



DERBY CITY COUNCIL

**School Admissions Forum
10 March 2010**

ITEM 5

Report of the Corporate Director of Corporate
and Adult Services

Response of the Department for Children Schools and Families to a request for clarification of the School Admissions Code

SUMMARY

- 1.1 Officers were approached by Drew Livingstone, on behalf of Rolls Royce, in the early part of 2009. He requested that the Council alter its interpretation of the School Admissions Code in respect of the children of families who were returning from foreign work placements. He explained that Rolls Royce employees may be expected to go abroad on placement to further the interests of the company. When these employees returned to Derby some had experienced difficulty in placing their children back into the schools they attended before they left the city. Their main concern was with secondary transfer applications primarily to Derby Moor Community Sports College and Littleover Community School as the majority of employees live in these catchment areas. Mr Livingstone also raised concern with some primary intake applications as well for Griffie Field Primary School.
- 1.2 Mr Livingstone's request was forwarded to the School Admissions Forum who decided to seek clarification from the Department for Children, Schools and Families (DCSF) before taking the matter further. A response has now been received and members are once again asked to consider the Rolls Royce proposal in the context of the guidance which has been received.

RECOMMENDATION

- 2 To invite the School Admissions Forum to make comments on the proposal of Rolls Royce guided by the responses of the DCSF.

SUPPORTING INFORMATION

- 3.1 When a child applies to attend a Derby school the admissions team takes their place of residence as stated on their application form. This will determine in which catchment the child resides. If the child is abroad at the time of application and resides outside of the city limits, they will be categorised as Criteria 6, or out of area.

- 3.2 Mr Livingstone argued that since Rolls Royce employees maintain a place of residence within the city and their placement is temporary the Admissions Authority could take their Derby address as the place of residence at the time of applying. This would change their admissions category to Criteria 3, or, in area.
- 3.3 Cathy Dobb, Head of Service for Admissions and Awards, Robin Constable, Solicitor, and Daniel Cooper, Constitutional Services Officer met with Mr Livingstone and Rachael Seal, from the Rolls Royce HR department to discuss their concerns. After a discussion on the issues involved in the case, officers advised the Rolls Royce representatives that the School Admissions Forum were best placed to consider their case.
- 3.4 The School Admissions Forum met on 23 September 2009 and considered the Rolls Royce proposals. A copy of their submission and the minute covering the decision are attached at appendices 2 and 3. The School Admissions Forum decided to forward the query from Rolls Royce to the Department for Children, Schools and Families (DCSF) to seek their advice.
- 3.5 The response from the DCSF was received on 23 October 2009. A copy of the DCSF response is attached at appendix 4. Their advice did not give a definitive answer to clarify the situation. Officers met with the Cabinet Member for Children and Young People, Councillor Allen, on 15 December 2009 to gauge his opinion on the matter. Following that meeting it was decided to again approach the DCSF for clarification. A copy of the most recent DCSF response is attached at appendix 4.
- 3.6 The guidance from the DCSF remains unclear and places responsibility for the interpretation of the Schools Admissions Code at the feet of the Local Admissions Authority.
- 3.7 The response states: 'A British citizen could use their UK address when applying for a school place in England, and include any supporting evidence such as a letter from their employer explaining the temporary nature of their work abroad and their date of return to the UK.'
- 3.8 However, it then goes on to say that it is the responsibility of the Admissions Authority to administer the scheme and verify the addresses. As stated here: 'The admission authority must accept the address provided on the application form. It is for the local authority to then verify this address, where a school is oversubscribed and that address is a relevant criterion.'
- 3.9 And finally the first response adds that if a local authority's arrangements are considered unlawful, unfair or unclear, then the matter can be referred to the Schools Adjudicator for determination.
- 3.10 Altering the current scheme could create additional work for the Admissions team to verify those applications which are received from families undertaking placements abroad. There could also be work involved in ensuring the validity of any qualifying letters received from employers as well.

