



## **DETERMINATION**

**Case reference:** ADA2819

**Objector:** The Fair Admissions Campaign

**Admission Authority:** The Bennett Memorial Diocesan School Trust,  
Tunbridge Wells

**Date of decision:** 3 December 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 determined by the Bennett Memorial Diocesan School Trust for admissions in September 2015.**

**I have also considered the arrangements in accordance with section 88I(5). I determine that the admission arrangements do not conform with the requirements relating to admission arrangements in the ways 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 as quickly as possible.**

### **The referral**

1. Under section 88H(2) of the Schools Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by the Fair Admissions Campaign, the objector, about the admission arrangements (the arrangements) for the Bennett Memorial Diocesan School, a Church of England academy secondary school for pupils age 11-18 years in Kent, the local authority (the LA) for the area, for September 2015. The objection is that: the arrangements were not published, and may not yet be determined; and, based on the 2014 arrangements; the point of measure of distance at the school and the process of random selection are not specific; the use of footnotes and other notes is confusing; parents are asked to support the school's ethos; there is no category of other children; and there are matters on the supplementary information form (SIF) that do not comply with the Code.

### **Jurisdiction**

2. The terms of the academy agreement between the academy trust and

the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing body who are the directors of the academy trust, which is the admission authority for the school, on that basis. The objector submitted the objection to these determined arrangements on 30 June 2014. 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 am also using my power under section 88I 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 objector's email of objection dated 30 June 2014;
  - b. the school's response to the objection and supporting documents;
  - c. the LA's response to the objection and supporting documents;
  - d. the Diocese of Rochester (the diocese) the faith body's response to the objection and supporting documents;
  - e. the LA's composite prospectus for parents seeking admission to schools in the area in September 2014 and 2015;
  - f. maps of the area identifying relevant schools;
  - g. confirmation of when consultation on the arrangements last took place;
  - h. copies of the minutes of the meeting of 9 December 2013 of the governing body at which the arrangements were determined; and
  - i. a copy of the determined arrangements for 2014 and 2015.

### **The Objection**

5. The objector argues that the admission arrangements for 2015 were not published on the school's website which is contrary to paragraph 1.47 of the Code. Also, that the arrangements may not yet be determined as they are not published and this is contrary to paragraph 1.46 of the Code.
6. As the objector had not seen the arrangements for 2015 the further aspects of the objection are based on the arrangements for 2014. They

are that: two matters are not specific, the point within the school used to measure distance is not specified contrary to paragraph 1.13 and the process and independence of random selection is not specified contrary to paragraph 1.45 (sic); the school has no 'catch-all' criterion for other children in the over subscription criteria contrary to paragraphs 1.6, 1.36 and 2.8 and that the use of footnotes is confusing, contrary to paragraph 1.8 of the Code.

7. The objector argues further matters that relate to the SIF do not comply with the Code. Namely that: the SIF asks for child's gender, names of both parents and whether both parents are communicant members contrary to paragraph 2.4; again with reference to 2.4 and 2.4e, the SIF asks both parents to sign; and the inclusion of an ethos statement that ends "*In signing this statement, parents are acknowledging support for this ethos and indicating a clear preference for it in their child's education*" is contrary to paragraphs 1.9a, 1.6, 1.36 and 2.8 of the Code.

### **Other Matters**

8. In the course of considering the objection, I reviewed the arrangements as a whole. The arrangements for entry to the sixth form (year 12) appeared not to conform with the requirements relating to admissions as follows:
  - a. internal candidates are required to apply by application form in breach of the Code at paragraph 2.6;
  - b. internal applicants are prioritised in the oversubscription criteria. but internal applicants are already on the school's roll and cannot be subject to these arrangements which apply only to external candidates, those for which the published admission number (PAN) is provided, the school is in breach of the Code at paragraph 2.6;
  - c. the application form asks for names of previous schools and indicates that a reference will be sought from the present school, contrary to paragraphs 1.9 b) and g) of the Code;
  - d. the application form contains an ethos statement for signature by parent and child contrary to paragraph 1.9 a) of the Code;
  - e. the oversubscription criteria give priority to pupils who have achieved better grades within the academic criteria, selection by ability in this way is contrary to paragraph 1.9 d) of the Code; and
9. I refer also to the naming of present schools on the SIF for year 7 pupils, contrary to paragraph 1.9 b) of the Code.

