

## **DETERMINATION**

**Case reference:** ADA2804

**Objector:** The Fair Admissions Campaign

**Admission Authority:** The governing body of Thornleigh Salesian College, Bolton

**Date of decision:** 13 October 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 for Thornleigh Salesian College for admissions in 2015 determined by the governing body.**

**I have also considered the arrangements in accordance with section 88I(5). I determine that they do 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 by the Fair Admissions Campaign (the objector) concerning the admission arrangements for September 2015 (the arrangements) for Thornleigh Salesian College (the school), for which the local authority (the LA) is Bolton Metropolitan Borough Council. The objection is to the inclusion of un-named feeder primary schools in the oversubscription criteria; a lack of reference to priority admission for children with a statement of special educational needs; and the lack of an effective tie-breaker.

### **Jurisdiction**

2. These arrangements were determined under section 88C of the Act by the governing body, which is the admission authority for the school. The objector submitted the objection to these determined arrangements on 30 June 2014. I am satisfied that 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.

### **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 objection, dated 30 June 2014;
  - b. the school's determined admission arrangements for September 2015;
  - c. the Diocese of Salford (the diocese) diocesan education service's response to the objection, dated 18 August 2014, and its admissions guidance to schools;
  - d. the LA's response to the objection, dated 22 August 2014, and subsequent correspondence and documentation;
  - e. the LA's composite prospectus for secondary transfers in September 2015;
  - f. the school's response to the objection, dated 27 August 2014 and subsequent correspondence and documentation; and
  - g. the school's website.

### **The Objection**

5. The first part of the objection is to the way in which named feeder schools and other schools are listed within the oversubscription criteria. The arrangements name seven "*associated Roman Catholic primary schools*" and nine "*nominated parishes*". Applications are then prioritised according to the applicant's child's combination of school and place of residence. Further oversubscription criteria refer to other Roman Catholic primary schools and non Roman Catholic primary schools in general; the objector contends that, by using this "catch all" approach, children in these schools would have priority over those who are home-schooled and that this contravenes paragraph 1.9b) of the Code. Furthermore, the arrangements do not make any reference to children with a statement of special educational needs that names the school, as required by paragraph 1.6 of the Code. Finally, by not including an effective tie-breaker, the arrangements do not comply with paragraph 1.8 of the Code.

### **Other matters**

6. In the course of considering the objection I reviewed the arrangements as a whole and noted that while looked after children are given proper priority within the oversubscription criteria, there is no mention of previously looked after children except in a note at the

end of the arrangements. The explanatory note regarding the definition of siblings is unclear and lacks detail. The distance tie-breaker, as described, does not state who identifies the route to be measured, how the measurement is made, or by whom. Giving priority in allocating places to children who have attended “a Roman Catholic primary school” does not meet the requirements of the Code in respect of selecting and naming feeder schools. There are contraventions of the Code in respect of applications for entry to the school’s sixth form. While sixth form admission arrangements have been placed on the school’s main website since the objection was made, there are no such detailed arrangements on the sixth form sub-site, where information about admissions is brief and potentially confusing. As with the arrangements for entry to year 7, the sixth form arrangements make no reference to children with a statement of special educational needs or to previously looked after children, nor is a tie-breaker included. The application form on the sixth form sub-site is for September 2014 and seeks information which the school is not entitled to request, furthermore asking both the applicant and a parent to sign the form. The website refers to an interview, which is not permitted by the Code if it forms part of the process of allocating places.

## **Background**

7. The school is a voluntary aided mixed Catholic secondary school for pupils aged 11-18 in the diocese of Salford. There are about 1600 pupils on roll, including 300 in the sixth form. Following its most recent inspection by Ofsted in September 2011, the school was judged good overall, with the sixth form deemed satisfactory. An inspection in the following month under Canon 806 on behalf of the diocese and section 48 of the Education Act 2005 judged the school to be outstanding overall.
8. As a voluntary aided school, the governing body is the admission authority. The arrangements for admissions to year 7 in September 2015 were determined on 9 April 2014 and were available to download from the school’s website at the time the objection was made.
9. The school has a planned admission number (PAN) of 230. The arrangements name seven associated Roman Catholic primary schools and nine “nominated parishes”. Oversubscription criteria are, in summary:
  - a. Catholic looked after children
  - b. Catholic children living in a nominated parish and attending an associated primary school
  - c. Catholic children living in a nominated parish and attending a Catholic primary school
  - d. Catholic children who attend an associated primary school
  - e. Catholic siblings who attend a Catholic primary school
  - f. Catholic children living in a nominated parish and who attend a

- non Catholic primary school
- g. Catholic children who attend a Catholic primary school
- h. Catholic children who attend a non Catholic primary school
- i. Other looked after children
- j. Other children in an associated Catholic primary school
- k. Other siblings
- l. Other children

The sibling link is not allowed if the older child joined the sixth form after attending another local Roman Catholic 11-16 school. There is a distance tie-breaker, using the safest short walking route from home to school.