- 3.11 There is also the question of where to draw the line with this thought process. People taking extended religious holidays for example, could also fall within this change to the process. Question marks lie over the administration of applications from residents who own more than one property in the city or applications from houses rented out by Rolls Royce employees who may be returning to the area.
- 3.12 On the other hand the original response from the DCSF asserts that an Admissions Authority could choose to make a localised arrangement to enable children of Derby residents to apply from abroad if it were so minded.
- 3.13 It is really a question of fairness and whether the current system can be considered fair or would a change to the existing system make this fair for all involved.
- 3.14 In any event if either Rolls Royce or the residents of Derby consider the current or an amended scheme unfair there is a right of appeal to the Schools Adjudicator who can make that decision on their behalf.

For more information contact:

Name Daniel Cooper
 Tel 01332 255465
 e-mail daniel.cooper@derby.gov.uk

Background papers:

List of appendices:

None
 Appendix 1 – Implications
 Appendix 2 – Submission to the School Admissions Forum
 Appendix 3 – Minute extract of the School Admissions Forum
 Appendix 4 – Correspondence to the DCSF
 Appendix 5 – Response of the DCSF dated 23 October 2009
 Appendix 6 – Additional letter of clarification to the DCSF and their response dated 2 February 2010

IMPLICATIONS

Financial

1.1 None arising from this report.

Legal

2.1 Contained in the report.

Personnel

3.1 None arising from this report.

Equalities Impact

4.1 None arising from the report.

Corporate objectives and priorities for change

5.1 None arising from the report.

Rolls-Royce Plc ---Submission to the Admission Forum of Derby City Council

Introduction

Rolls-Royce plc is a global business currently employing almost 39,000 people, of which over 10,000 are employed from its Derby sites. A critical factor in the success of the Company is its ability to assign key employees from Derby to business-critical locations overseas.

Recently, a number of employees who have repatriated back to their home base in Derby, after completion of their international assignment (typically lasting from 12 to 36 months), have found that they are unable to secure a place for their child at their “catchment” school because their relatively short and temporary absence away from their normal workplace in Derby relegates their school place application to a lower priority. They are then considered as ‘out of area’ applicants. Some children have even been refused a place at the school they had previously attended before their parent’s international assignment began. Had the employee refused to accept their international assignment offer and remained in Derby, much to the detriment of the company, these schooling problems would be significantly less likely, but Rolls-Royce would suffer as a consequence.

School Admissions Policy

Changes to the School Admission Code, implemented in statute by the Government in February 2009, state that Local Authority Admission Forums should consider “**Fairness of Applications rather than the Legality of proposed Admission Arrangements**”.

It is this emphasis on ‘fairness’ which we would draw to the attention of the Admission Forum in this context.

As stated above, families with children in this situation are finding that when they apply from overseas, often a year in advance, for a place in their local school on their return to Derby, they are treated as “**out of area applicants**” and consequently have a significantly reduced chance of gaining a place in the school of their choice, in spite of the fact that by the end of their assignment, and at the start of the new school session, they will again be resident in Derby, usually living in their original house in the school catchment area.

The effect of this current educational policy is now, regrettably, causing the company considerable problems with the key group of employees we require to undertake international assignments.

Employees with school age children are now turning down international assignment opportunities, due to the educational uncertainties they are likely to experience on their return to Derby. This is having a significantly negative impact on the Company, and particularly risking its global operations.

Without the availability of qualified staff to take up temporary international assignments, important contracts might be lost to competitors to the detriment of Derby and the wider community.

The Company is not seeking priority for staff returning to Derby after an international assignment.

Rather it asks that such staff, when supported by any required verification from the company, are considered as Derby residents when School Applications are being initially considered by the Education Authorities. In that sense “fairness rather than legality” takes priority.

Rolls-Royce plc hopes that the Admissions Forum will see the ‘fairness’ in this request and will therefore make a recommendation to the Admission Teams in Derby City Council to take this problem into consideration when looking at School Applications.

In conclusion, without a satisfactory resolution to this Schools’ Admission Problem it is the Company’s considered view that both Rolls-Royce plc and the City of Derby will be adversely affected.

