



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3877

Objector: A parent

Admission authority: Governing board of St Hilda's Church of England High School, Liverpool

Date of decision: 22 September 2021

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2022 determined by St Hilda's Church of England High School governing board.

I have also considered the arrangements in accordance with section 88I(5) and find there is one other matter which does not conform with the requirements relating to admission arrangements in the way 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 unless an alternative timescale is specified by the adjudicator. In this case I specify that the arrangements must be revised by 28 February 2022.

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 by a parent (the objector), about the admission arrangements (the arrangements) determined by the governing board of St Hilda's Church of England High School (the school) for September 2022. The objector believes that the arrangements unfairly exclude and discriminate against non-Anglican Christians.

2. The local authority (LA) for the area in which the school is located is Liverpool City Council. The LA is a party to this objection. Other parties to the objection are the objector, the school, and the Diocese of Liverpool (the diocese).

Jurisdiction

3. These arrangements were determined under section 88C of the Act by the school's governing board, which is the admission authority for the school, on 26 November 2020. The objector submitted her objection to the arrangements on 15 May 2021. The objector has asked to have her identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of her name and address to me. 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 power under section 88I of the Act to consider the arrangements as a whole.

4. A revised Code came into effect on 1 September 2021. Since the objection and the responses to it were framed in terms of the 2014 Code, I shall use the references to it which have been made by the parties to the case and will indicate only if the new Code differs in any respect. It is, of course, the revised version of the Code which is now in force.

Procedure

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code 2014 (the Code).

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

- a. the objector's form of objection and continuation sheet, dated 15 May 2021;
- b. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- c. a copy of the determined arrangements, including the supplementary information form (SIF);
- d. copies of the determined arrangements for 2020 and 2021;
- e. the responses to the objection from the school, LA, and diocese;
- f. a copy of the guidance on admissions which is now provided to its schools by the diocese;
- g. information from the 'Get Information About Schools' website.

The Objection

7. The objector believes that the arrangements for the school for 2022 unfairly exclude and discriminate against non-Anglican Christians. The objector summarised the objection as follows: "Does the change to St Hilda's Admission policy since 2021, and looking to September 2022 entry, unfairly now exclude non-Anglican Christians from the school? Is it clear and objective that the change to points calculation excludes non-Anglican Christian church attenders when they would still believe they could apply based on the criteria and all

prior years, and why have St Hilda's chosen this path in direct contrast to their sister and brother schools Archbishop Blanch [Academy] and St Margaret['s] C of E Academy with whom they usually work closely together, especially when St Hilda's is the only MIXED school option for families who would like to keep siblings educated together”.

8. The objector refers to paragraphs 14 and 1.38 of the Code in full and parts of paragraphs 15(b) and 1.8 as being relevant to their objection:

- 14. “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.”
- 15. (b) (part) “Where changes are proposed to admission arrangements, the admission authority **must** first publicly consult on those arrangements.”
- 1.8 (part) “Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group.”
- 1.38 “Admissions authorities for schools designated as having a religious character **must** have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based admission arrangements, to the extent that the guidance complies with the mandatory provisions and guidelines of this Code. They **must** also consult with the body or person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated. Church of England Schools **must** as required by the Diocesan Boards of Education Measure 1991 consult with their diocese about proposed admission arrangements before any public consultation.”

9. The objector says that the Equality Act 2010 is also relevant to their objection, stating, “Is this being respected, by discriminating between a set of Christians, who attend churches want their child educated in their faith and believe the same theology?”

10. My jurisdiction is solely for the determined arrangements for 2022 for the school. Therefore, I do not consider the following matters, referred to by the objector in the objection, to be within my jurisdiction:

- The arrangements of the other schools in Liverpool mentioned in the objection. (Archbishop Blanch Academy and St Margaret's C of E Academy)
- Anything referred to in the objection in relation to the school's arrangements for 2021.

