

DETERMINATION

Case reference: ADA/2387 and 2389

Admission Authority: The London Oratory School

Date of decision: 12 December 2012

Determination

I have considered the arrangements determined by the admission authority in accordance with section 88I (5) of the School Standards and Framework Act 1998. I determine that some aspects of the School's arrangements for admissions in September 2013 do not conform with the requirements of the School Admissions Code relating to the avoidance of conditions on consideration of applications, clarity and oversubscription criteria relating to service to an associated organisation.

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. As a result of concerns referred to the Office of the Schools Adjudicator (OSA) by two correspondents about the admission arrangements (the arrangements) made by the London Oratory School (the School), I have reviewed the arrangements. The referrers' concerns relate to the clarity and fairness of the School's arrangements for assessing the suitability of applicants for places in the sixth form, and the acceptability of an oversubscription criterion which takes account of a candidate's and/or family's participation in the wider life of the Church including forms of service.

Jurisdiction

2. The referrals were received by the OSA on 4 July 2012 and 21 August 2012, after the normal final date for the receipt of objections under the School Standards and Framework Act 1998 (the Act). However, under section 88I of the Act, the Adjudicator may also consider arrangements that come to his attention by other means, if he considers that those arrangements may not conform with mandatory requirements. Referrals made in this way are not time bound.

3. The funding agreement between the proprietor of the School, an Academy, and the Secretary of State for Education requires that the admissions policy

and arrangements conform to admissions law as it applies to maintained schools and the requirements of the School Admissions Code (the Code). These arrangements were determined by the proprietor, the admission authority for the School, on that basis.

4. The Act provides for the Adjudicator to consider arrangements in these circumstances. I am, therefore, satisfied that it is within my jurisdiction to do so in this case.

Procedure

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

6. Following a preliminary examination of the arrangements and the School's responses to my questions about them, I wrote to the School explaining that I had formed the view that there were aspects of the arrangements which did not comply with the requirements of the Code, giving the School the opportunity to comment on that view. The School provided a written response and, on 29 October 2012, I attended a meeting at the School at which the School, the London Borough of Hammersmith and Fulham, the local authority (the LA) and the Diocese of Westminster (the Diocese) were represented. I subsequently wrote to the School with some additional concerns, again inviting the School's comments.

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

- a. the School's admission arrangements for September 2013;
- b. the letters of referral;
- c. additional information published by the School for those considering seeking a place in the School's sixth form;
- d. additional information relating to the sixth form admission process, including a sample of the tests used and of the form used to seek schools' views of external applicants' potential, provided by the School at my request;
- e. the School's comments on my preliminary assessment of the arrangements, set out in the Headmaster's letter of 21 September 2012;
- f. e-mails of 26 November and 3 December 2012 from the Headmaster in response to my additional enquiries; and
- g. comments on the arrangements submitted by the Diocese.

Consideration of Factors

Areas of Concern

8. My examination of the arrangements in the light of the letters of referral

and the School's answers to my questions led me to the following concerns.

- a. The School's oversubscription criteria, applied at each point of entry to the School, include a reference to an applicant family's service in a Catholic Parish or in the wider church, which appeared to be contrary to paragraph 1.9e of the Code.
- b. It seemed probable that the process used for the allocation of places in the sixth form for pupils applying to join the School at that stage (and the tests used to assess suitability for admission to the sixth form in particular) did not comply with paragraph 2.6 of the Code in that the School does not publish criteria for admission to the sixth form from outside the school, but appeared to hold a competitive examination leading to the ranking of candidates by ability and/or potential. This seemed to amount to a different standard being applied to external candidates for admission to the sixth form.
- c. It was not clear from the published arrangements how the ranked list of test results interacted with the school's oversubscription criteria, which are essentially concerned with establishing the degree of candidates' commitment to the Catholic Church. The Code requires admission arrangements to be clear, enabling parents in particular to "be able to look at a set of arrangements and understand easily how places... will be allocated." (Code paragraph 14).
- d. Even if clarity could be achieved, it seemed that the process for assessing the suitability of applicants for admission to the sixth form was not compliant with paragraph 1.9a of the Code. This specifies that admission authorities must not "place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements." By requiring applicants to sit a test the School appears to be placing a condition on consideration of an application which is not included in the oversubscription criteria.
- e. The wording of the arrangements appeared to suggest that the school operated a variable admission number for pupils applying to join the school for the sixth form, contingent on the number of pupils transferring within the school. This would be inconsistent with paragraph 1.2 of the Code which requires an admission authority to publish an admission number for each "relevant age group" and to admit all qualified applicants up to that number.

The School's Responses

9. Criterion relating to service:

- a. The school is heavily over-subscribed with Catholic candidates. Once

criteria relating to looked after children, attendance at Mass and baptism have been applied, there is a need to apply further criteria. Service to the Church properly forms part of the religious oversubscription criteria, as there is a requirement on Catholics arising from Canon Law to undertake service and good works to the wider Church.

- b. In drafting the arrangements, including the examples of types of service to be recognised, it had sought to be as inclusive as possible and to include a wide range of examples of service. The School is concerned to ensure that there is a religious criterion which takes account of a candidate's and/or family's participation in the wider life of the Church which would include forms of service, reflecting the relevant provisions of Canon Law. It would, however, be willing to re-examine the wording of the criterion and footnote to ensure that they comply with the Code.
- c. The School confirmed that it had taken careful account of the advice provided by the diocesan authority on this matter, although it had concluded that it was not appropriate to follow it on this point. The School referred the Adjudicator to correspondence between the School and the Diocese on this matter.