10. The LA's data show that the school was oversubscribed in each of the previous two years, although in September 2013 places were offered to all those on the waiting list after the offer day, and 225 children were admitted to the school; 39 places were allocated within the final oversubscription criterion. In September 2014, there were 63 applicants on the waiting list on offer day, and eight places were subsequently offered to them; following five successful appeals (out of 14), 235 children were admitted to the school, including 12 within the final oversubscription criterion. School data vary slightly from those supplied by the LA but paint a broadly similar picture, showing additionally that in September 2012 a number of places were also offered within the final oversubscription criterion. In each of the last three years the school has admitted between two and five looked after children and between three and five children with a statement of special educational needs that named the school.

### Consideration of Factors

11. The first part of the objection is to the way in which named feeder schools and other schools are treated within the oversubscription criteria. The arrangements list seven "*associated Roman Catholic primary schools*" and nine "*nominated parishes*". Applications are then prioritised according to the combination of the school attended by the child and his or her place of residence. Further oversubscription criteria prioritise applicants' children who have attended other Roman Catholic primary schools and non Roman Catholic primary schools in general, that is, without naming any; the last four oversubscription criteria refer to non Catholic children. The objector contends that, by using a 'catch all' approach that mentions applicants who have attended either "*a Roman Catholic primary school*" or "*a non Roman Catholic primary school*", in addition to (but given lower priority than) those who have attended the "*associated*" schools and/or who live in the "*nominated parishes*", any child who had attended any school would get priority over those who had been home schooled and that this contravenes paragraph 1.9b) of the Code, which states that admission arrangements "**must not ... take into account any previous schools attended, unless it is a named feeder school**". The objector's argument is that by implying that any primary school anywhere is, in effect, a feeder school, a child who had not attended a school – any

school – during his or her primary years would automatically fall into the lowest category of oversubscription criteria, that is, “*Other children*”.

12. I do not believe that the school’s oversubscription criteria were constructed with the overt intention of preventing home schooled children from being offered a place. Indeed, within the current criteria, both Catholic and non Catholic home schooled children might be offered a place under criterion I (“*Other children*”). As I have shown with the data quoted above, a considerable number of places was allocated within this criterion in the most recent three admission rounds and so home schooled children of any faith, or none at all, would have had some chance of being offered a place. The fact remains, however, that the prohibition in paragraph 1.9b) of the Code quoted above renders several of the school’s oversubscription criteria non-compliant, that is, criteria c, e, f, g and h as these refer simply to “*a Roman Catholic primary school*”; although the objector also queried criterion j, this refers to non Catholic children in one of the associated (that is, named) Catholic primary schools, and so is acceptable.
13. In its response, the school stated “*we need to decide what category home-schooled children go in – whether they are Catholic or non-Catholic*” but this misses the point of the objection. The LA responded that it “*disagree[s] with the notion that the school must name all other schools that are non-catholic [sic] as to do so would be unreasonable.*” This, again, addresses only part of the issue but points up what is, indeed, a substantial matter in that the Code sets at paragraphs 1.9 and 1.15 terms to be met in choosing and naming feeder schools. The school is permitted to name its seven associated primary schools; this is “*transparent*” and “*reasonable*” in the terms of the Code, as they are schools linked with the parishes that are associated with the school. However, it is not permitted to give priority to children attending “*a Roman Catholic primary school*” as this is not naming specific feeder schools; it is clearly neither “*transparent*” nor “*reasonable*” to include potentially every Roman Catholic primary school as a feeder school, even if it were practicable to name them all.
14. For the reasons explained above, I uphold this element of the objection in respect of paragraph 1.9b) of the Code, concerning the requirement to name feeder schools, while noting that the Code makes no explicit reference to the admission of previously home schooled children.
15. The objector also states that the arrangements do not make any reference to the requirement that priority in allocating places will be given to children with a statement of special educational needs that names the school, as set out in paragraph 1.6 of the Code. Not to mention such children is not, in fact, an infringement of this paragraph in the Code since it is not an oversubscription criterion but repeats other legislation relating to special educational provision. Nevertheless, for the sake of clarity in arrangements, it is good practice to state that children with a statement of special educational needs that names the school will be admitted and that, if the school is oversubscribed, this will be before the criteria are applied and that the