However, it has been necessary in this determination to refer to aspects of the 2020 and 2021 arrangements where they provide context to, and a greater understanding of, the objection to the 2022 arrangements.

Other Matters

11. Having considered the arrangements as a whole it appears that one other matter also does not, or may not, conform with requirements. Namely that the SIF requests the name of the child's primary school, contrary to the relevant part of paragraph 2.4 of the Code.

Background

12. The school is an 11-18 co-educational Church of England high school, with over 1000 pupils on its roll. It is a voluntary aided school within the Diocese of Liverpool and located in the Sefton Park area of Liverpool. The published admission number (PAN) for entry to the school in 2022 is 170. Prior to 2021, it was a partially selective school, with 15 per cent of its intake determined by success in an admissions examination. Since 2021, it has had a comprehensive intake, having abolished the examination route from its arrangements.

13. The school describes itself as being, "... heavily oversubscribed with over 1,300 applications for the 170 places available". The school explains that since 2015, when the school moved to new premises, increased its PAN, and became co-educational, application numbers have increased year-on-year. In 2015, 596 applications were received. Up to national offer day in 2021, 1384 applications had been received. This is an increase of just over 132 per cent (not 232 per cent as in the school's response to the objection). The school also recorded that, "...as well as St Hilda's reputation being cemented in those 6 years, Liverpool LA preferences increased from 3 to 5 in 2016 with St Hilda's now an option for parents who hitherto needed to make more strategic submissions."

14. The admissions arrangements for 2022 were determined by the school's governing board on 26 November 2020. In those arrangements, after admission for children with Education Health and Care Plans (EHCPs) (criterion A in the arrangements), children are admitted according to the oversubscription criteria, summarised as follows:

- B. Looked after and previously looked after children (LAC/PLAC)
- C. Children of staff at the school
- D1. Children of the Christian faith (up to 150 places, which reduces by the number of admissions under criteria A, B and C)
- D2. Children of the Muslim faith (up to 10 places)
- D3. Children of other world faiths (up to 10 places)

E. All other applicants

15. Oversubscription criterion D1 is divided into two categories:

- a) Children/parent/carers who are regular worshippers in Anglican Churches.
- b) Children/parent/carers who are regular worshippers in other Christian Churches (where the congregation believes in the Trinitarian God (God the Father, God the Son and God the Holy Spirit) and affirms the beliefs and doctrine of the Apostles' Creed).

Where applications for admission exceed the number of places available, a points system is employed to decide which pupils will be offered a place (see Table 1). This is based on attendance at worship and takes into account the variability of that attendance year-on-year.

Table 1: Points scores in the 2022 arrangements

	Anglican	Other Christians
1 year's attendance		
Weekly attendance	36	24
Attendance 3 times a month	27	18
Fortnightly	18	12
Monthly	9	6
Occasionally	2	2
Never	0	0
2 years' attendance		
Weekly attendance	72	48
Attendance 3 times a month	54	36
Fortnightly	36	24
Monthly	18	12
Occasionally	4	4
Never	0	0
3 years' attendance		
Weekly attendance	108	72
Attendance 3 times a month	81	54
Fortnightly	54	36
Monthly	27	18
Occasionally	4	4
Never	0	0

16. The arrangements for the school for 2021 were previously varied to take into account the difficulties posed by restrictions on attendance at worship caused by the COVID-19 pandemic. The determination on that variation is VAR1426, which was issued on 17 August 2020. The requested variation was agreed for 2021 and remains a part of the arrangements for 2022.

17. I am aware that the school has also submitted a separate application to vary their arrangements for 2022. That application is being considered by another adjudicator. The reference number for that case is VAR2163. The proposed variation was to change the points allocated from those shown in Table 1. This was in response to the effects of the COVID-19 pandemic and the difficulties created in attending worship. I am also aware that the adjudicator in VAR2163 has identified a further way in which the arrangements may not or do not conform with the requirements relating to admissions. That matter is dealt with in VAR2163 and is not considered in this determination.

