



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA2992

Objector: The Fair Admissions Campaign

Admission Authority: The Governing Body of Emmaus Church of England and Catholic Primary School, Liverpool

Date of decision: 18 September 2015

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold that aspect of the objection which falls within my jurisdiction to the admission arrangements determined by the governing body of Emmaus Church of England and Catholic Primary School.

I have also considered the arrangements in accordance with section 88I(5). I determine that the 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 within two months of this decision.

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 in an email dated 30 June 2015, concerning the admission arrangements for September 2016 (the arrangements) for Emmaus Church of England and Catholic Primary School (the school), a voluntary aided primary school in Liverpool, which is the local authority (the LA) for the area, in the Church of England diocese of Liverpool (the diocese) and the Catholic archdiocese of Liverpool (the archdiocese). The objection is that the arrangements for 2016 have not been published as required and raises other concerns, mostly relating to faith-based criteria, regarding the arrangements for 2015.

Jurisdiction

2. The objector submitted the objection to the arrangements for September 2016 on 30 June 2015. 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. The objector also raised a number of concerns in relation to the admission arrangements for 2015. As the deadline for making objections to the admission arrangements for 2015 was 30 June 2014, I have not been able to consider these matters further. However, having had the arrangements for 2016 drawn to my attention, I have used my power under section 88I of the Act to consider the 2016 arrangements as a whole and to determine whether or not they comply with the requirements relating to admissions.

Procedure

3. In considering these matters I have had regard to all relevant legislation and to the School Admissions Code (the Code).

4. The documents and websites I have considered in reaching my decision include:

- a. the objection, dated 30 June 2015;
- b. the school's admission policy for 2015;
- c. the school's admission policy for 2016, including the supplementary information form (SIF), determined at a meeting of the governing body on 4 March 2015;
- d. minutes of the meeting of the school's governing body held on 4 March 2015;
- e. the school's response to the objection, dated 15 July 2015 and comments in reply to my further enquiries, dated 24 August 2015;
- f. the diocese's response to the objection, and copy of its *Guidance to Aided Schools and Academies on the application of the School Admissions Code 2014*, dated 13 July 2015;
- g. the diocese's response to the school's comments on my further enquiries, dated 25 August 2015;
- h. the archdiocese's response to the objection and model admission policy for Catholic primary schools 2016, dated 14 July 2015;
- i. the LA's response to the objection, dated 14 July 2015 and copy of its common application form (CAF);
- j. the objector's further comments on the school's response to the objection, dated 23 July 2015;
- k. the school's website; and

- I. the LA's website.

The Objection

5. The objection is that on 30 June 2015 the arrangements for 2016 had not been published on either the school's or the LA's websites, as required by paragraph 1.47 of the Code.

Other matters

6. In considering the 2016 arrangements as a whole, I brought to the school's attention a number of issues that might not comply with the Code. The arrangements do not make it sufficiently clear that a child with a statement of special educational needs (SEN) or an Education, Health and Care (EHC) plan that names the school will be admitted first, without regard to the oversubscription criteria. Several oversubscription criteria prioritise "*children whose parents/guardians are most involved in the Church of England or Catholic Church*"; the phrase "*most involved*" is not clear. The activities listed as constituting "involvement" in the notes to the arrangements are not clear, are not sanctioned by guidance from the faith bodies, and, in some cases, contravene prohibitions in the Code. The arrangements do not meet in full the requirements of the Code by not stating that a waiting list will be reordered, according to the oversubscription criteria, each time a name is added. There is no reference to the processes for the admission of children below compulsory school age, deferred entry to school and the admission of children outside their normal age group. The SIF, used to apply the faith-based oversubscription criteria, is non-compliant in some of the information asked of applicants and in requiring all applicants to complete it.

Background

7. The school, which opened in 1997, is a voluntary aided mixed primary school for pupils between the ages of 3 and 11, with over 450 pupils on roll. The school is designated by the Secretary of State under the Act as having a religious character, and has a faith affiliation to both the Church of England and the Catholic Church. An Ofsted inspection in February 2008 evaluated the school as outstanding; an interim assessment letter in April 2011 stated that, as its performance had been sustained, the school would not be inspected unless Ofsted received further information that raised concerns.

8. The arrangements for 2016 were determined by the governing body on 4 March 2015, the minutes recording that "*There are no changes to be made.*" On the date this objection was referred to the Office of the Schools Adjudicator (OSA), however, the 2016 arrangements had not been published on either the school's or the LA's websites.

