

## **DETERMINATION**

**Case reference:** ADA2748

**Objector:** A member of the public

**Admission Authority:** Leicestershire County Council

**Date of decision:** 24 September 2014

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by Leicestershire County Council for community and voluntary controlled schools in Leicestershire for September 2015.**

**I have also considered the arrangements in accordance with section 88I(5). I determine there is a matter as set out in the determination that does 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 as quickly as possible.**

### **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 on 30 June 2014 by a member of the public, (the objector), about the admission arrangements (the arrangements) for voluntary controlled (VC) and community schools in Leicestershire for September 2015. The objection is to the provisions in the arrangements relating to the admission of children born in the summer term.

### **Jurisdiction**

2. These arrangements were determined under section 88C of the Act by Leicestershire County Council, the local authority (LA), which is the admission authority for the schools. The objector submitted the objection to these determined arrangements on 30 June 2014. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my powers under section 88I of the Act to consider the arrangements as a whole.

## Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
  - a. the objector's form of objection dated 30 June 2014;
  - b. the LA's response to the objection and supporting documents dated 30 July 2014 and 18 August 2014;
  - c. draft and final versions of the LA's composite prospectus for September 2015;
  - d. the LA's document "Admissions to Mainstream Schools (Community and Voluntary Controlled) Policies and Procedures, March 2014" which includes the determined arrangements for these schools;
  - e. confirmation of when consultation on the arrangements last took place;
  - f. copies of the minutes of the meeting of the LA at which the arrangements were determined; and
  - g. the Department for Education (DfE) publication: "Advice on the admission of summer born children" (the DfE advice).

## The Objection

5. The objection is to the provisions in the arrangements relating to the admission of children born in the summer term who therefore reach compulsory school age in the September following their fifth birthday. The objector argues that the arrangements breach paragraph 14 of the Code as they "*fail to mention the fact that, without applying initially and then deferring, a summer born child can apply for a Reception place at compulsory school age*" and paragraph 2.17 as they do not meet the requirement that admission authorities must make decisions on the basis of the circumstances of each case. The objector also considers that the provisions in the arrangements concerned with children transferring to junior or secondary school later than others in the same age cohort are not clear and that the LA's use of the term "normal age-range" is not clear in contravention of paragraph 14 of the Code and contrary to the Act's definition of "Reception class" and "compulsory school age". The objector also considers that it is unclear what the arrangements mean by School Admissions Service and that this makes the arrangements contrary to paragraph 14 of the Code. The objector explains in the objection that he is objecting to all schools to which the arrangements apply rather than to those of a particular school and he gives the names of three such primary schools as examples.

## Other Matters

6. In the course of considering the objection, I reviewed the arrangements as a whole and concluded that they may not conform with the requirements relating to admissions in terms of the definition of looked after children set out in the arrangements.

### **Background and consideration of factors**

7. The County Council's cabinet determined the arrangements for admission to community and VC schools – both primary and secondary - in the LA's area for September 2015 at its meeting on 5 March 2014. As well as referring to the requirement in paragraph 14 of the that arrangements must be fair, clear and objective, the objector also cites paragraphs 2.16 and 2.17 of the Code which I set out here for ease of reference:

*“2.16 Admission of children below compulsory school age and deferred entry to school – 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:*

- a) *Parents can request that the dated their child is admitted to school is deferred until later in the academic year or until the term in which the child reaches compulsory school age, and*
- b) *Parents can request that their child takes up the place part-time until the child reaches compulsory school age.*

*2.17 Admission of children outside their normal age group – Parents of gifted and talented children, or those who have experienced problems or missed part of a year, for example due to ill health, can seek places outside their normal age group. Admission authorities **must** make decisions on the basis of the circumstances of each case, informing parents of their statutory right to appeal. This right does not exist if they are offered a place in another year group at the school.”*

8. The LA's document setting out its arrangements makes a number of references to when children start primary school which are as follows:

Paragraph 2.6 includes: *“A child turning 5 in the summer term must start school no later than the following autumn term (Leicestershire paragraph 4.16 [sic – there is no paragraph 4.16, so this is taken to refer to paragraph 4.14] applies for summer born children)”*.

