



DETERMINATION

Case reference:	ADA3114
Objector:	A parent
Admission Authority:	The Governing Body of St Richard Reynolds Catholic College, Richmond upon Thames for St Richard Reynolds Catholic Primary School and St Richard Reynolds Catholic High School
Date of decision:	2 November 2016

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2017 determined by the Governing Body of St Richard Reynolds Catholic College, Richmond upon Thames for St Richard Reynolds Catholic Primary School and St Richard Reynolds Catholic High School.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which 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 the date of the determination.

The referral

- 1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a parent (the objector) about the admission arrangements (the arrangements) for September 2017 for St Richard Reynolds Primary School and St Richard Reynolds High School (the schools), two voluntary aided schools each with a Catholic religious character which between them provide for pupils aged four to 18, determined by the schools' federated governing body which is known as St Richard Reynolds Catholic College (the college). The objection is to the use of a Certificate of Catholic Practice (CCP) as the means for recognising**

an applicant as a practising Catholic for both the primary and secondary school (the schools) which comprise the college, and to the clarity of the admission arrangements for the secondary school.

2. The schools and the college and the objector are parties to this objection. The local authority (LA) for the area in which the college is located is the London Borough of Richmond upon Thames and is also a party to this objection. The other party to the objection is the Roman Catholic Diocese of Westminster (the diocese) by virtue of its role as the designated religious authority for the schools.

Jurisdiction

3. These arrangements were determined under section 88C of the Act by the college, which is the admission authority for the schools. The objector submitted their objection to these determined arrangements on 28 April 2016. The objector has asked to have their identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) by providing details of his or her name and address to me. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
 - a. the objector's form of objection dated 28 April 2016;
 - b. the responses of the college, the LA and the diocese to the objection and supporting documents;
 - c. material on the website of the diocese;
 - d. confirmation of when consultation on the arrangements last took place;
 - e. copies of the minutes of the meeting of the governing body at which the arrangements were determined; and
 - f. copies of the arrangements as originally determined and as subsequently re-determined.

I have also taken account of information received during a meeting I convened on 15 July 2016 at the offices of Surrey County Council, Woking, and of that provided subsequently by those who had been present at this meeting.

The Objection

6. The college's arrangements, both for the primary and secondary school give priority within groups of Catholic children to those of practising families, as evidenced by their possession of a CCP. This form provides for a priest to certify that the child is from a practising family. However, the objector complains that the arrangements do not define what form or frequency of religious practice is required for a priest to do this. The objector says that parent cannot look at the arrangements and easily understand how the faith-based oversubscription criterion may be reasonably satisfied, which is a requirement of paragraph 1.37 of the Code.
7. The second part of the objection concerns a note added to the admission arrangement of the secondary school which states that it expects to give "top priority" in September 2019 to children transferring from "open" places at the primary school. The objector says that it is not clear from this statement whether priority over Catholic or over non-Catholic children is referred to and that it is therefore potentially misleading to parents with children in this category at the primary school or considering making an application for such a place. The objector says that the arrangements fail to be clear, and breach paragraph 14 of the Code.

Other Matters

8. When I looked at the arrangements I was concerned that they contained further matters which may breach the requirements concerning admission arrangements. I therefore sought the comments of the college and the other parties on these points of concern, which were that the arrangements:
 - a. for the secondary school;
 - i. give priority to children of "other faiths" but do not state clearly which these other faiths are, and so may breach the requirements of paragraphs 14, 1.8 and 1.37;
 - ii. do not make it clear that some applicants for places do not need to complete the school's supplementary information form (SIF), which may discourage some parents from applying for a place, and which may breach paragraph 14; and
 - iii. may involve meetings with parents that constitute unlawful interviews.
 - b. for the primary school:
 - i. give priority to children of "other faiths" but do not state clearly which these other faiths are, and so may breach the requirements of paragraphs 14, 1.8 and 1.37;

- ii. do not make it clear that some applicants for places do not need to complete the school's supplementary information form, which may discourage some parents from applying for a place, and which may breach paragraph 14; as above;
- iii. the way the oversubscription criteria for foundation and open places work may fail to meet the requirement of paragraph 1.2 that there is a single admission number for the age group to which a set of oversubscription criteria are applied sequentially as specified by paragraph 1.6;
- iv. may fail to make clear that children admitted to year R may attend on a part-time basis prior to reaching compulsory school age as required by paragraph 2.16c); and
- v. may involve meetings with applicants that constitute unlawful interviews.

Background

9. St Richard Reynolds Catholic College is a federation of two schools overseen by a single governing body. The schools are the high school (secondary school) and the primary school. The schools both opened in September 2013 with students in Year 7 at the secondary school and Reception (Year R) at the primary school. The secondary school admits up to 150 in pupils Year 7 and the primary school up to 30 in Year R.
10. The admission arrangements for September 2017 for the secondary school say that if it is oversubscribed, priority will be given to applications according to the following oversubscription criteria, in order:
 - i. Catholic (as defined) looked after and previously looked after children;
 - ii. baptised Catholic children with a CCP who live in the school's catchment area;
 - iii. baptised Catholic children who live in the school's catchment area;
 - iv. baptised Catholic children who do not live in the school's catchment area;
 - v. other looked after and previously looked after children;
 - vi. other children, in the order: eastern Christian Church and Catechumens, other Christian traditions and other faiths, and any others.
11. The admission arrangements for September 2017 for the primary school say that there are 20 Foundation places and 10 Open places. For the former, the arrangements list oversubscription criteria to be used "*whenever there are more applications than the number of*

places". Within this list of oversubscription criteria, baptised Catholic children have first priority after the admission of Catholic looked after and previously looked after children, and among them priority is given "*where the application is supported by a CCP*". The penultimate oversubscription criterion, before "*any other children*", is "*children from other Christian traditions and other faiths*". For the "*open*" places, after the admission of looked after and previously looked after children, the distance from the school to the child's home is used to determine priority with those living nearer having higher priority.