MINUTE EXTRACT

Time Commenced: 10.00 am
Time Finished: 11.10 am

SCHOOL ADMISSIONS FORUM 23 SEPTEMBER 2009

Present:	David Keys	Brackensdale Junior School Parent Governor (in the Chair)
	Alison Brown	Derby Diocese, Board of Education
	Sue Bradley	Kingsmead School Head Teacher
	Elizabeth Coffey	Acting Head Teacher Landau Forte College
	Robin Constable	Solicitor
	Daniel Cooper	Constitutional Services Officer
	Greg Duffy	Woodlands School Deputy Head Teacher
	Cathy Dobb	Head of Admissions and Awards
	Genevieve Gordon	Education Welfare Officer
	Roger Shipton	Merrill College Head Teacher
In Attendance	Drew Livingstone	Rolls Royce Plc
	Sara Clark	Rolls Royce Plc

05/09 Rolls Royce Plc – Submission to the Admission Forum of Derby City Council

Members considered a report from Rolls Royce Plc seeking support from the Forum in relation to problems some of their employees were having in relation to school places.

It was reported that Rolls Royce Plc are experiencing increasing difficulty finding school places for their employees who are seconded overseas for work placements. They retain their properties within the city while they serve their placement but when they make their application they are still overseas. The property in which the child currently resides is used to assess the child in connection with the Admissions Authority's admission criteria. Even though a family has a property within the catchment of the school instead it would be their overseas address that would be taken as their residence. This means that children from these families are given the lowest category on the admissions criteria when they make their application.

Senior management are expected to go on a work placement as part of their employment and this is crucial to the ongoing success of Rolls Royce Plc.

The representatives from Rolls Royce Plc asked that children of their employees were not given priority over the Derby residents but were simply treated equally. The company are willing to provide the necessary verification to prove that the employee has returned from overseas, and the length of the placement.

The Chair raised concern that this would mean that places were reserved for Rolls Royce Plc employees. He said the Forum had supported the admissions criteria for Derby and this was in place to ensure a fair system that could be applied equally to all prospective school children. The representatives from Rolls Royce Plc stated that this was not their intention and they are requesting that their employees are treated the same as a regular Derby resident when their application is made. The Head of Admissions and Awards Cathy Dobb stated that any changes to the interpretation of the law may be difficult as a number of residents own multiple properties within the city. Where a family resides is a crucial factor in offering a place to a child and it may also prove difficult to combat fraudulent applications.

The Deputy Head Teacher at Woodlands, Greg Duffy, stated that residents who spend a time abroad on work placement and then could not gain a place for their child were unintentionally a by product of the system. He said that at Woodlands, where possible in similar circumstances, they have admitted children back into the school as it is in the child's best interests and will help them to settle back into schooling.

The Chair stated that he felt quite strongly that the current legal framework is there to provide an equal and fair system that protects all those involved. The solicitor stated aspects of the legal framework were open to interpretation and the Forum could consult the Department for Children, Schools and Families for clarification of the approach the Council, as an admission authority, should take.

Resolved to write to the Department for Children, Schools and Families for clarification on whether an employee working abroad can be treated as residing in their family home at the time of applying for a school place so long as their period of absence and date of return is verified by their employer.



DERBY CITY COUNCIL

Director, Michael Foote, Solicitor
Corporate and Adult Services
PO Box 6292, Council House, Corporation Street, Derby DE1 2ZL

APPENDIX 4

LEGAL SERVICES

Stuart Leslie
Assistant Director

Collette Summerson
DCSF
School Admissions
Room 38
Mowden Hall
Staindrop Road
Darlington
DL3 9BG

Your ref:
Our ref: RMC/7216
Date: 28 September 2009
Contact: Robin Constable
E-mail: robin.constable@derby.gov.uk
Telephone: 01332 255452
Minicom: 01332 256666
Fax: 01332 255834

Dear Madam

INTERPRETATION OF SCHOOL ADMISSIONS CODE

I am the legal adviser to the School Admissions Forum set up by the Council. The Forum met on 23 September and considered a submission by Rolls Royce Plc. I enclose copies of the written submission provided in advance by the company and also of the minutes of the meeting. I would be grateful for your guidance on how the Council, as an admissions authority, should interpret the relevant parts of the School Admissions Code.

