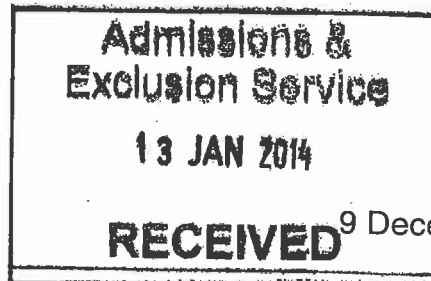




Office of
the Schools
Adjudicator

Office of the Schools Adjudicator
Mowden Hall
Staindrop Road
Darlington
DL3 9BG

Ms Karen Worthington
Admissions Officer
School Admissions Team
Nottingham City Council
Loxley House, Station Street
Nottingham
NG2 3NG



Dear Ms Worthington,

Variation to the admission arrangements of all Community and Voluntary Controlled Primary Schools in Nottingham City Local Authority

Case Reference: VAR/000623

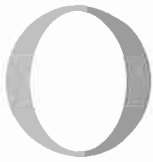
The adjudicator, Mr Chris Kiernan, has reached a decision on the above case.

A copy of his determination is enclosed and will be published on the OSA website at: www.education.gov.uk/schoolsadjudicator

Once a determination is made and published, neither the adjudicator nor anyone else can make changes to the decision. In legal terms the adjudicator is "*functus*" and has no power to review or comment on his decision. The reasoning for the decision is set out in the enclosed determination. The only route of appeal against this decision is by a judicial review, information on which can be found at: www.judiciary.gov.uk

Yours sincerely

Wilf Fleming
Secretary to the Office of the Schools Adjudicator



DETERMINATION

Case reference: VAR/000623
Admission Authority: Nottingham City Council
Date of decision: 9 January 2014

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve the variations to the admission arrangements determined by Nottingham City Council, the admission authority for community and voluntary controlled schools in the Nottingham local authority area for admissions in September 2014.

The first variation is to remove criterion 5 of the oversubscription criteria from the infant and primary school admission criteria for admissions in September 2014. This criterion gives a priority for admission to children who attend the nursery of the school at the closing date for applications. The second variation is to increase the period of time a primary age pupil (except for pupils in year 6) can stay on the waiting list from 40 days to an all-year waiting list from September 2014.

The referral

1 Nottingham City Council, the local authority, (the LA), the admission authority for community and voluntary controlled maintained schools (the schools) in Nottingham, referred a request for a variation to the Adjudicator on 4 December 2013 concerning the admission arrangements (the arrangements) for the schools in the school year 2014/2015.

2 The LA has requested two variations:

“a. to remove criterion 5 from the infant/primary schools admission criteria (i.e. pupils attending the nursery of the school).

b. to increase the period of time the waiting list is kept open for infant, junior and primary schools, where it's not possible to offer a place at a school named by parents/carers.”

Jurisdiction

3 The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998, which states that:

‘where an admission authority (a) has in accordance with section 88C determined the admission arrangements that are to apply for a particular school year, but (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances

occurring since they were so determined, the authority must [except in a case where the authority's proposed variations fall within any description of variations prescribed for the purposes of this section] (a) refer their proposed variations to the adjudicator, and (b) notify the appropriate bodies of the proposed variations".

4 I am satisfied that the proposed variations are within my jurisdiction.

Procedure

5 In considering these matters I have had regard to all relevant legislation and the School Admissions Code (the Code).

6 The documents I have considered in reaching my decision include:

- the request for an in-year variation for admissions in September 2014;
- the LA's school admissions booklet for 2014/15;
- a map and a list of all community and voluntary controlled schools in the city area;
- the LA's consultation document setting out proposed changes to admission arrangements for 2015/16, which includes information about the proposed variation to admission arrangements for 2014/15;
- emails and letters informing all schools, child minders, and the Director of Children's Services for Nottinghamshire County Council of the proposed variations for 2014/15;
- an advertisement in the local papers on 4 December 2013;
- the email sent to all parents who have applied online for school places for their children in the last two years;
- email replies to two parents and a school questioning the proposed changes; and
- the minutes of the LA's meeting of 19 November 2013 agreeing that admission arrangements determined for the 2014/15 school year be referred to the Office of the Schools Adjudicator seeking a variation.