allocation of such places will be within the PAN, so that applicants are aware of its impact. There is no such statement in the arrangements published on the school's website, which has been accepted as an omission by the school in its response to the objection. The LA pointed out that, in its composite prospectus for secondary transfers in September 2015, a reference to children with a statement of special educational needs is placed immediately before the list of oversubscription criteria on the pages that publish the school's arrangements. I have confirmed that this is so. I do not uphold this part of the objection as the omission to which the objector refers is not, as explained, a contravention of paragraph 1.6 in the Code. However, the inconsistency between what is published by the school and the LA impairs the ability of applicants to be able to access and understand easily how places for the school will be allocated.

16. Finally, the objector contends that the arrangements do not comply with paragraph 1.8 of the Code, which requires that *"arrangements must include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated."* The arrangements state that *"If in any category there are more applications than places available, priority will be given on the basis of proximity to the school."* The arrangements do not consider the possibility of, for example, twins living at the same address or of unrelated children living at different addresses but at the same measured distance from the school, or within the same block of flats. The LA's response to this element of the objection was that *"The LA calculates the distance to 3 decimal points for governors to determine priority on a tiebreak"* but this does not address the issue raised by the objection, since a tie-break might still be required. In its response to the objection, the school has accepted the need to include an appropriate tie-breaker. I uphold this element of the objection.

17. Having considered the three elements of the objection, I have found non-compliance with paragraphs 1.9b) and 1.8 of the Code and so I partially uphold the objection.

### **Other matters**

18. In the course of considering the objection, I reviewed the arrangements as a whole and noted that while looked after children are given due priority in oversubscription criteria a and i, there is no mention, as required by paragraph 1.7 of the Code, of previously looked after children except in note (3) at the end of the arrangements, to which applicants are not referred within the main body of the arrangements. There must be explicit reference to "previously looked after children" within the oversubscription criteria.

19. The criteria use the phrases *"sister or brother"* and *"brother/sister"* without referring applicants to explanatory note (2). This note regarding siblings, moreover, does not provide a sufficiently clear or detailed definition, which contravenes paragraphs 1.4 and 1.8 of the Code, both of which require arrangements to be clear to, and easily

understood by applicants.

20. Although the current distance measure is an inadequate tie-breaker as I have explained above, it remains a valid way of distinguishing between applicants when there are more that meet an oversubscription criterion than places available. However, the arrangements do not make clear who will decide the route to be measured or how this will be done. The response to the objection from the LA explained that it performs this operation on behalf of the school's governing body, but this would not be known to applicants reading the published arrangements. While there is a reference at this point in the arrangements to families changing their address during the period between the allocation of places and the actual date of admission, there is no mention of children who may have more than one place of residence. Paragraph 7 of the school's arrangements therefore fails to comply with paragraph 1.13 of the Code, which states that *"Admission authorities **must** clearly set out how distance from home to the school will be measured, making clear how the 'home' address will be determined and the point in the school from which all distances are measured. This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent."*
21. As discussed above, the arrangements do not meet the requirements of the Code in respect of choosing and naming feeder schools. While I accept that the seven specific primary schools named in the arrangements are a *"transparent"* and *"reasonable"* choice given the location of the school and its associated parishes, it is not then acceptable to introduce a further priority category of *"a Roman Catholic primary school"*. This does not meet the requirement in the Code that feeder schools should be named and that they should be *"selected"*; a blanket reference to all Roman Catholic primary schools does not comply with paragraph 1.15 of the Code.
22. There are many contraventions of the Code in respect of applications for entry to the school's sixth form. Sixth form admission arrangements have been placed on the school's main website since the objection was made; these are described as *"First prepared June 2014"* and as *"adopted"* by the governing body in July 2014. There are no such detailed arrangements on the sixth form sub-site, where information about admissions is brief and potentially confusing. There is no mention of a sixth form PAN nor are there any oversubscription criteria for external applicants on this sub-site. The downloadable application form is dated September 2014. Together, these issues contravene paragraphs 1.2, 1.46 and 1.47 of the Code, which lay down the requirements to determine by 15 April each year and then publish the arrangements for each *"relevant age group"*, including a PAN. For this school, the relevant age groups include applicants for the sixth form and it would clearly be transparent and helpful to potential sixth form applicants for all relevant information to be accessible on the sixth form sub-site and for there to be

consistency across the whole of the school's website.