18. The religious character of the school is Church of England, and the Church of England is part of the Anglican communion. As explained above, the school's faith body is the Church of England Diocese of Liverpool. In this determination, the term 'non-Anglicans' is used as that is used by the objector to mean any Christian who is not an Anglican. This term equates to the term 'Other Christians' as used in the school's arrangements.

Consideration of Case

19. It has been necessary to look first at relevant parts of the previous two years' arrangements. In doing so I do not seek to stray into areas that I have already said are beyond my jurisdiction; my intention is to provide essential context to the objection raised in relation to the 2022 arrangements.

20. In the arrangements for the school for 2021, the points score table for oversubscription criterion D1 (a and b) was changed to that shown for 2022 in Table 1 (see paragraph 16). The points scores table from the 2020 arrangements can be found below (see Table 2). Comparing Tables 1 and 2 shows that the change embedded a greater benefit in terms of gaining more points and hence greater priority for Anglicans than other Christians where members of both groups attend worship with the same frequency.

Table 2: Points scores in the 2020 arrangements

	Anglican	Other Christians
1 year's attendance		
Weekly attendance	20	16
Attendance 3 times a month	15	12
Fortnightly	10	8
Monthly	5	4
Occasionally	2	2
Never	0	0
2 year's attendance		
Weekly attendance	40	32
Attendance 3 times a month	30	24
Fortnightly	20	16
Monthly	10	8
Occasionally	4	4
Never	0	0

3 years' attendance		
Weekly attendance	60	48
Attendance 3 times a month	45	36
Fortnightly	30	24
Monthly	15	12
Occasionally	6	6
Never	0	0

21. The school said that the reason for this change was:

“St Hilda’s attracts applications from Liverpool local authority residents plus neighbouring authorities of Sefton, Knowsley, St Helens, Warrington, Halton (and occasionally Wirral) which have little or no Church of England secondary options. There is an expectation from Anglican parents their children should be able to attend a CofE secondary, especially if transitioning from a CofE primary.

Up to/including 2020, Anglicans who worship three times a month scored less than other Christians who worship weekly. As competition for places increased, this meant those Anglicans were ranked below a large tranche of other Christians, in 2020 for instance 218 other Christians ranked higher.

Since 2017 a common theme from Anglican applicants, appellants and their clergy representatives was a request for Governors to review the points system, in particular that attendance three times a month at an Anglican church be given higher priority. A new scoring system was included in the determined admission arrangements for 2021 and continued for 2022. Anglican families worshipping three times a month now score 162 whilst other Christians attending weekly worship score 144.”

22. The objector says that the change to the points scores table in 2021 unfairly excluded non-Anglican Christians from the school, and as the table remains the same in the 2022 arrangements, the same situation will reoccur. In their response, the school confirmed that 2021 was the first time that non-Anglican Christians were not admitted to the school through oversubscription criterion D1. However, the school said that was not because of the change to the points scores. The explanation provided is:

“This could not be foreseen and was attributable to the following:

- A record number of applications overall and Christian applications.
- A particularly high-scoring cohort with 176 applicants scoring maximum Christian points versus 134 applicants in 2020.
- 94.3 per cent of those allocated a place in the Christian criterion scored maximum points versus 76.6 per cent in 2020.

- 27 places in the Christian criterion were taken up by a record number of EHCPs plus LACs/previous LACs (criteria A & B), thereby reducing the number of Christian places from 150 to 123. (The number of EHCPs naming St Hilda's has increased dramatically and this year's intake is 4 times the national average).

It was not attributable to the change in how points were awarded: non-Anglicans would still not have been successful even had the 2020 admission points system continued ... 17 Anglicans [were] at the top of the 2021 waiting list as at 1st March 2021. If the 2020 scoring system was employed instead, there would still be 6 Anglicans at the top ahead of highest scoring non-Anglicans. The composition of this particular cohort is more pertinent than the scoring system."

