “offered in distance order” (as defined)
 - e. An oversubscription criterion (listed as number 8) which says: “Where a school can take some, but not all, of the children who qualify under these rules, we will give priority to children taking account of the next rule (or rules) and the school’s nearest open entrance gate offering the closest first.”
 - f. Finally there is a statement which says that if two otherwise equally qualified candidates cannot be separated, random allocation would be used, the method being set out on the LA’s website.

Other matters

17. When I saw the arrangements, I was concerned that:
- (i) the admission arrangements do not make clear that the admission of children whose Education, Health and Care Plan names the school under paragraph 1.6 of the Code will reduce the number of available places by that same number (ie places are not reserved for these children). Paragraph 14 requires admission arrangements to be clear;
 - (ii) first priority in the school’s oversubscription criteria is not given to all looked after and previously looked after children including children who appear to have been in state care outside England (that is, in a single oversubscription criterion), as required by paragraph 1.7 of the Code;
 - (iii) the oversubscription criterion which gives priority to siblings of children already at the school is unnecessarily complex and may be confusing to parents, making the arrangements unclear. Paragraph 1.8 requires oversubscription criteria to be clear, and

- (iv) oversubscription criterion 8 is unclear and unnecessary. Paragraph 1.6 requires the admission arrangements to set out the order in which oversubscription criteria are applied. If some children are not admitted under a particular oversubscription criterion, the next criterion automatically applies. Paragraph 14 of the Code requires admission arrangements to be clear.

Consideration of case

18. The school had included with its response to the above (on 25 January 2024) a consultation draft of admission arrangements for the school for 2025, saying that it intended to determine them in the light of consultation feedback and also seeking feedback from the adjudicator on certain points concerning them. It is not for the adjudicator to comment on a school's draft admission arrangements, and I will deal here with the determined 2024 arrangements and the matters above which I have raised with the school. It will be for the school to make changes to its arrangements for 2024 (which are relevant to admissions to the school until at least 31 December 2024) in the light of this determination, and to its determined arrangements for 2025 (which I have not viewed) should that be necessary to give effect to mandatory provisions of the Code in the light of this determination, in line with paragraph 3.6 of the Code.

19. The school referred to a model set of school admission arrangements published by the National Governance Association (NGA) concerning how the wording of its arrangements accommodates the requirements of the Code as they apply to children with Education, Health and Care Plans. It said that its draft arrangements for 2025 contained this wording and that it was willing to include the same in revised arrangements for 2024. I have not viewed the NGA document. 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. All children whose Education, Health and Care Plan names the school **must** be admitted.”

The Code therefore makes it clear that these children are to be admitted as part of the overall admissions to the school, taking up some of the available places. The school's arrangements give the impression that this is not the case, since the statement concerning them is explicitly made before the PAN or the “admission rules” are stated. They therefore fail to comply with what paragraph 1.6 of the Code requires. I note in passing that the reference in the arrangements to children “with a statement of special educational needs” is no longer relevant (since these are no longer issued), that the term “admission rules” is potentially confusing to parents as this is not used in the Code, and that the arrangements do not state at the outset that oversubscription criteria (the usual term) are applied sequentially. I have also noted, with surprise, that a minute of a meeting of the Governing Body in February 2023 recorded that, in relation to the 150 available Year 7 places in

September 2023, “9 places were kept for SEND students”, a practice which would not be in accordance with the operation of school admission arrangements as set out in the Code (if this minute is accurate).

20. The school accepted that the Code requires all looked after and previously looked after children to be admitted simultaneously, under a single oversubscription criterion, and not sequentially in two separate groups. However, the arrangements, as determined, fail to meet the Code’s requirements under paragraph 1.7, which states:

“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.”

21. The school argued that the wording of the arrangements concerning the priority given to siblings is clear, and that it is necessary to distinguish between admissions at the normal point of entry and in-year admissions if the requirement that the older sibling remain on the school roll when the admission takes place is to be observed. That is obviously correct, since an older sibling in year 11 would (normally, for an 11-16 school) no longer be on roll the following September in order to provide priority for a Year 7 sibling. My concern with the clarity of the arrangements is that the terms “immediate” and “casual” are not defined and therefore not clear for parents reading them. All that is required is a reference to the (clearer) footnote provided in the arrangements which says, simply, that:

“A pupil in a secondary school will only count to provide priority to a sibling if he or she is attending the school in Years 7 to 10 at the [time] allocations are made and is still expected to be on the school’s roll at the time of the proposed admission or Years 7 to 11 at the time of admission for in-year admissions.”

The school’s oversubscription criteria are unnecessarily complex and therefore unclear, in breach of paragraph 1.8 of the Code, which states:

“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.”

I note in passing that the school has a sixth form, and it should make clear in its admission arrangements whether an older sibling in the sixth form would convey priority to a sibling seeking a place in Year 7(say). As determined, the arrangements would not do so, but this may not be clear to a parent reading them, and it may also not be the school’s intention.

22. The school has accepted that the oversubscription criterion described above as “number 8” is unclear and unnecessary. It therefore breaches the requirement of paragraph 14 of the Code concerning the clarity of admission arrangements. As stated above, it would be of great help to the clarity of the arrangements if they contained a brief explanation of operation of oversubscription criteria at the outset.

Summary of findings

23. I have explained above why the arrangements fail to comply with what the Code requires in paragraphs 14, 1.6, 1.7 and 1.8.

Determination

24. I have considered the admission arrangements for September 2024 for Cressex Community High School, High Wycombe, Buckinghamshire in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to matters set out in this determination they do not conform with the requirements relating to admission arrangements.

25. 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: 24 July 2024

Signed:

Schools Adjudicator: Dr Bryan Slater