### **Background**

10. Bennett Memorial Diocesan School converted to academy status on 1 April 2014. It is a Church of England school for pupils aged 11-18 years

in Tunbridge Wells. The last inspection by Ofsted of the school in June 2012 found it to be outstanding in all aspects. It has a published admission number for year 7 of 224.

11. On receiving the objection, but before the school had been notified I looked at the school's website and found the arrangements for 2015. I show the oversubscription criteria and footnotes below as part of the objection concerns the clarity of the arrangements.

- A     **Children in or who have ever been in public care<sup>#</sup>**
- B     **Children from Anglican families at the heart of the church.** The definition of this is a child who has one or both parents worshipping regularly (by which is meant at least three times per month on average) in an Anglican church\* and who have done so for at least three years\*\* up to the time of application. It is also required that at least one parent is communicant, in other words takes part in Holy Communion services or the Eucharist, and that the child for whom they are applying is baptised\*\*\*. If applications which meet these criteria exceed the number that can be offered, applicants with a sibling at Bennett in September of the year of admission will be ranked before those without a sibling, and then within each group applicants will be ranked by distance from the school. §
- C     **Children from non-Anglican Christian families at the heart of the church.** The definition of this is a child who has one or both parents worshipping regularly (by which is meant at least three times per month on average) in any Christian church and who have done so for at least three years\*\* up to the time of application. It is also normally expected that the child for whom they are applying is baptised\*\*\*. If applications which meet these criteria exceed the number that can be offered, applicants with a sibling at Bennett in September of the year of admission will have priority, and then within each group applicants will be ranked by distance from the school.
- D     **Children from Anglican families attached to the church.** The definition of this is a child who has at least one parent who attends an Anglican church\* at least monthly, or takes part in one form of service to the church on at least a monthly basis, and who has sustained this pattern of commitment for at least two years\*\*. It will also be required that the child is baptised\*\*\*. If applications which meet these criteria exceed the number that can be offered, applicants with a sibling at Bennett in September of the year of admission will have priority, and then within each group applicants will be ranked by distance from the school.
- E     **Children from non-Anglican Christian families attached to the church.** The definition of this is a child who has at least one parent who attends a non-Anglican Christian church at least monthly, or takes part in one form of service to the church on at least a monthly basis, and who has sustained this pattern of commitment for at least two years\*\*. It will also be

normally expected that the child is baptised\*\*\*. If applications which meet these criteria exceed the number that can be offered, applicants with a sibling at Bennett in September of the year of admission will have priority, and then within each group applicants will be ranked by distance from the school.

- F Children from Anglican and non-Anglican Christian families known to the church.** The definition for this will be a child who has at least one parent who attends any Christian church on an occasional basis, less frequently than once a month, but at least as frequently as three times a year, or who takes part in a regular form of service to the church, less often than once a month but at least three times a year. If applications which meet these criteria exceed the number that can be offered, applicants with a sibling at Bennett in September of the year of admission will have priority, and then within each group applicants will be ranked by distance from the school.
- G Children from families with no church attendance.** If applications which meet these criteria exceed the number that can be offered, applicants with a sibling at Bennett in September of the year of admission will have priority, and then within each group applicants will be ranked by distance from the school.

## **Notes**

*\* Local Ecumenical Partnerships (LEPs) of which the Church of England is a member will be considered as Anglican churches for this purpose.*

*\*\* if during this time the family has relocated, or changed the church at which they worship, supporting evidence from the previous church must be provided.*

*\*\*\* or has been formally welcomed into the church community at a service or ceremony of thanksgiving or dedication. Documentary evidence will be required both for baptism and for any services of thanksgiving or dedication. A priest's or minister's letter will suffice as evidence for a service of dedication if no formal certificate is available.*

*§ (1) The number admitted under category B will not exceed 75% of the planned admissions number. Category B applications not admitted because of this cap will be re-ranked with category D applications.*