9. The school has a published admission number (PAN) of 60. As a joint Church of England and Catholic school, the arrangements state that the governing body "*intends that, in following the admissions policy, equal numbers (30) will be allocated to each denomination, however, applying the criteria, may lead to an imbalance in numbers.*" The arrangements include information about the numbers of children admitted against each of the oversubscription criteria in the previous year. Oversubscription criteria are, in

summary:

1. Looked after or previously looked after children
2. Church of England and Catholic children who are both baptised and living on the Croxteth Park Estate at the closing date of applications
3. Church of England and Catholic children who are baptised and living outside the Croxteth Park Estate at the closing date of applications
4. Children living on Croxteth Park Estate, from other Christian denominations affiliated to Churches Together in England
5. Children from other faiths living on Croxteth Park Estate
6. Children living on Croxteth Park Estate
7. Children whose parents have expressed a preference for the school

10. In the event of oversubscription within criteria 2 and/or 3, priority is given in the following order:

- (a) children whose parents/guardians are most involved in the Church of England or Catholic Church and have a brother or sister at the school at the time of likely admission
- (b) children who have a brother or sister at the school at the time of likely admission
- (c) children whose parents/guardians are most involved in the Church of England or Catholic Church
- (d) children living nearest to the school, measured by the straight line distance from the home address to the main entrance of the school

11. Notes explain that the measurement in (d) above will be used as a tie-breaker to decide which applicants are admitted if there are more applicants than places available against any of the criteria; that random allocation will be used as a final tie-breaker; and that, in ranking applications, points will be awarded against criteria 2(a), 2(c), 3(a) and 3(c), in recognition of applicants' involvement with church activities. In addition to the LA's CAF, all applicants are required to complete the school's SIF, which asks them to detail their church involvement if a place is sought against faith criteria.

12. The school was oversubscribed for admissions in September 2015, with 108 total applications including 74 first preferences. The 60 places allocated in accordance with the PAN were made against oversubscription criteria 1 (1), 2(a) (16), 2(b) (8), 2(c) (13) and 2(d) (22); 14 first preference applications were thus unsuccessful, and no places were available for allocation against criteria 3-7. This shows a significant recent change in the

pattern of allocation; for entry to the school in September 2013, places were allocated up to and including criterion 3(d), against which seven places were allocated, and for entry to the school in September 2014, up to and including criterion 3(a), although only 1 place was available to be allocated against that criterion. The number of places allocated under criterion 2(d) has risen from 9 in 2013 to 21 in 2014 and 22 in 2015, while the number of places allocated against criterion 2(c) has reduced from 20 in 2013 to 11 in 2014 and 13 in 2015. The overall number of places allocated against criteria 2(a)-(c), however, has remained steady at 39 in 2013, 37 in 2014 and 37 in 2015. These figures show that, to have a good chance of being allocated a place at the school, it has become increasingly important for applicants to be baptised members of either the Catholic church or the Church of England, to live on the Croxteth Park Estate, for the applicant's child to have a sibling in the school and for the applicant to be involved in church activities.

Consideration of the objection

13. My search of the school's website on receipt of this objection confirmed that the arrangements for 2016 were not published either there or on the LA's website. Although neither the archdiocese nor the LA made reference to this issue in their responses to the objection, the diocese commented that *"All schools are advised to publish their admission arrangements on their website and the local authority website."* Paragraph 1.47 in the Code requires that arrangements for September 2016 must have been determined by 15 April 2015 and that *"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 ... "* In its response to the objection sent to me on 13 July 2015, the school stated, *"This is an oversight and has now been published [sic] on our school website. However, the admission arrangements have been published on the local authority's website."* I was unable, however, to verify either part of that claim when I visited both websites on 13 July and again several weeks later in mid-August. In response to my further enquiries on this and other matters, the school informed me on 24 August that the full arrangements had been placed on both websites, which I was able to verify that same day.

14. I therefore determine that, in respect of publishing its determined arrangements for 2016/17, the admission authority did not meet the requirements of paragraph 1.47 in the Code and I uphold this aspect of the objection while noting the subsequent action taken.

15. Other aspects of the objection were not within my jurisdiction, as explained above.

Consideration of other matters

16. I move now to matters I noted in the 2016 arrangements as possibly not compliant with the Code. The first point concerns the explanation in the arrangements that children with a statement of SEN or an EHC plan that names the school will be admitted without regard to the oversubscription criteria. This is an issue more of clarity than of compliance; there is reference to the admission of such children in the opening "policy" section of the

admissions document, but at some distance from the admissions criteria section, where it might be better placed for the sake of transparency when applicants consult the arrangements. In response, the school stated that it would seek guidance from the religious bodies on this point; both emphasised in responses to me that they expect faith schools to make this provision clear in their arrangements. The admission authority might wish to consider whether the reference to the priority admission of these children is sufficiently prominent to aid applicants in their understanding of how places are allocated.