23. The sixth form arrangements make no reference to the admission of children with a statement of special educational needs that names the school. Again, there is no mention of previously looked after children, which is non-compliant with paragraph 1.7 of the Code. As in the arrangements for entry to year 7 also, the oversubscription criteria do not include *“an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated”* as required by paragraph 1.8 of the Code.
24. There is a reference in the arrangements to *“interviews which take place before GCSE results day”*. This is unclear as to whether interviews are meetings simply to provide information about courses, or whether they have any other purpose. Further to this, on the sixth form sub-site, under the heading “Enrolment”, there is the statement *“Once you have applied, been interviewed and received your offer ...”*, which I interpret as an indication that the interview is in fact a formal part of the process of offering a place and is therefore in contravention of paragraph 1.9m) of the Code, which states that *“In the case of sixth form applications, a meeting may be held to discuss options and academic entry requirements for particular courses, but this meeting cannot form part of the decision making process on whether to offer a place.”*
25. The application form asks for information which the school is not entitled to request, such as the religion, first language and home language of applicants, their state of health, and whether they have received learning support. It also asks for the applicant and a parent to sign the form. These shortcomings contravene several subsections of paragraph 1.9 in the Code, that is, a), b), h), as well as paragraph 2.6, which makes it clear that sixteen-year-olds can apply themselves for a sixth form place without the need for parental support or endorsement.

## **Conclusion**

26. The objector contends that the school's reference in its arrangements to named feeder schools, and to other un-named schools in general, is unfair towards applicants who have been home schooled. While the Code makes no direct reference to the admission of children who have been home schooled, the arrangements do not comply with paragraph 1.9b) of the Code, in that they propose taking account of children's attendance at schools that are not named feeder schools. A second element of the objection is to the lack of reference in the arrangements to children with a statement of special educational needs that names the school. While it is good practice to say in the arrangements that children with a statement that names the school will be admitted, this is not against an oversubscription criterion and what is said in paragraph 1.6 of the Code is simply a factual statement. The omission of a suitable reference, while regrettable in terms of clarity, is not a non-compliance issue and so I do not uphold



that part of the objection. The final part of the objection is to the lack of an effective final tie-breaker. I agree that this omission does not meet the requirements of paragraph 1.8 of the Code. For these reasons, I partially uphold the objection.

27. In considering the arrangements as a whole, I find that they do not make reference to previously looked after children in the main body of the oversubscription criteria, that the definition of “siblings” is insufficiently clear and detailed and that the distance measurement criterion is not fully explained and does not meet all the requirements of the Code. The general lack of clarity does not comply with paragraph 14, while the specific instances and the omissions mentioned above are non-compliant with paragraphs 1.8, 1.7 and 1.13 of the Code. The inclusion of all and any Roman Catholic primary schools as a priority category in the oversubscription criteria does not meet the requirements of paragraph 1.15 of the Code regarding the selection and naming of feeder schools.

28. The sixth form arrangements, which were not determined in accordance with the timescales laid down in the Code and are thus in contravention of paragraphs 1.46 and 1.47 of the Code, are potentially confusing to applicants in that there is inconsistency between the school’s main website and the sixth form sub-site. The arrangements make no reference to children with a statement of special educational needs, which needs to be clarified so that how places are allocated is easily understood as required by paragraph 14 of the Code. There is no mention of priority in allocating places to previously looked after children and no final tie-breaker. The application form, which is dated for the previous year, asks for information that the school is not permitted to seek. The arrangements, and a statement on the sub-site, imply that an interview is part of the process of offering places. These shortcomings mean that the sixth form arrangements do not comply with the requirements of paragraphs 1.7, 1.8, 1.9 and 2.6 of the Code.

29. It is for these reasons that I conclude that the arrangements are not compliant with the Code and must be revised as soon as possible.

### **Determination**

30. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for Thornleigh Salesian College for admissions in 2015 as determined by the governing body.

31. I have also considered the arrangements in accordance with section 88I(5). I determine that they do not conform with the requirements relating to admission arrangements.

32. 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: 13 October 2014

Signed:

Schools Adjudicator: Andrew Bennett