The new code which came into force on February 10 this year contains certain parts that admission authorities must comply with. One of these is paragraph 2.16, which states that: "In setting oversubscription criteria admission authorities must not: ... d) give priority to children according to the occupational, financial or marital status of parents, subject to paragraph 2.17 below". 2.17 goes on to say that: "The prohibition in 2.16 does not apply to boarding schools when giving priority to children of members of the UK Armed Forces". So the only people that can be treated more favourably as a result of who they work for in the admission process are those in our Armed Forces when applying for places at boarding school. Unless and until Parliament decides my view is that the Council is bound by that.

You will note that Rolls Royce are not seeking preferential treatment. They want an "even playing field" for their employees who are seconded abroad, so that they will not be at a disadvantage compared to other parents who remain living in the Derby area when applying for school places. Paragraph 1.60 of the Admissions Code says that: "Admission authorities may receive an application from parents overseas for a school place for a child who is not yet resident in the UK. The admission authority will not necessarily know when the child is expected to be resident in the UK, or whether a parent's application for leave to enter will be successful, or if it has been, on what terms of entry it has been granted. These are all considerations that an admission authority should take into account when considering the application."

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If a Rolls Royce's employee's placement is for a fixed term, and it can be shown to us as an admissions authority that it will come to an end before the academic year starts, and they will be returning to an address in this area, can we treat their application as being an "in area" one for the purpose of allocating school places, rather than treating them as an out of area applicant, lowering their chances of a successful application? Provided the parent/employee concerned is a British citizen, the uncertainty about leave of entry described in the Code will not exist.

The Council is eager to deal fairly with all applicants for school places, and is aware that, if it interprets the admission arrangements in this way for Rolls Royce employees, it should do so for employees of other companies. It also wants to ensure that the system is not abused by those who rent a property in name only while living at another address, in order to gain an advantage in the process. The situation is further complicated by the fact that, according to the law (Shah v Barnet London Borough Council, 1983), it is possible to have more than one ordinary residence.

For these reasons I would appreciate your guidance on the provisions of the School Admissions Code outlined above. Please note that I intend to share your reply with both the School Admissions Forum and Rolls Royce Plc.

Yours faithfully

Robin Constable
Solicitor

Appendix 5

From: info@dcsf.gsi.gov.uk [mailto:info@dcsf.gsi.gov.uk]

Sent: 23 October 2009 16:39

To: Constable, Robin

Subject: Case Reference 2009/0083583

Dear Mr Constable ,

Thank you for your letter dated 28 September 2009 about the interpretation of the School Admissions Code in respect of parents returning from overseas work.

The Code does not prescribe priority for children unless they are deemed vulnerable. Families of UK Service personnel must take the posting they are given, which renders their children vulnerable to sudden and possibly frequent changes of schooling. The Code attempts to reduce the effects of this.

Paragraph 1.61 of the Code states that there are no restrictions on entry to the UK for children (whether or not accompanied by their parents) who hold full British Citizen passports, and that they are entitled to apply for a place at a maintained school or Academy. Paragraph 3.15(a) then states that "The common application form must allow parents to provide their name, their address (including documentary evidence to support), and the name, address and date of birth of the child."

A British Citizen undertaking a work contract abroad could use their UK address when applying for a school place in England, and include any supporting evidence such as a letter from their employer explaining the temporary nature of their work abroad and their date of return to the UK.

The admission authority must accept the address provided on the application form. It is for the local authority to then verify this address, where a school is oversubscribed and that address is a relevant criterion. Under paragraph 3.15(b), local authorities and admission authorities "must exchange information on applications made and potential offers" as necessary.