17. The next matter concerns oversubscription criteria 2(a), 2(c), 3(a) and 3(c), which refer to parents or guardians who are “*most involved*” in church activities. There are two aspects to consider here: the lack of clarity and the lack of objectivity in this part of the arrangements; the extent and degree of “involvement” are not clearly specified, and it is likely that different churches would make different, and subjective, judgements concerning the “involvement” of church members.

18. In considering clarity I note that while, in the admissions policy document, a list of 14 types of “qualifying” voluntary involvement in church activities is provided, the approach to, and outcome of, scoring is not immediately obvious (“*For all applicants 5 points will be awarded to a maximum of 10 points ...*”), and that further confusion is introduced by the statement “*Other voluntary involvement in the life of the church to be specified.*” This seems to indicate that a maximum of two activities will count, but that one or more may be something not defined in the arrangements but nominated instead by applicants themselves. The lack of clarity is compounded by the wording of the list on the SIF being slightly different from that in the policy document, and by the SIF not including an explicit reference to “*other voluntary involvement*” although there is a space, introduced by an asterisk and the parenthetical phrase “*please specify*” which perhaps implies an opportunity for the applicant to add their own activity.

19. Nor can I see how this variation in detail, and the opportunity – or not – for applicants to define their own involvement, could be considered in any way “objective” when applying oversubscription criteria. There is an additional complication: the statement that one point per week will be awarded to Church of England applicants for attendance at St Cuthbert’s Church on Croxteth Park Estate for the year prior to the closing date of applications, implies – but by no means makes clear – a difference in how “involvement” is measured in relation to Anglican and Catholic applicants when set against the criteria, although no explanation is offered anywhere in the arrangements as to how this works in tandem with the “involvement points” or the effect it might have on the allocation of places to applicants of either faith. I comment further below on the acceptability of naming churches.

20. In my view, this part of the arrangements is not at all helpful to parents in being “*able to look at a set of arrangements and understand easily how places for that school will be allocated*”, the guiding principle set out in paragraph 14 of the Code. That paragraph, as well as paragraph 1.8 in relation to oversubscription criteria, demands clarity and objectivity in admission arrangements. I have said that I do not find these criteria in the arrangements clear; neither can I see them as anything other than subjective

since, as I commented above, different churches may take a different view of what constitutes “involvement” and the invitation for applicants to nominate their own sphere of involvement means that no-one could know what might be deemed acceptable or not by the admission authority and hence what effect it might have on applications. The diocese made a similar point in its response, and the archdiocese commented that *“The term ‘involved’ is not sufficiently clear for use in an admission policy. Although practice is an appropriate determinant of faith, the term used in the policy lacks sufficient objectivity.”*

21. Paragraph 1.9e) in the Code prohibits arrangements giving 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”*; paragraph 1.9i) prohibits arrangements from prioritising children *“on the basis of their own or their parents’ past or current hobbies or activities”*, although there is permission for schools that have a religious character to *“take account of religious activities, as laid out by the body or person representing the religion or religious denomination”*. Some of the activities listed (such as cleaning and church maintenance) clearly fall within the definition of “practical support” and are thus prohibited by paragraph 1.9e). In relation to paragraph 1.9i) the diocese responded that *“Activities listed in the notes section as constituting ‘involvement’ should not be used as it would be difficult to compare with other churches. In some churches it is difficult for people to become ‘involved’ as any tasks have already been allocated to others.”* The archdiocese stated that *“‘Involvement’ is not consistent with [the] Archdiocesan model on oversubscription criteria, which uses baptism as the sole determinant of Catholicity.”* In other words, neither religious body chooses to “lay out” activities that might be allowed under paragraph 1.9i); therefore, the arrangements do not comply with the prohibitions either in that paragraph or in paragraph 1.9e) of the Code.