*§ (2) Before the rank ordering by distance is applied within Category B, places will be allocated to applicants attending parishes located in each of the deaneries of Malling (12 places), Sevenoaks (18 places) and Shoreham (6 places), as defined by the Diocese of Rochester. If there are more applicant than deanery places, each will be rank ordered by distance from the school and the closest offered places. If there are fewer applicants, the unused places revert to the overall allocation for this category.*

# *Looked after children are defined as children under the age of 18 for whom the Local Authority provides accommodation by agreement with their parents or carers (Section 22 of the children Act 1989) or who ceased to be so because they were adopted or who is the subject of a care order under Part IV of the Act*

## **Consideration of Factors**

12. I have considered the matters raised by the objector in turn with responses from the school, LA and diocese where available.
13. The objector argues that the arrangements for 2015 were not on the school's website contrary to paragraph 1.47 which says "*Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website displaying them for the whole offer year*" and further as they were not published, it may be that they were not determined which would be contrary to paragraph 1.46 which requires that, "*All admission authorities **must** determine admission arrangements by 15 April every year, even if they have not changed from previous years and a consultation has not been required*".
14. The school's response is that the arrangements are published on the school's website and are accessible under a heading of 'Additional Information and Application Form' and that they will be moved under their own heading once the application round opens for 2015. It adds "*until the end of the summer term most queries were related to the 2014 admissions round, which is why those criteria were kept in the main admissions menu*".
15. When I was asked to consider the objection, and before the school had been notified there was an objection, I looked at the school's website on 30 July 2014 and found the admission arrangements for 2015 published as the school describes. While I accept that those arrangements were not immediately apparent under the heading admissions, the requirement of the Code is that they are published on the school's website and I find that they were. I do not uphold this part of the objection.
16. I consider next whether the arrangements were determined as queried by the objector. The school submitted minutes of a meeting of the governors' admissions committee dated 9 December 2013 and the terms of reference of the committee showing the delegated authority. The minutes show the governors decided to add to the oversubscription criteria, a category for 'other children' as required by the Code at paragraph 1.36 "*...schools are required to offer every child who applies, whether of the faith, another faith or no faith, a place at the school if there are places available.*" The school consulted on this change and then published the arrangements.
17. I have considered whether these arrangements are properly determined

as required by the Code as the governors did not consider the arrangements again after the consultation period. I have taken three factors into account; first the decision in the minutes is very clear "*the Governors unanimously approved the proposed oversubscription criteria as drafted for both Y7 and Sixth Form for admission in 2015*". Second, there were no responses to the consultation so there was nothing further to consider and third, I view the decision as falling within the scope of footnote 34 of paragraph 1.42 of the Code "*An increase to PAN, or a change to the admission arrangements to comply with the mandatory provisions of the Code or the School Admissions Regulations 2012, is not a change requiring consultation.*" As the governors made the decision about the 2015 arrangements and there was no need to consult on the matters added, I consider the arrangements to be determined as required. I do not uphold this part of the objection.

18. As I find the determined arrangements to be published as required by the Code, I am considering the other elements of the objection in relation to the 2015 arrangements.

19. The objector argues that two matters in the information about distance are not sufficiently specific, the first is the point within the school from which home to school distance is measured is not clear as required by the Code at paragraph 1.13: "*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.*"

20. The section of the arrangements is as follows;

*"Distance for the purposes of these criteria is measured between the child's normal address and the school in a straight line using Ordnance Survey address point data. Distances are measured from a point defined as within the child's home to a point defined as within the school as specified by Ordnance Survey. The school uses measurements provided by Kent LA and further information on this is available from booklets provided by Kent. In the unlikely event that there are two or more applications of equal eligibility for the last available place at the school a random selection will be applied."*

21. The response of both the school and the LA is that this is the explanation of distance that used is by the LA and also indicates where more information may be found.

22. The Code says that it must be made clear the "point in the school from which all distances are measured." While some schools refer to location, for example, "the head teacher's office" or "the gate nearest the child's home", my view is that a named point is not required by the Code and that "*to a point defined as within the school as specified by Ordnance Survey*" does make it clear that there is one point of measure, suitably scientifically defined by Ordnance Survey. I find this sufficiently clear when more information on how that point is arrived is available for those parents who might wish to pursue this. I do not uphold this part of the objection.