23. The school therefore argue that the reason for there being no non-Anglican admissions under criterion D1 in 2021 was not a result of the points scores in the arrangements, but other factors unique to the applicant cohort. The school say this is reinforced by the same outcome having been reached by applying the 2020 scores to the same cohort. The experience of the school in 2021 is useful in that it illustrates that it was not the change in the points scores in the arrangements for that year which caused the issue raised by the objector.

24. It is clear from the school's reasons for the change in the points scores in the 2021 arrangements – and that remain in place for 2022 – that the intention of that change was deliberately to bring about a situation where Anglican applicants who attended public worship most frequently had a higher priority than non-Anglican applicants who attended as often when oversubscription criterion D1 was applied. The objector believes that this approach discriminates against non-Anglican applicants and unfairly excludes them from the school. I will now look to these core issues in respect of the school's 2022 arrangements along with issues raised by references made in the objection to other aspects of the Code as listed under paragraph 1.8.

25. In the more detailed narrative of the objection, and contrary to how the objector has articulated their objection, I note that the objector stated, and therefore recognises that, "St Hilda's is a C of E school, and as such, it is clear they have freedom to admit Anglican children as priority." It is important to note again here that the religious character of the school is Church of England, and the Church of England is part of the Anglican communion.

26. I have noted that oversubscription criterion D1 b) specifically allows for the admission of non-Anglican children. The school says, "The policy does not exclude non-Anglican Christians though priority is given for equivalent worship at Anglican churches. The points scoring system is based on both Christian denomination and frequency of worship. Maximum points are achieved by weekly attendance at an Anglican church. However, regular worshippers in other Christian churches actually score more than Anglicans who worship infrequently. Non-Anglicans have gained places in previous years showing that denomination was not the only determinant".

27. The objector believes the arrangements discriminate against non-Anglican Christians in contravention of the Equality Act 2010. Section 85 sets out the specific duties and responsibilities of schools in relation to pupil admissions under that Act. However, as the school is designated with a religious character, schedule 11 is relevant. That schedule exempts schools designated with a religious character from the requirement not to discriminate on the grounds of religion in terms of the admission of pupils to a school. That exemption is reflected in paragraph 1.36 of the Code, the final part of which states, “Schools designated by the Secretary of State as having a religious character (commonly known as faith schools) may use faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed”. In the faith body’s response to the objection, it said that “The Church of England is neither a social or racial group, it is a religious establishment”. This school has opted to have faith-based arrangements and within those to give a higher priority to children who are Anglican than to other Christians. This is clearly permitted by the Equality Act 2010 and by paragraph 1.36 of the Code. I do not uphold this aspect of the objection.

28. In relation to the issue of fairness, the Code requires admission practices and criteria to be fair but does not define the term. The assessment of the fairness of arrangements depends on the circumstances of the case. I have first looked at what the objector believes to be the ‘unfairness’ in the arrangements in order to make an assessment. Regarding the point made that the arrangements unfairly exclude non-Anglicans, it is permitted, in law, to apply the faith-based oversubscription criteria included in the arrangements. This is a highly oversubscribed school and whatever arrangements it adopts some parents will be disappointed. The fact that a higher priority is given to Anglicans than to other Christians does not make the arrangements unfair. For this to be the case there would need to be an identifiable group of children who – if they could not attend this school – would face a significantly longer or more difficult journey to another school. Unfairness would not arise because an available alternative was not a Church of England school or was a less preferred school. No suggestion has been put to me that any child unable to secure a place at St Hilda’s would not be able to secure a school place a reasonable distance from his or her home. Indeed, in Liverpool which is a large city it would be surprising for this to be the case. Looking to other issues related to fairness in the objection, the objector refers specifically to paragraphs 14 and 1.8 of the Code. I am of the view that the arrangements are fair, clear, and objective and can be easily understood by parents, in line with paragraph 14 of the Code. The oversubscription criteria comply with paragraph 1.8 as they are reasonable, clear, objective and procedurally fair. The arrangements also comply with the requirements of the Code for faith-based oversubscription criteria in schools designated with a religious character. I do not therefore uphold this element of the objection.