Paragraph 4.8 says *“Date of admission for all infant and primary schools is from the September immediately following a child's fourth birthday i.e. all children who have turned 4 before the end 31 August.”*

Paragraph 4.10 says: *“All schools under the control of Leicestershire County Council have a single start for first time admission at 4+. However parents must ensure full-time education for their child from compulsory school age, from 5+.”*

Paragraph 4.14 is headed: “Deferring first-time admission” and says:

*“When a child’s parents are notified of the allocation of a primary school place, they can request deferment of the child’s admission. The Local Authority will agree to deferment to later in the school year or until the child reaches compulsory school age in that year.... The parent would not however be able to defer entry beyond the beginning of the term after the child’s fifth birthday nor beyond the academic year for which the original application was accepted..... For summer born children if the place is not taken up by the summer half-term then a fresh application must be submitted for entry into Year 1, as the admissions application is only valid for the academic year in which you applied. The Local Authority may withdraw the offer of the place if it is not taken up after deferment and offer the place to another child according to Local Authority priority criteria...”*

9. The LA in its response to the objection maintains that its admissions arrangements do conform with the requirements of paragraph 2.16 of the Code. It argues that its paragraph 4.14 is concerned with the inability of the admission authority to 'reserve places' if they are not taken up for the academic year to which the application relates. It says it is not operating a blanket policy of refusing to admit summer born children to YR rather than Y1 when they reach compulsory school age as the reference to parents applying for Y1 is to those who defer but do not take up a place. The LA goes on to say that the paragraph is informing parents of the implications of accepting a place in YR and then not taking it up with the result that the parent will have to apply for a place afresh. The LA in its response says that this fresh application *“will usually be made for year one”*.

10. I agree with the LA that a fresh application would need to be made for a school place and that it cannot reserve a place beyond the end of the academic year concerned if such a place is not taken up. However, this is not the matter which is the subject of the objection. The sections of the admission arrangements which I have quoted above are the only sections which refer to the admission of summer born children. There is no reference elsewhere in the arrangements to any possibility of a parent applying for a place for their summer born child to start school when that child reaches compulsory school age and for the child to be admitted to YR. Indeed, the arrangements as determined state unequivocally that *“.. a fresh application must be submitted for Year 1”*. This is what parents reading the admission arrangements will see and I think that a reasonable parent could well conclude that no other option than a place in Y1 was possible. There is another relevant document which a parent in Leicestershire would be likely to see in the process of applying for a school place. This is the LA’s composite prospectus which has the title “Your Guide to Primary Education”. For 2015, the LA was not required to publish this until 12 September 2014 but helpfully provided me with a draft. I have now also seen the final version as published on the LA’s website. This also refers to deferred entry but says rather less than the admission arrangements document. The relevant sections of this document say:

*“In Leicestershire primary and infant schools will be offering a school place*

*for a child of four years of age from the autumn term following their fourth birthday. However, statutory school age is from the first term after your child's first birthday.*

#### *Deferring first-time admission*

*Some parents of 4+ children may wish to request to defer their child's start date into the Reception year group, but only until their child reaches compulsory school age.*

*To request a deferment you must first have applied and secured a school place. The request to defer must be made to the LA who will consider the request. If your request to defer is agreed the place will be held open up to and no later than the term immediately after your child's 5<sup>th</sup> birthday or by the summer half-term, whichever is sooner in order to ensure a place in year 1. It is important that you are aware that the place may be withdrawn if it is not taken up after the deferment. However, the place cannot be held beyond the academic year in which the child's place was offered."*

11. As with the admission arrangements, I think that a parent reading this would not readily understand that there was any scope to request that a summer born child could start school in YR in the September following his or her fifth birthday. I have already set out my concern that parents reading the material published by the LA would not realise that scope existed for them to apply for their summer born child to start school in the September following that child's fifth birthday and to ask for the child to be placed in a YR class as an exception to joining a Y1 class along with others of their chronological age group. I accordingly conclude that the arrangements as determined and published are not clear as required by paragraph 14 of the Code. This is because they do not make apparent this possibility and, rather, would be likely to cause a reasonable parent to think that a summer born child starting school after his or her fifth birthday would have to do so in Y1 whatever their circumstances.
12. The DfE advice states that it would be unlawful for an admission authority to have a blanket policy which says that summer born children who start school in the September after their fifth birthday will be admitted to Y1. As noted above, the LA says that it does not have such a policy but it has not provided me with any documentary evidence of this. It is my view that the arrangements at the very least suggest a blanket policy which would be unlawful. In its response to the objection the LA, while maintaining that its arrangements do conform with the Code, has proposed some changes to the wording of the arrangements and has said that this is in order to clarify its policy. These changes would change the statement: "a fresh application must be submitted for Year 1" to read "a fresh application must be submitted, usually for entry into Year 1". The LA also proposes to insert the words "until entry" after "open for the child" into the sentence which reads: "*The place at the school will be held open for the child and not made available to another child.*" Finally, the LA proposes to add the following

paragraphs to its arrangements:

*“Paragraph 4.15*

*Exceptionally, parents of Summer born children, that is those children born from 1st April to 31st August, can request delayed admission, that is they may request that they are admitted out of their normal age group - to reception rather than Year 1 following their 5th birthday*

*If such a parent requests admission to Reception not Year 1 all relevant factors will be considered in assessing the request, parents would be expected to provide evidence to show that admission to Reception was in the child's best interests and will be taken into consideration.*

*Parents seeking to delay their child's admission into school should contact the Admissions Service in the Autumn term in the year prior to the normal entry in the following September.*

*The Admission Authority of the school to make the decision. Decisions will be made on the basis of the circumstances of each case. This will take in to account parents' views, information about the child's academic, social and emotional development. The views of the head teacher of the school concerned will be taken in to account. Decisions made by the Admissions Service will be clearly set out.*

*Where the Admissions Service agree to a child being admitted to a year out of their normal age group and as a consequence of that decision the child would be admitted to the age group which pupils are normally admitted to the school, an application will need to be made in the usual way and that application will be processed as part of the main admission round and on the basis of determined admission arrangements.*

*Parents' statutory right to appeal against the refusal of a place at a school for which they have applied does not apply if they are offered a place at the school but it is not their preferred age group.*

*Parents of those children educated outside of their normal age group whilst in primary school, should be aware that it will be for the admission authority of the secondary school to decide whether to admit the child out of their normal age group.”*

13. Once arrangements have been determined they may be varied only in the limited circumstances set out in the School Admissions (Admission Arrangements and Determination of Admission Arrangements) (England) Regulations 2012 (the Regulations). The only such circumstance relevant here is the provision which allows arrangements to be varied where this is necessary to give effect to a mandatory requirement of the Code or admissions legislation. The Office of the Schools Adjudicator (OSA) accordingly asked on my behalf if the LA was proposing to make these changes on that basis. The LA replied in its email of 18 August 2014 that it was in its view simply clarifying its

policy. It is my view that the LA is in fact proposing to vary its arrangements to comply with my determination or with admissions law or a mandatory provision of the Code. As I note above, the LA has the right to do this. The arrangements at the time they were determined were not clear a required by paragraph 14 of the code and thus did not conform with the requirements relating to admissions. I must therefore uphold this part of the objection, but I note in doing so that the LA has proposed to vary its arrangements in response to the objection to meet the mandatory requirement for clarity.

14. I turn now to the other aspects of the objection which relate to the sections of the arrangements dealing with early or late transfer to junior or secondary school. In the arrangements, under a heading "*Early Transfer or Admission of Children Staying on Outside the Normal Age-Range*", there are four paragraphs which set out how such transfers will be managed and which apply both to children whose parents wish them to transfer to their next school ahead of the usual transfer date for children of that age and to children whose parents wish them to transfer to their next school later than the usual transfer date for children of that age.
15. The objector's first concern is that it is unclear what is meant by the phrase "normal age-range" which is used in this part of the arrangements. The objector says that the term is not defined and in consequence is unclear in contravention of paragraph 14 of the Code. It is the case that these terms are not defined in the arrangements. However, I do not think that necessarily makes them unclear. The arrangements and the document *Your Guide to Primary Education* both make clear when children are entitled to start school and when they reach compulsory school age. I consider that a parent will be able to understand from these documents what is meant by "normal age-range." The great majority of children will start school in YR in the academic year which follows their fourth birthday and, in that context, I do not find that there is anything unclear in the LA's use of the term "normal age-range". I do not uphold this aspect of the objection.
16. The objector argues also that the use of the term "normal age-range" is at odds with the Act's definitions of Reception Class and compulsory school age. Reception class is defined in the Act as "*a class in which education is provided which is suitable for children aged five and any children who are under or over five years old whom it is expedient to educate with pupils of that age*". Compulsory school age is actually defined in the Education Act 1996 rather than the Act and provides that a child reaches compulsory school age on the prescribed day following his fifth birthday or on his fifth birthday if the birthday falls on a prescribed day. The prescribed days are then set out in regulations. The effect is that children born between 1 April and 31 August reach compulsory school age in the September following their fifth birthday. A child who joins YR in the September following his or her fourth birthday will have his or her fifth birthday during the course of that academic year. Some children will not reach compulsory school age during YR

while the school is in session, but that is not a bar to their being admitted to YR – indeed, paragraph 2.16 of the Code makes clear that “admission authorities must provide for the admission of all children in the September following their fourth birthday”, although children do not have to attend school until they reach compulsory school age. I cannot see that the LA’s use of the term normal age-range is at odds with these definitions. I do not uphold this aspect of the objection.