23. The objector argues that the final sentence of the statement in the paragraph above *“In the unlikely event that there are two or more applications of equal eligibility for the last available place at the school a random selection will be applied.”* is in breach of the Code at paragraph 1.45 ( this paragraph deals with the consultation, the paragraph that refers specifically to random allocation is paragraph 1.34 ) as the process and independence of random selection is not specified. The Code says *“Local authorities **must not** use random allocation as the principal oversubscription criterion for allocating places at all the schools in the area for which they are the admission authority. Admission authorities that decide to use random allocation when schools are oversubscribed **must** set out clearly how this will operate, ensuring that arrangements are transparent, and that looked after children and previously looked after children are prioritised.”*
24. The school’s response is that its reference to random selection relates only to a tie break for two applicants in the same category who live an identical distance from the school. The head teacher confirms that this has never arisen. However he says the school is happy to set out how it would administer *“such an unlikely random selection”*.
25. The LA’s response is similar *“The reference to ‘random selection’ that is made relates only to the tiebreaker which is used in the extremely unlikely event that a child is equal in all other ways including distance to another. This is unlikely because our distances go down to 4 decimal places. We would therefore consider it misleading for the objector to suggest that the school is selecting using random allocation.”*
26. My view is that the school is not using random selection as its principal oversubscription criterion for allocating places and indeed, is not using it at all other than to comply with paragraph 1.8 of the Code for a tie breaker when the four decimal points of distance is the same. I do not find the school in breach of the Code at paragraph 1.34. I therefore do not uphold this part of the objection.
27. The objector argues that the school has *“no catch-all criteria below category F for children who don’t meet any of A-F.”* that schools are not allowed to turn away applicants if not oversubscribed and this is contrary to paragraphs 1.6, 1.36 and 2.8 of the Code.
28. This may have been the case for September 2014, however the school added such a criterion for 2015. It is shown as;
- “G Children from families with no church attendance. If applications which meet these criteria exceed the number that can be offered, applicants with a sibling at Bennett in September of the year of admission will have priority, and then within each group applicants will be ranked by distance from the school.”*
29. I consider that the presentation is not helpful as criterion G and the text concerning applications is run together. The way of separating applications if there are more applicants that meet a criterion than places



available needs to be separated from the last criterion. The new criterion introduced for 2015 provides for places, if any remain, to be allocated without reference to faith. This meets the requirements of the Code quoted by the objector. I do not uphold this part of the objection

30. The objector argues that arrangements are not clear with reference to the Code at paragraph 1.8. The use of footnotes is a little confusing, particularly the footnotes marked '§', as well as the reserved places which are only introduced after the oversubscription criteria.
31. The school's view is that the footnotes were introduced to aid clarity and that if the information was integrated into the main text the description of each of the main criteria will be longer and less accessible.
32. The view of the LA is *"We would regard the concern over the footnotes to be a fair observation. The published admissions arrangements for Bennett Memorial School are by far the most extensive of all the secondary schools in the county and we believe they could be simplified for parents. KCC has raised concerns previously over the complexity of the admissions arrangements but there has been little appetite for change. We would however also observe that the school is very popular, a significantly oversubscribed faith school and governors have clearly felt the need to apply extensive faith criteria in order to ensure they are fair to significant faith community the school seeks to serve."*
33. Guidance from the diocese says that arrangements should be readily understood.
34. I have reflected carefully on this aspect, the Code says at paragraph 1.8 *"Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair."* I note what the LA says that the arrangements are complex and extensive and the objector finds that, with the use of footnotes, they are a "little confusing". I balance these views with the desire of the governors to apply the faith criteria as fairly as they can, which has involved rather lengthy explanations in the text.
35. The Code requires clarity and it is my view is that there are notes with various forms of information. There are notes which give definitions, for example what counts as an Anglican church or 'children in public care' which give more information about categories in the oversubscription criteria and in those cases, if I accept that all the information is necessary, which I do, then whether that information is in the footnotes or the main text is not so significant a change that would make the arrangements compliant or not.
36. However, some of the notes introduce more and new information, for example *"§ (1) The number admitted under category B will not exceed 75% of the planned admissions number"* and *"§ (2)..places will be allocated to applicants attending parishes located in each of the deaneries of Malling (12 places), Sevenoaks(18 places) and Shoreham (6 places)".* These matters seem to me to be highly significant as they show priorities within the

oversubscription criteria and need to be part of those. A parent reading the oversubscription criteria does not see the relevant detail in the criteria and may not immediately realise there are conditions and sub categories which apply within them. I find this is not sufficiently clear. In my view this part of the arrangements is not clear and is in breach of the Code at paragraph 1.8.