29. The objector says that “The policy under D1 states “St Hilda’s admits up to 150 Christian pupils” This should be changed to add “with high priority to Anglican children” which would be fair and better define what this means to St Hilda’s, and be clear and objective as per the Admissions Code principles. As a reader of the policy, attending an independent Church weekly you would believe you had a fair opportunity of gaining a place at the school.” I have taken this to indicate that the objector believes the description of

oversubscription criterion D1 in the arrangements to be 'unfair', although this might be better described as 'unclear'. Therefore, in referring to 'fairness', the objector is in fact seeking greater clarity in the description of the faith-based oversubscription criterion in the 2022 arrangements in respect of paragraph 14 of the Code. I have looked at the arrangements with this part of that paragraph in mind: "Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated." I view the explanation of how places are allocated under the oversubscription criteria, including D1 (as shown by Table 1 and description of the arrangements under paragraph 16) to be clear. It is a matter for the school whether they take up the objector's suggestion to add the additional phrase to future arrangements.

30. For the sake of completeness, I have made note of two key aspects of the arrangements. Firstly, oversubscription criterion D1 is not the only point at which non-Anglicans can be admitted to the school. Although the objection concentrates on oversubscription criterion D1, I have noted that non-Anglicans can be admitted, without reference to their religion, under criterion A and oversubscription criteria B and C, providing the child has an EHCP, is a LAC / PLAC or the child of a member of staff at the school (respectively). Secondly, as a Church of England school, the school is not compelled to give priority to children on the basis of faith and is not constrained to limit any priority on the basis of faith to children who are Church of England, Anglican, other Christian denominations, or any other faith. Yet, its oversubscription criteria (D1 b), D2 and D3) include places for non-Anglicans and other world faiths.

31. I will now go on to address other aspects of the objection. Although the objector does not include an explicit concern about the consultation process, they refer to paragraph 15(b) of the Code in their objection. The school stated in its response to the objection in relation to the consultation process that, "There were no changes proposed to the existing admission arrangements so the admission authority did not publicly consult on the arrangements for 2022." The school provided evidence that they undertook a consultation in respect of the changes to the 2021 arrangements. As there no changes were proposed to the 2022 arrangements, the school did not have to consult on them. As I am concerned only with the school's admission arrangements for 2022, I did not consider this matter any further.

32. The objector refers to paragraph 1.38 of the Code as part of the objection. In response, the diocese confirmed that, at the point the 2022 arrangements were determined, it had no published guidance in place for any of its 119 schools to use when determining their arrangements. The diocese has since published such guidance, which any of its schools can use in future years. However, in respect of the admissions arrangements for 2022, the school cannot have regard to something which was not available to them. The school stated that, "The Diocese is always consulted prior to public consultation on admission arrangements". The faith body was able to confirm that the school had consulted with it in respect of its admissions arrangements for 2022, and also stated, "... a Church of England School can give priority to Anglicans and St Hilda's has clearly communicated this

in its policy". I am therefore satisfied that under the circumstances the school met the requirements of paragraph 1.38 of the Code.

33. In the conclusion to the more detailed narrative of the objection, the objector states, "There are many non-Anglican families who have children in St Hilda's currently who now see no way for their siblings to enter, and feel very discouraged by this. It has also removed the only remaining mixed-faith based education option for non-Catholics in this city". (By "mixed-faith based", I take the objector to mean mixed (as in girls and boys being educated together) as stated in the main part of the objection and not mixed as in different faiths). I note that the school has only been mixed for the past six years, its oversubscription criteria do not contain a sibling criterion, and the school confirms it has not had a sibling criterion for over 20 years.