Background and consideration

7 The LA determined its admission arrangements for admissions to the reception year (year R) of community and voluntary controlled infant and primary schools for September 2014 on 11 March 2013. The arrangements include as the fifth oversubscription criterion priority for children attending the nursery of the school at the closing date for applications and whose parents have asked for a place at that school.

8 The major change in circumstance leading to the request for the variation is that in the autumn term 2013 it came to the attention of the LA that the Office of the School Adjudicator had had a number of cases referred to it concerning admission arrangements that included an oversubscription criterion specifying priority for admission to the school for attendance at a given nursery class or other nursery provision. The LA cites eight cases of admission arrangements where the Adjudicator determined that the inclusion of a criterion specifying attendance at specific nursery provision does not meet the test of 'fair'.

9 The LA states in its variation request that, having considered the determinations, it believes its criterion giving children attending the nursery class of a school priority for a reception place at that school is not compliant with the Code.

10 I have considered first the 'the major change in circumstance' that has resulted in the admission authority seeking a variation – the removal of its fifth oversubscription criterion – and whether the proposed variation would address the problems arising from the change of circumstance. In particular, I have considered the effect on parents who have applied under the admission arrangements published for September 2014; the impact of proposed arrangements on individual schools with nursery classes; and the time in the admissions round when the change is being proposed.

11 The oversubscription criteria for the school year 2014/15 as determined by the LA are set out in pages 70 and 71 of its admissions booklet, with a comprehensive definition of all terms used. In summary they are:

1. looked after and previously looked after children;
2. children living in the school's catchment area, with a brother or sister attending the school at the time of admission;
3. children living in the catchment area;
4. children living outside the catchment area, with a brother or sister attending the school at the time of admission;
5. children who attend the school's nursery at the closing date; and
6. children living outside the catchment area.

12 It is important to note that the requested variation will only affect children who attend the school's nursery class and who a) do not live in the catchment area and b) will not have a brother or sister at the school at the time of the younger child seeking a reception place. Children attending the nursery class who live in the catchment area would have priority under criterion 3, and children living out of the catchment area, but who have a sibling in the school would have priority under criterion 4. The children who would be affected by the proposed variation are those currently attending the nursery unit of an oversubscribed school whose parents live out of the catchment area and

further away than children whose parents have applied for a place at the school and live out of the catchment area and live closer to the school, but whose child does not attend the school's nursery.

13 In the 2013 admissions process, 189 children were admitted into infant and primary schools under criterion 5 of the oversubscription criteria. At the same time, 373 children living outside the catchment area and considered under criterion 6 were refused a place at a primary school to which their parents had applied for a place. If criterion 5 had not been part of the LA's oversubscription criteria, all 562 children would have been considered for admission using the distance from the school as measured by a straight line, with an appropriate tie break in case any two or more distances were identical.

14 In its consultation on proposed admission arrangements for all parents with children who will be 'starting or changing school in the school year 2015/16', the LA specifically draws the attention of all parents who will, or may have, a child who will be starting or changing school in the 2014/15 school year to its proposal to vary admission arrangements for community and voluntary controlled schools. This was complemented with emails to all parents on its electronic admission database and an advertisement in local papers in early December 2013. The LA has met the Code's requirement for the notification to all relevant bodies and persons of its proposed notification.

15 The requested variation may mean that some schools admit children who live outside their catchment area (criterion 6) who do not attend the nursery school, before children who attend the nursery, but who live out of the catchment area and further away from the school. However, in my view the LA is correct in seeking to address an area, in which it believes it does not comply with the Code,

16 The LA has made every effort to inform parents about its intention to seek a variation to its admission arrangements for the school year beginning September 2014 to remove criterion 5. While this may result in some parents who have children at a school's nursery unit failing to be allocated a place in the school's reception class if it is their preferred school, I accept that the LA has reasonable evidence to consider that its arrangements may be unfair and therefore contravene the Code. This being the case, the LA has viewed this as a major change in circumstance, with reasonable evidence that its arrangements may be unfair, even though this was not its intention, and believes that the proposed variation will address the change in circumstance and its arrangements will then comply with the Code.

17 The second proposed change is to increase the period for which a waiting list for primary places is kept open. In autumn 2011 the LA consulted on arrangements for the 2013/14 school year to reduce the period of time a pupil may remain on the waiting list for a place at a school. It duly implemented new arrangements from September 2013.