37. I consider now the matter of 'reserved places' also raised by the objector as being contrary to the Code at paragraph 1.8; the arrangements describe them as follows, and they are placed after the oversubscription criteria and after the footnotes.

Places will be reserved for two categories of applicant. These reserved places are considered before the application of the criteria B to F above. If all reserved places are not taken by applicants who meet the criteria for them, the surplus places revert to the main categories above.

- 1 Up to 5 places will be offered to children in exceptionally challenging personal or family circumstances. Medical, health, social and special access reasons will be applied in accordance with the school's legal obligations, including those under the Equality Act 2010. Those children with a mental or physical impairment which gives them a demonstrable and significant need to attend this particular school will qualify, as will children of parents with similar impairments. To qualify, claims will need to be supported by written evidence from a suitably qualified medical or other practitioner and the evidence will need to demonstrate a special connection between the needs of the child or parent and Bennett Memorial Diocesan School. If more than 5 such applications are received, they will be rank ordered by distance from the school and the closest 5 offered places.
- 2 Children from non-Christian faith backgrounds – up to 15 offers will be made for children from non-Christian faith backgrounds who wish their child to benefit from a Church of England education. To be considered for one of these reserved places, they will require a reference from their local religious leader stating that they are observant members of their faith, and that they worship publicly with their faith community on a regular basis, according to the norms and customs of that faith. If more than 15 such applications are received, the 15 whose normal addresses are closest to the school will be offered places.
- 3 Priority will be given to children of staff in the following circumstances:
  - a) Where the member of staff has been employed at the school for two or more years at the time at which the application for admission to the school is made, or
  - b) The member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage.

38. My view is that these reserved places are oversubscription criteria; children eligible for such places in the two categories identified have a priority after children looked after or previously looked after. I find it confusing that here are three categories shown in this section which the arrangements say are two categories. Further, as presented, these arrangements appear to give priority to children of staff in the circumstances above, no number of places is shown as reserved for them and such children would have priority ahead of all other categories other than the first – the looked after and previously looked after children and the reserved places in 1 and 2 above.
39. It is permissible under the Code to have such an oversubscription criterion by paragraph 1.39 “*Admission authorities may give priority in their oversubscription criteria to children of staff ...however it should be clearly shown within the main list of oversubscription criteria.*”
40. I consider again in relation to these reserved places that to include other oversubscription criteria in the notes rather than within the body of oversubscription criteria make the reading of the arrangements potentially confusing for parents. The arrangements lack the clarity required for oversubscription criteria required by paragraph 1.8 of the Code. They fall short of the requirement overall for clarity in paragraph 14 of the Code and of the principle in that paragraph that “*Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*” I uphold this part of the objection.
41. The objector argues that requiring parents to sign the ethos statement is contrary to paragraphs 1.9a, 1.6, 1.36 and 2.8 of the Code. Paragraphs 1.6, 1.36 and 2.8 all in various ways, make it clear that if the school is not oversubscribed, all applicants must be offered a place. Paragraph 1.9a states that the arrangements must not “*place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements;*”
42. The ethos statement appears on the first page of the SIF, after the child’s details.

**Ethos Statement for supplementary form**

*Bennett is a Church of England school. Parents of any background are welcome to apply for a place here and all applications will be considered according to the criteria attached. The school’s aim is to provide a high quality academic education underpinned by strong Christian values, supported across the curriculum, including through Christian worship and religious studies. The school is characterised by an emphasis on learning to live together as a community in the light of Christian belief and values, and by developing strength of character and self confidence through a wide range of extra curricular activities and opportunities. In signing this statement, parents are acknowledging support for this ethos and indicating a clear preference for it in their child’s education.*