34. The response from the LA confirms the objector's view that, "... St Hilda's is the only MIXED school option for families who would like to keep siblings educated together". However, I have looked at the GIAS website, and found that there are other mixed gender faith-based schools in Liverpool:

- Liverpool College (0.9 miles from the school) – Church of England, within the Diocese of Liverpool.
- The Academy of St Francis of Assisi (2.6 miles from the school) - sponsored by both the Diocese of Liverpool and Archdiocese of Liverpool.
- The Academy of St Nicholas (3.7 miles from the school) – sponsored by both the Diocese of Liverpool and Archdiocese of Liverpool.

All of these schools are supported by the same faith-body as the school (with two also supported by the Roman Catholic Archdiocese). I have not therefore found it to be the case that the school is the only option for families wanting a mixed faith-based education option for families.

I also note here the LA state in their response that, "To date, no issues associated with pupil place planning in Liverpool have been linked to the change cited for St Hilda's Church of England High School's admissions arrangements."

35. Having considered the factors above I have formed the view that in respect of the areas raised by the objector, the arrangements for the school are compliant with the Code and are in accordance with schedule 11 to the Equality Act 2010. For these reasons I do not uphold the objection. I further note that it is also not the case that non-Anglicans are excluded from applying to and gaining places at the school and I have found other mixed education options in schools with a religious character within the vicinity of the school.

Other Matters

36. The SIF requests that the parent include the name of their child's primary school (in the 'Child's Details' section on page 1 of the form).

37. The Code, at paragraph 2.4, allows SIFs to be used in some circumstances but says, so far as is relevant here, "... they **must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria ...". The arrangements do not take account of the primary school attended by children.

38. The school's reason for asking for the name of the child's primary school on the SIF is as follows:

"We do not take into account any previous schools attended for ranking or allocation purposes but we do use current primary school for admin purposes only, to ensure applicants do not miss out on a place due to their own application errors.

In November each year the local authority provide a list of applicants who have entered St Hilda's as a preference with their home local authority. We compare this with SIFs received by matching Surname + Date of Birth and/or Surname + Postcode.

For those we cannot match, the instruction from the local authority is to treat them as All Other Applicants. However, as a final checking mechanism to assist parents, we filter those applicants by primary school and often match them by spotting anomalies, for instance transposed naming conventions, incorrect date of births provided or inconsistent hyphenated names.

We apologise if using the information in this way is not compliant with the Code and will delete the question if found to be so."

39. While it is reasonable for the school to seek to ensure that it can match the SIFs to the information provided by the LA from applications made to it on Common Application Forms, this does not allow it to ask for information not necessary to apply the arrangements. The school is therefore required to amend the arrangements accordingly, and I am grateful to them for agreeing to this. At this point in the academic year, some applications for admissions in 2022 will already have been made using the existing SIF. In recognition of this and to avoid confusion, I will require the school to amend the SIF by 28 February 2022 so that the revised SIF applies to the arrangements for 2023.

Summary of Findings

40. The objector raised concerns over whether oversubscription criterion D1 unfairly excluded and discriminated against non-Anglicans. I have found that the school's arrangements are compliant with the Code and are in accordance with schedule 11 of the Equality Act 2010. I do not uphold the objection.

41. I identified that the SIF requests the name of the applicant's primary school, an item of information which is not necessary in order to apply the admission arrangements and the inclusion of which breaches paragraphs 2.4 of the Code. The SIF must be amended to remedy the breach.

Determination

42. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2022 determined by St Hilda's Church of England High School governing board.

43. I have also considered the arrangements in accordance with section 88I(5) and find there is one other matter which does not conform with the requirements relating to admission arrangements in the way set out in this determination.

44. 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 unless an alternative timescale is specified by the adjudicator. In this case I specify that the arrangements must be revised by 28 February 2022.

Dated: 22 September 2021

Signed:

Schools Adjudicator: Dr Robert Cawley