22. The LA had no comment to make but the school responded in some detail. Regarding the issue of “involvement”, the school said, *“We recognise that there may be different opinions as to what constitutes a satisfactory level of involvement and for this reason we do not state a frequency.”* That, in my view, only makes the situation worse, removing any semblance of objectivity from the process of applying the criteria consistently across all applications. Concerning the list of activities, the school responded by stating that *“As a joint denominational school the Governing Body have endeavoured to be fair to both denominations ... For the Anglican children this is done on the basis of church attendance in the past 12 months which is in line with Diocesan guidance. However, like the Catholic families they are encouraged on the SIF to identify involvement they have in their own church. The Governing Body agree that this is not in line with the Archdiocese [sic] guidance. However, this guidance is fundamentally targeted solely at Catholic schools and not joint schools.”* I do not see any logic in that explanation; certainly the SIF does not indicate that the “involvement” is aimed primarily at Catholic applicants and the archdiocesan response quoted above indicates clearly that no activities are “laid down” or suggested in its guidance to admission authorities, with only baptism permitted as a faith-related oversubscription criterion.

23. Paragraph 1.37 in the Code states that admission authorities **“must ensure that parents can easily understand how any faith-based criteria will be**

reasonably satisfied.” For the reasons detailed above, I cannot accept that these criteria satisfy that requirement in any way. I therefore determine that the oversubscription criteria that take account of applicants’ involvement in church activities are non-compliant with paragraphs 1.9e), 1.9i) and 1.37 in the Code. It is also clear to me from the diocese’s and archdiocese’s responses that there is scant evidence of the admission authority’s having had regard to guidance issued by either of them, as required by paragraph 1.38 in the Code.

24. I brought to the school’s attention the requirement in paragraph 2.14 of the Code for arrangements to state that, each time a name is added, the waiting list will be reordered according to the oversubscription criteria; and that there is no reference to processes for the admission of children below compulsory school age, deferred entry to school or the admission of children outside their normal age group as required in paragraphs 2.16 and 2.17 of the 2014 Code. The school has not responded to these points and I determine that the arrangements do not comply with the Code in these respects.

25. I now consider the remaining issues concerning the SIF. The first point to make is that a prominent statement on the front page of the “Admissions” section of the school’s website says that *“Parents/Carers applying for a place for their child at Emmaus School **MUST** complete the schools [sic] supplementary admission form **AND** apply via the Liverpool City Council website also.”* Paragraph 2.4 in the Code states that admission authorities *“**must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria ... “.* If parents are applying for a place for a looked after or previously looked after child, or if applying against oversubscription criteria 6 or 7 (in other words, non-faith places) then there is clearly no need for them to complete a SIF as, faith-related matters apart, it merely duplicates information that would be provided by the LA’s CAF. There are two points of concern regarding the enquiries made on the SIF. First, it requires a birth certificate which, as paragraph 2.5 of the Code makes clear, may be requested only after a place has been allocated if proof of birth date is required for any reason. Second, the oversubscription criteria refer to applicants’ involvement with either the Church of England or Catholic Church generally, whereas the SIF requires endorsement by the clergy at a specific named church of each denomination. This is not merely an inconsistency, but is unfair to applicants who may, for example, have worshipped elsewhere before moving to live in the area of the school, or choose to worship elsewhere for reasons of their own, and thus is not compliant with the overall principles of the Code set out in paragraph 14, that the criteria used to allocate school places must be *“fair, clear and objective.”*

Conclusion

26. The part of the objection that was within my jurisdiction was to the non-publication of the 2016 arrangements, as required by paragraph 1.47 of the Code. I found that the arrangements had not been published according to the timescale set out in that paragraph. I therefore upheld that part of the objection, while noting that the arrangements have now been published on both the school’s and the LA’s websites.

27. As the 2016 arrangements had been brought to my attention I raised some concerns with the school. The reference to the admission of children with a statement of SEN or an EHC plan that names the school is not sufficiently prominent in that part of the admissions document which applicants were most likely to study closely. I found some of the faith-based criteria to be lacking clarity and considered them likely to result in subjective and potentially inconsistent decisions when allocating places; the admission authority had not considered applicants' ease of understanding how such criteria might be satisfied. These parts of the arrangements do not comply with paragraphs 1.4, 1.8, 1.9e), 1.9i), and 1.37 in the Code. I also found that information in the admissions policy about the operation of a waiting list does not include all the detail required. There is no statement in the arrangements concerning the processes of requesting the admission of a child below compulsory school age, deferred entry to school, or the admission of children outside their normal age group. These omissions mean that the arrangements do not comply with paragraphs 2.14, 2.16, or 2.17 in the Code.

28. It is for these reasons that I conclude that the arrangements for 2016 do not comply with the Code and must be revised within two months of this decision.

Determination

29. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold that aspect of the objection which falls within my jurisdiction to the admission arrangements determined by the governing body of Emmaus Church of England and Catholic Primary School.

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

31. 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 this decision.

Dated: 18 September 2015

Signed:

Schools Adjudicator: Andrew Bennett