43. The school explains that the statement starts by making it clear that parents of any background are welcome to apply for a place and all applications will be considered according to the criteria. The school considers that the statement does not preclude any parent from applying but explains the distinctive nature of the school and parents are invited to indicate that they have understood that by signing the form. It adds that signing or not has no bearing on how they are considered in relation to the oversubscription criteria.
44. The LA agrees with the school and is of the view that the reference to 'signing the statement' is a sentence that has been taken out of context. It adds *"The sentence is also under the heading "Ethos Statement for supplementary form", so it's only for people who are applying on faith grounds. In our view it may be questionable as to how necessary it is, however we would not consider that it is contravening the code in the way that is suggested by the objector."*
45. I consider that the arrangements make it clear in a number of ways that if the school is not oversubscribed all applicants will be offered a place, for example, by oversubscription criterion G, by the first sentence of the statement and in the introductory paragraph of the arrangements where it says *"If there are places unfilled after the allocation of places to those who meet the oversubscription criteria, and after the allocation of reserved places, other places will be offered in order of distance of the child's normal address from the school address."* I do not agree the school is in breach of the Code at paragraphs 1.6, 1.36 and 2.8; I do not uphold this part of the objection.
46. However, the objector also suggests that the statement is in breach of the Code at paragraph 1.9a which says 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;"**
47. The Code at paragraph 2.4 sets out very clearly that, *"... In some cases, admission authorities will need to ask for supplementary information forms in order to process applications. If they do so, they must only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability. They must not ask, or use supplementary forms that ask, for any of the information prohibited by paragraph 1.9 of the Code"*. Authorities are entitled to ask for basic identifying information on the form without falling foul of this clause, so for example, as on this form, the child's name, address and date of birth
48. The SIF is a two page document. The first page asks for details of the child and parents, for example name address, church attendee, priests name and immediately after those details is the ethos statement with places for two signatures and date. The second page asks for evidence of the category in which the parent thinks their child sits and has a place for their signature and that of the priest

49. The school contends that this is an invitation to show parents have understood the ethos and there is no compulsion to sign and no consequence if a parent does not. I do not think that is clear. A parent completing a form of application for any school place and certainly one in an oversubscribed, outstanding school is likely to think they should complete all sections of the form and sign where it asks for a signature. I accept that the school does not intend that places are allocated only to pupils whose parents have signed this statement but a parent might reasonably think an offer of a place is conditional on the signing of this form, so while I do not find there is such a condition, I find that the inclusion of this statement could mislead parents into thinking there is and it is unclear and contrary to the Code at paragraph 12 which requires places to be “*allocated and offered in an open and fair way.*” It may be that parents are not misled by the statement and boxes for signatures, but the Code is clear that a SIF must only request additional information that is necessary to apply the oversubscription criteria. Inviting, even if not requiring, parents to sign, does not comply with the Code.
50. The objector also says that the SIF asks for child’s gender, names of both parents and whether both parents are communicant members contrary to paragraph 2.4, that again with reference to 2.4 and 2.4e the SIF asks both parents to sign.
51. First the matter of gender; the school says asking the pupil’s gender is not forbidden by the Code, and if the school should not know the gender of the child then it would be necessary to withhold the given name of the child as that would, in most cases reveal the child’s gender.
52. The LA agrees with the school and adds “*It makes no difference to the application of oversubscription criteria but does enable a school when writing to parents to establish if they are referencing a son or daughter*”.
53. Again, I turn paragraph 2.4 of the Code and the requirement that admission authorities “**must only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria ...**” I ask myself whether gender falls within the basic data set permitted, but I have decided that, while I accept that it plays no part in the application of the oversubscription criteria, that it is additional information and to request it is in breach of the Code. I uphold this part of the objection.
54. The objector argues that the SIF requires both parents to sign which at paragraph 2.4e is contrary to the Code. The school responds that there is no requirement for both parents to sign; there are places for them both to sign if they wish.
55. I find the arrangements emphasize that only one parent need to attend church to meet the entry requirements and that it is important for the priest to know which parent is claiming communicant status in order to verify church attendance. The form shows ‘parent (s)’ thus, indicating

options of one or both. However I see there are two boxes for two parents or guardians to sign, but no indication that only one parent has to sign. The Code says a SIF “**must not ask, ... e) both parents to sign the form**”. While the form does not ask, it does not make it sufficiently clear that two signatures are not required, and should not imply that two signatures needed I find therefore is in breach of the Code at paragraph 2.4 e). I uphold this part of the objection.