Taken together, these provisions allow local authorities and schools to ensure in locally-agreed arrangements that children have access to school places on a fair basis. If these arrangements are considered unlawful, unfair or unclear, the matter can be referred to the Schools Adjudicator for determination.

Yours sincerely,

Sean Hackett
School Collaboration, Organisation and Fair Access
Sean.Hackett@dcsf.gsi.gov.uk
www.dcsf.gov.uk



Your correspondence has been allocated the reference number 2009/0083583.

Appendix 6

From: Constable, Robin
Sent: 14 January 2010 11:26
To: 'info@dcsf.gsi.gov.uk'
Cc: Cooper, Daniel; Dobb, Cathy
Subject: RE: Case Reference 2009/0083583

Thank you for your email of 23 October. I have now had the opportunity to discuss it with our Cabinet member responsible for education and the head of our school admissions and awards section. It would be helpful if you could provide some further clarification so that we can decide how to proceed

It is the fourth and fifth paragraphs of your email which we would be grateful if you could elaborate upon. You refer to a British citizen working abroad providing “a letter from their employer”. It may be that a self employed person has compelling reasons for working abroad for a few years and maintains an address in this country. What provision could be made for their circumstances?

Moving on to the fifth paragraph of your email, you say that “It is for the admission authority to then verify” the address given on the application form. How is the admission authority to do this? At present it works on the basis that a child’s address is where they reside at the time of the application. If it is to depart from this rule, how can it do so without allowing fraudulent applications to occur, and how does this tie into with the recommendation made in the Office of School Adjudicator’s Annual Report suggesting that further sanctions are considered in relation to such applications?

I am sorry to trouble you again but, at present, we fear that the guidance is open to interpretation and challenge, and we wish to avoid the latter as far as possible. This matter will be considered again by our School Admissions Forum on 10 March, and we would like the opportunity to meet again about your response before then, so please reply as soon as you are able to do so.

With thanks

Robin Constable | Solicitor | Corporate and Adult Services Department | Derby City Council, PO Box 6292, Council House, Derby, DE1 2ZL | Telephone 01332 255452 | Fax 01332 255834 | www.derby.gov.uk
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From: info@dcsf.gsi.gov.uk [mailto:info@dcsf.gsi.gov.uk]
Sent: 02 February 2010 16:27
To: Constable, Robin
Subject: Case Reference 2010/0003124

Dear Mr Constable,

Thank you for your further correspondence dated 14 January about School Admissions. Regarding your first question I will refer you to paragraphs 1.60 and 1.61 in The School Admissions Code which I have outlined below.

Applications made from abroad for children not yet living in the UK

1.60 Admission authorities may receive an application from parents overseas for a school place for a child who is not yet resident in the UK. The admission authority will not necessarily know when the child is expected to be resident in the UK, or whether a parent's application for leave to enter the UK has been or will be successful, or if it has been, on what terms of entry has been granted. These are all considerations that an admission authority **should** take into account when considering the application.

British citizens and lone children with right of abode

1.61 There are no restrictions on entry to the UK for children (whether or not accompanied by their parents) who hold full British Citizen passports (but not British Dependent Territories or British Overseas passports) or children from countries whose passports have been endorsed to show that they have the right of abode in this country. Such children will be permitted to enter this country irrespective of their purpose in doing so and are entitled to apply for a place at a maintained school or Academy.

Also it is not necessary to have supporting documentation to apply for a place at a maintained school or Academy.

On your second question about how an admission authority verifies an address on the application form I will again refer you to the Code and paragraph 1.80 which I have inserted below:

Permitted information

1.80 Local authorities and admission authorities may ask for proof of address in order to establish whether oversubscription criteria are met. Such proof may include Council Tax or utility bills, but **must not** contain information prohibited by paragraph 1.78.

I expect you already have a copy of The School Admissions Code (to view prohibited information at paragraph 1.78) but if not you will find it at www.dcsf.gsi.gov.uk/sacode

Yours sincerely,
Sean Hackett
School Collaboration, Organisation and Fair Access
Sean.Hackett@dcsf.gsi.gov.uk