18 These arrangements limited the time that year R and year 7 pupils could remain on a waiting list until the end of the autumn term in which admission took place; and also limited the time that children whose parents applied for a school place at any other time than the beginning of year R or year 7 stayed on the waiting list to 40 days from the date a place was refused. Once the time on the waiting list expires, the child concerned cannot be placed again on the waiting list – fresh applications must be made if the parent still wants a place for their child at the school.

19 In limiting the time a child is able to stay on a waiting list, the LA sought to avoid what it terms as ‘unnecessary’ school transfers, which might disrupt children’s education and make them less likely to achieve their potential. However, since the policy was introduced the number of pupils in primary schools in the area has increased to the highest level seen since the 1970s. The result has been increasing numbers of parents with more than one child not being able to get places in one primary school for all their children. In these cases, the time limitation on a child’s name being on a school’s waiting list reduces the chances of obtaining a place at a preferred school.

20 The only option for parents who want a place at a particular school, but have been refused a place and whose child has been taken off the waiting list, is to continue to reapply for a place following the removal of the child’s name from the waiting list. This is because if a place is not available, they cannot go back on the waiting list. This has resulted in extra burdens on parents who continue to want a place at a particular school to reapply continually.

21 Therefore the LA proposes to return to an all-year-round waiting list for primary schools, which will be kept open from the date of refusal to the last day of the summer half-term. Parents will be contacted on a half-term basis to check if they wish their child to remain on the list (except children in year 6).

22 The LA notes that there are also several academy schools that have adopted the same arrangements. It has advised all academies, voluntary aided and foundation schools of its intention to seek a variation and advised that they might wish to consider varying their arrangements if they wish to remain consistent with its (the LA’s) arrangements.

23 The current arrangement is compliant with the Code, as is the proposed variation. Therefore, I have considered whether the proposed variation disadvantages any potential applicant for a school admission and, if so, if this outweighs the benefits to those advantaged by it; the effect on maintained and voluntary controlled schools, as well as other admission authorities in the area; and the responses of parents and others to the LA’s proposed variation.

24 The parents who would be disadvantaged are those applying for a school place in 2014, who might get one under the current arrangements, in cases where a child who would have been admitted before theirs has been taken off the waiting list, having been on it for 40 days. It is difficult to see how this disadvantage outweighs the benefits to children who would remain on the waiting list, and who would be allocated a place at a given school on the basis of clear over-subscription criteria.

25 The LA notes in its variation request that the change will potentially affect all voluntary and controlled infant and primary schools in its area. However, this will be limited to admitting one child rather than another. No more children will be admitted unless through successful appeals for a school place.

26 It is my view that, considering the overall principles of the Code – the fair, clear and objective allocation of school places – the proposed variation meets them more comprehensively than the current arrangements.

Conclusion

27 I conclude that the LA has acted promptly and reasonably to request an in-year variation for admissions to maintained community and voluntary controlled infant and primary schools in its area for the fifth criterion in its over-subscription list from September 2014. This is because it has reasonable evidence to consider that its arrangements may be unfair having taken into account the findings from objections to the Schools Adjudicator regarding year R admission arrangements that give priority to children who attended particular nursery provision.

28 With regard to the request to increase the period of time a primary age pupil (except for pupils in year 6) can stay on the waiting list from 40 days to an all-year waiting list, I conclude that this is likely to benefit most children on waiting lists for places at schools they prefer, some of whom will be children with siblings at another school to that which they are attending, and that the proposed variation meets very well the overall principles of the Code.

Determination

29 In accordance with section 88E of the School Standards and Framework Act 1998, I approve the variations to the admission arrangements determined by Nottingham City Council, the admission authority for community and voluntary controlled schools in the Nottingham local authority area for admissions in September 2014.

30 The first variation is to remove criterion 5 of the oversubscription criteria from the infant and primary school admission criteria for admissions in September 2014. This criterion gives a priority for admission to children who attend the nursery of the school at the closing date for applications. The second variation is to increase the period of time a primary age pupil (except for pupils in year 6) can stay on the waiting list from 40 days to an all-year waiting list from September 2014.

Date: 9 January 2014

Signed: *Chris Kiernan*

Adjudicator: Chris Kiernan