I have considered also the arrangements for the sixth form.

56. Admission authorities are required to set admission arrangements for all years for which they admit external candidates, in the school’s case for year 7 and year 12. Admission arrangements for both years must comply with the Code. The school has a published admission number (PAN) of 1 for the sixth form and the oversubscription criteria shown below. All applicants, internal and external are required to attend a “guidance interview” and complete an application form. The school has specific academic requirements that must be met to gain admission.

57. The oversubscription criteria are, in summary, as follows

- Children in or have ever been in public care
- Applications from internal candidates who meet the academic requirements are considered first.
- Where particular courses are heavily oversubscribed and we cannot for practical or resourcing reasons run parallel groups the places will be offered to those internal candidates who have better grades at GCSE or subject specific requirements. This will form a major part of the guidance meeting referred to above to determine the most appropriate course for an individual. We will offer alternative courses to any student affected by this criterion.
- For external applications the remaining places available on a particular course will be offered to those who have better grades at GCSE or subject specific requirements.
- If applications which meet these criteria exceed the number that can be offered, applicants will be ranked by distance from the school.

The matters I consider are as follows;

The PAN

58. The school has a PAN of one but says it in recent years has admitted more than that, for example in 2013, 26 external candidates were admitted. I considered whether this might be misleading for parents as it would imply that it might not be worth making an application and as such would not comply with the Code at paragraph 1.8 “**Oversubscription criteria must be reasonable, clear,...**”. The school says that: “*it is difficult for us to specify a number greater than 1 for this because the number of places available depends on two factors: the number of Bennett year 11 students to elect to remain in the sixth form, and the pattern of take up of different courses. In order to run a cost effective sixth form, we need to*

*create economical class sizes. The number of external places available will vary from year to year according to capacity. If we were to specify a higher number, for example 10 or 20, we would be bound to offer 10 or 20 places, and it may be in a particular year that higher than average levels of year 11 retention meant that that number of places could not be guaranteed.*” On balance, I accept the school’s argument that on economic grounds they may not wish to admit many external candidates and this number is difficult to forecast but to have a PAN of one is in my view misleading for potential applicants. I note that on the school’s website the PAN is now ten.

#### Applications by internal candidates

59. Internal candidates are already on the roll of the school so may complete a form concerning preferred subjects for study, but they do not apply for a place as they already attend the school. Paragraph 2.6 of the Code says *“Children and their parents applying for sixth form places may use the CAF, although if they are already on the roll they are not required to do so in order to transfer into year 12.”* The school says *“They are applying for courses, not a place as such. In the case of year 11 students this is made entirely clear to them at every stage”*. However the form provided is common to both internal and external applicants and asks for more information than courses preferences. My view is that internal pupils are not obliged to complete an application form and to require it does not comply with the Code at paragraph 2.6.
60. The school is entitled, by the same paragraph to set specific academic requirements which must be the same for internal and external candidates. I find that it does and thus complies with the Code, but the application of the academic requirement appears to be non-compliant
61. Internal candidates who meet these requirements are included second in the oversubscription criteria; but oversubscription criteria apply only to applications for students who are new to the school. If the oversubscription criteria are being applied this means there are more candidates than places, however internal candidates are on the school roll already and cannot be excluded if they meet the academic requirements so have no place in the oversubscription criteria. The school says *“ We accept that the third bullet point on the oversubscription section of the sixth form policy looks misleading in this respect – in fact it does not describe what actually happens, because all students on roll have a place if we offer a course they want to do and they meet the course entry requirements.”* I find the school does not comply with the Code at paragraph 2.6 in this regard. I note that the school has taken prompt action to seek to address this issue.