10. Academic entry criteria for admissions to the sixth form.

- a. In response to my initial summary of concerns the School explained that it considered that conditional offers of places in the sixth form have to be made before actual GCSE results are known. The number applying for places in the sixth form is such that, in order to make the process manageable, it has to make a preliminary assessment of candidates' suitability before proceeding to apply the School's religious oversubscription criteria.
- b. The basic assessment of "suitability" for sixth form study is predicted GCSE results. The same standard is required for internal and external candidates. In the case of external candidates, the School relies on grade predictions submitted by candidates' current school. A significant proportion of such schools do not return the form providing the information sought, putting some candidates at a significant disadvantage. By requiring all external candidates to take a common suitability test, the School is able to make an assessment of all candidates on the basis of a GCSE predicted grade or its equivalent as indicated by test outcomes. The School considers that this is fairer to all candidates, and avoids unfair disadvantage to those candidates whose schools are unable or unwilling to complete the form.
- c. This process does not lead to a ranked list of candidates, but to a pool of candidates whose grade predictions (or equivalent) are in line with the School's published minimum academic requirements as applied to internal and external candidates.
- d. The School's religious oversubscription criteria are then applied to all

applications judged to be suitable for sixth form study, that is to say, likely to meet the academic standard. Offers made as a result of this process are conditional on actual GCSE results.

- e. Places are not finally confirmed until actual GCSE performance is known. Candidates whose application was rejected on the basis of a prediction that they would not reach the required standard are reconsidered if their actual GCSE results are better than predicted.
- f. As the Adjudicator has needed the further clarification provided in writing and in the meeting in order to understand the operation of the sixth form admission arrangements, the School accepts that it would be reasonable to re-examine the wording of the description of its practice as set out in the arrangements.
- g. In response to my further enquiry to the School, referring it to the implications of paragraph 1.9a of the Code, the Headmaster has advised that the governors undertake to withdraw the test as a means of understanding the suitability of candidates.

11. Admission number for the sixth form.

- a. The admission number for the sixth form is 40. The School always admits at least that number. If circumstances allow a greater number to be admitted that can happen, but never fewer.
- b. A minor amendment to the wording of the arrangements on this point will remove any ambiguity.

View of the Diocese and LA

12. The representatives of the Diocese have indicated that they consider the criterion relating to service within a Catholic parish to be contrary to the guidance provided by the Diocese and to the Code. They consider that, while such a criterion may demonstrate that certain parents and children are conscientiously practising their Catholic faith, it is not an appropriate measure of Catholic practice as it disadvantages other equally conscientious Catholic families who choose to fulfil their obligations in other ways.

13. The LA has made no submission on these cases.

Conclusions

Criterion relating to service

14. Paragraph 1.9 of the Code sets out a number of types of oversubscription criteria which an admission authority may not use. Paragraph 1.9e proscribes criteria which “give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including any religious authority”.

15. The School’s website states clearly “The school is part of the Catholic

Church.” I am clear that a Catholic parish is an associated organisation for the purpose of this provision of the Code. The School’s oversubscription criteria take into account “service in any Catholic Parish or in the wider Catholic Church by the candidate or a Catholic parent.” A footnote to the arrangements expands on this criterion by giving examples of the sort of service which would qualify. These include assisting in the liturgy, assisting in pastoral work and assisting with housekeeping or the maintenance of church property.

16. I respect the School’s reasons for seeking to include such a criterion, but, as currently drafted, this criterion is clearly not compliant with the Code and must be removed.

Academic criteria for admissions to the sixth form.

17. The academic criteria which the School uses for final decisions about admission to the sixth form from outside the School, being exclusively based on *actual* GCSE performance are entirely consistent with the Code.

18. Now that I understand the School’s actual practice as summarised in paragraph 10 above, I accept that the arrangements are based on straightforward academic criteria relating to GCSE performance, and that these criteria are the same for internal and external candidates. But the Code requires arrangements to be clear, enabling potential applicants and their parents to “be able to look at a set of arrangements and understand easily how places ... will be allocated.” In view of the length the School has had to go to in order to enable me to understand how places in the sixth form are allocated, I must assume that applicants and their parents would be at least as confused and unclear as I have been. That was certainly the case for one of the referrers. I have therefore concluded that the arrangements as they apply to sixth form admissions are not clear and therefore not compliant with this requirement of the Code, as set out in paragraph 14.

19. More significantly, however, the School’s requirement that applicants participate in a test is in itself contrary to the requirements of paragraph 1.9a of the Code. Participation in the test is a condition on the consideration of an application other than the oversubscription criteria and therefore not permitted. The School has accepted the significance of this paragraph, and undertaken to “withdraw the use of an entrance test as a means of understanding the suitability of a candidate”. This is a helpful and positive response, but, for the avoidance of future doubt, I must stress that it is not just that the use of the test in itself trespasses against the Code. The use of any process to assess suitability in advance of (and in addition to) the application of the oversubscription criteria and academic entry requirements is prohibited by the Code. Future arrangements must not include any such prior assessment process.

Admission number for the sixth form

20. I am satisfied that it is the School’s practice to admit at least 40 external applicants to the sixth form each year. The wording of the relevant sentence needs to be amended so that this is unambiguously reflected in the

arrangements, in order to comply with the Code's requirements as to clarity.

General

21. It is clear the School has invested significant professional energy in developing admission arrangements which support its mission. In so doing it seems that it may not have paid sufficient attention to the detailed requirements of the latest edition of the Code. In reviewing its arrangements, it should take the opportunity to do so.

Determination

22. I have considered the arrangements determined by the admission authority in accordance with section 88I (5) of the School Standards and Framework Act 1998. I determine that some aspects of the School's arrangements for admissions in September 2013 do not conform with the requirements of the Code relating to the avoidance of conditions on consideration of applications, clarity and oversubscription criteria relating to service to an associated organisation.

23. 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: 12 December 2012

Signed:

Schools Adjudicator: Andrew Baxter