17. I now turn to the aspects of the document concerned with early and late transfers from a child’s first school to the next school (which in Leicestershire could be either a junior or a secondary school). The arrangements provide that early or late transfers must be approved the School Admissions Service. The objector argues that it is not clear what the School Admissions Service is. Noting that decisions on admissions matters are for the admission authority concerned, the objector says that if by the School Admissions Service the arrangements are referring to the relevant admissions authority, it should state this. The document is headed “Admissions to Mainstream Schools (Community & Voluntary Controlled) Policy and Procedures”. The LA in its response to the objection maintains that it is clear from the document what the School Admissions Service is and what functions they provide. The LA points out that paragraph 2 of the document describes the role of the Local Authority as the admission authority for community and VC schools and explains that the governing bodies of other types of state-funded schools are their admission authorities. The LA goes on to say “it is clear that the Admissions Service are administrators of admissions and the Admissions Policy”. I agree with the LA and I do not uphold this part of the objection.

18. The objector notes that the arrangements state that parents who wish their child to transfer early or late must make this request in writing and he states that there is no legally prescribed procedure or legal requirement for such a request to be made in writing and that it is therefore not clear or objective. I have considered this carefully. Parents have to apply for a school place in writing – either by completing a form or online. If a request is made in writing, there can be greater confidence that parent, school and LA are all clear about what has been requested and that the request can be properly considered. I do not uphold this aspect of the objection.

19. The next point made by the objector relates to the provisions in the arrangements that: “schools affected should submit a view regarding the suitability of the arrangement.” and: “Expected numbers in the year group and the AN [admission number] will be taken into account.” The objector considers that this suggests that the LA will make a decision based not the child’s best interests but on the size of the expected intake which the objector thinks is not fair and not objective and not clear in terms of the decision making process. The objector also contends that this could be discriminatory as it suggests that children outside the normal age range are given a lower priority than

other children. I do not think it unfair, unclear or not objective to take account of the view of schools or of expected numbers in the year group and the admission number. So far as the admission number is concerned, I am conscious that the admission authority will – so far as YR, Y1 and Y2 is concerned – need to take account of its duties under class size legislation. This seems perfectly proper. In addition, taking particular matters into account is not at all the same thing as basing a decision entirely on those matters. I do not uphold this aspect of the objection.

20. I turn now to the question of the treatment of children whose parents wish them to transfer early compared to those who wish them to transfer late. The objector has argued that the arrangements treat children whose parents wish them to transfer early favourably compared to those whose parents wish them to transfer late. This is on the grounds that the fifth paragraph in the relevant section of the arrangements applies only to children transferring early and says:

*“13.15 Children transferring younger than the normal age for transfer are subject to the same priority criteria as children in the normal transfer age-group, as long as:*

- *the relevant schools agree that early transfer is appropriate;*
- *the local authority considers early transfer is appropriate;*
- *the child has been taught in classes with the academic year group which is one year older for at least three years. (NB: this would normally exclude vertical grouping arrangements in primary schools).”*

21. The LA has not commented on this part of the objection. I have considered the points made by the objector. In doing so I have concluded that this part of the LA’s document does not actually form part of the formal determined admission arrangements for one or more schools. It is accordingly outside my jurisdiction and I do not comment further on it, other than to note that it is common – and indeed often helpful – practice on the part of LAs to include general information for parents in the same document which provides determined admission arrangements.

### **Other matters**

22. When I first reviewed the arrangements, I noted that the definition of looked after children was “children in the care of a Local Authority”. A child in public care is not the same as a looked after child as the latter also includes children who are provided with accommodation by a local authority. Paragraph 1.7 and footnote 17 of the Code make clear that the requirement relates to the wider group of looked after children (as well as to previously looked after children). The LA in its email of 28 August 2014 said that it would amend its arrangements in order to meet the requirements in full.

### **Conclusion**

23. I have concluded that an aspect of the arrangements relating to the initial admission of summer born children to primary or infant school does not comply with the requirements relating to admissions. I have also concluded that the arrangements did not when I first reviewed them meet the legal requirements in terms of the priority given to looked after children.

### **Determination**

24. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by Leicestershire County Council for community and voluntary controlled schools in Leicestershire for September 2015.

25. I have also considered the arrangements in accordance with section 88I(5). I determine there is a matter as set out in the determination that does not conform with the requirements relating to admission arrangements.

26. 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 as quickly as possible.

Dated: 24 September 2014

Signed:

Schools Adjudicator: Shan Scott