#### Application Form

62. The form of application contains an ethos statement for signature by student and parents.

*Ethos statement for sixth form application form (for signature by parents and applicants)*

*Bennett is a Church of England school. The school's aim is to provide a high quality academic education underpinned by strong Christian values, supported across the curriculum, including through Christian worship. In the sixth form all students are expected to support this ethos. A core studies programme is provided for all students which incorporates a range of areas, including religious and ethics education, and all students are expected to take part in the core programme as directed. A range of extracurricular opportunities are offered, and these are considered a vital part of learning and development in the sixth form. A professional standard of personal presentation and conduct is considered essential for membership of the Bennett sixth form, as described in the prospectus. In signing this statement, parents and students are acknowledging support for this ethos and indicating a clear preference for it in their sixth form education.*

63. I find this statement can be viewed as a condition and does not comply with the Code for the reasons in the paragraphs above which deal with the ethos statement for year 7. Furthermore, section 86A of the Act provides for a child or a parent to apply for a place without requiring the agreement of both.
64. The form asks for the name of the previous school and a contact name at the present school for a reference. The Code at 1.9 b) says the admission authorities **must not** *"take into account any previous schools attended, unless it is a named feeder school;"* and that at 1.9 g) *"take account of reports from previous schools about children's past behaviour, attendance, attitude or achievement, or that of any other children in the family;"*. I find the school by asking for this information is implying it will take these matters into account and is therefore in breach of the Code at Paragraph 1.9.

#### Selection by ability

65. The arrangements for both internal and external candidates say priority will be given to those "who have better grades at GCSE or subject specific requirements". The school is entitled to set a threshold for entry to the sixth form overall and for a particular subject, however selection by ability is not permitted by 1.9 d) **must not** *"introduce any new selection by ability"*; explained by footnote 21 *"There is a general restriction on selection by ability. Only designated grammar schools or schools with partially selective arrangements which already had such arrangements in place during the 1997/98 school year are permitted to continue to use selection by ability"*. The school says *"we accept that as phrased this may contravene the Code. We are happy to change this. However, by way of background, it has not been applied in the way stated – the applicants we received externally are diverse and cover a range of course options. In almost every case whether they are offered a place depends on what they want to do by way of course, and whether there is space on those courses once internal options have taken place."* Nonetheless I find arrangements as drafted imply the school is using a form of selection by ability and is in breach of the Code a paragraph 1.9 d). I note that the school has taken prompt action to seek to address this matter.

#### 66. Further other matter

I note that the year 7 SIF also asks for the name of the school now attended. Paragraph 1.9 b) of the Code says admission authorities **must**



**not** “take into account any previous schools attended, unless it is a named feeder school;” and paragraph 2.4 of the Code says schools “**must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription”

67. The school says this is not used for rank ordering the applicants in case of oversubscription. “However, it is essential for us to know who is from which school because once places are offered by the local authority on 1st March transition work with primary schools begins. Because we take pupils in a typical year from some 80 different primary schools across at least two local authorities, planning this transition work is complex, and without a reliable database of which pupil is from which primary school it would be very difficult to undertake liaison and visits in such a way as to ensure every child transitioned smoothly from primary to secondary school”. I accept the school’s statement that it does not use the previous school as an admission criterion and that knowing the name of the school is important for transition purposes and do not consider it breaches the Code at paragraph 1.9 b). However, the school is not permitted to ask for this information on the SIF by virtue of paragraph 2.4 and I find the school is in breach of the Code in this matter.

## **Conclusion**

68. The objector has raised a number of matters as part of the objection with reference to the Code at many points. The objection centres on the determination and publication of the arrangements, the clarity of them and the SIF. I have sought to deal with the points raised as made and I uphold some aspects and do not uphold others. I summarise my findings as follows:

69. I do not uphold the parts of the objection that relate to: publication and determination, the explanation of the distance measure; that there is no category of other children and to the use of random selection as I am satisfied that matters that would contravene the Code if they occurred do not take place.

70. I uphold the objection in relation to: transparency and clarity, in the matter of the use of notes, and reserved places; the ethos statement; details required on the SIF; and that the SIF requires two parents to sign the form.

71. I find the arrangements for the sixth form do not comply with requirements of the Code for the reasons given above though note the school has taken action following correspondence with them.

72. In addition I find the further matter relating to the SIF does not comply with the Code for the reason given above.

## **Determination**

73. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by The Bennett Memorial Diocesan School

Trust.

74. I have also considered the arrangements in accordance with section 88I (5). I determine that the admission arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.
75. 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: 3 December 2014

Signed:

Schools Adjudicator: Jill Pullen