12. Within each oversubscription category for both primary and secondary schools and, in the case of both open and foundation places at the primary school, priority is given on the basis of home to school distance. The final tie-breaker is random allocation.
13. The schools, in common with a number of other Roman Catholic schools in the Roman Catholic Diocese of Westminster which are also the subject of objections concerning their admission arrangements, has decided to employ the CCP in the admission arrangements for both schools for the first time in 2017. Its previous practice had also been to give priority to children from practising Catholic families, but the means used by which parents evidenced that practice was different. A diocesan Priest's Reference Form (a PRF) was employed for a priest to verify a stated type and frequency of practice set out in the school's arrangements.
14. At the meeting which I held, there were present by common consent representatives of four other schools concerning whose admission arrangements for September 2017 there had been an objection made to the adjudicator because of the school's use of a CCP. The relevant parties for each of the cases were also present. One school representative attending by virtue of being a governor of one of the schools and hence one of its representatives was also able to put forward a national perspective as a result of his role as Director of the Catholic Education Service (the CES). I regarded this as a helpful circumstance.

Consideration of Case

15. The provisions in the Code and elsewhere which are relevant to my considerations in this case are set out in the following paragraphs.
16. The admission authority for a voluntary aided school is its governing body, by virtue of section 88(1) of the Act. In this case, the admission authority for both schools is the joint governing body. Paragraph 5 of the Code makes it clear that it is the responsibility of the admission authority for a school to ensure that its arrangements conform to what the Code requires, and paragraphs 1.1 and 1.9 state that it is for admission authorities to determine their arrangements. Paragraph 1.10 says "*It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances.*"

17. Schedule 3 to the School Admission Regulations 2012 sets out the body or bodies representing the religion or religious bodies of maintained schools, which in the case of Roman Catholic schools is given as *“The Diocesan Bishop or the equivalent in canon law for the diocese in which the school is situated”*.
18. Paragraph 1.38 of the Code places a requirement on the admission authority for a school with a religious character to *“have regard to”* any guidance provided to it by the relevant faith body when constructing any faith-based oversubscription criteria *“to the extent that the guidance complies with the mandatory provisions and guidelines of this Code”*. Admission authorities may depart from such guidance, but may not do so lightly. The judgement of Cobb J in the London Oratory case ([2015] EWHC 1012 (Admin)) gives the terms under which they may do so within the law.
19. Paragraph 5 of the Code says *“It is the responsibility of admission authorities to ensure that admission arrangements are compliant with this Code”*, paragraph 1.9 that *“It is for admission authorities to formulate their admission arrangements...”* and paragraph 1.36 that: *“Schools designated by the Secretary of State as having a religious character may use faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed.”* Thus the effect of the law and Code is that it is for admission authority of a school with a religious character to decide whether to have faith-based oversubscription criteria. If it does, it is also for the admission authority to decide which such criteria to employ and the admission authority must also have regard to any guidance given by its religious authority when drawing up faith-based arrangements.
20. There is an important further qualification when a school with a religious character determines faith-based oversubscription criteria and this is to be found at paragraph 1.9i of the Code. This says that: *“...admission authorities...**must not**...prioritise children on the basis of their own or their parents’ past or current hobbies or activities (schools which have been designated as having a religious character may take account of religious activities, as laid out by the body or person representing the religion or religious denomination)”*. Cobb J provided further illumination on this point, saying that “laid out” means *“specifically provided for in or authorised in”* guidance from the religious authority.
21. Section 88A(1) of the Act provides that: *“No admission arrangements for a maintained school in England may require or authorise any interview with an applicant for admission to the school or his parents, where the interview is to be taken into account (to any extent) in determining whether the applicant is to be admitted to the school”*. This is reflected in the provision of paragraph 1.9m of the Code which states that interviews must not be used except in limited circumstances, none of which is relevant in this case.

Diocesan guidance and paragraph 1.9i of the Code

22. The diocese has told me that it issues no general guidance to schools concerning their admission arrangements, and that previous guidance was withdrawn when the CCP was introduced. The diocese also maintains a website, which when I visited it on 26 April 2016 included sample admission arrangements for a secondary school and a copy of the diocese's bulletin to schools of January 2016. This latter document, under the heading "admissions" states that:

"Following discussions with the Catholic Education Service regarding the Certificate of Catholic Practice, this updated advice is being sent to all schools for the 2017-2018 admissions round.....The only measure of an applicant's practice is the provision of the Certificate of Practice. All other references to practice must be removed from the admission arrangements."

23. The bulletin says that it is for schools to decide whether to include an element of priority based on practice. For schools that do so choose, it requests them to:

"Re-word any 'practising Catholic' criterion to read 'A Catholic child with a Certificate of Catholic Practice.....Delete the definition of 'practising Catholic' from your admission arrangements.....Insert the following definition: 'Certificate of Catholic Practice means a certificate given by the family's parish priest....in the form laid down by the Bishops' Conference of England and Wales'"

24. However, the sample admission arrangements for a secondary school posted on the diocesan website put these changes into effect, and assume that all such schools will choose to use religious practice to give priority within their admission arrangements. The diocesan schools' bulletin of September 2015 which I also found on its website, says in relation to the CCP that *"All primary schools **must** use this form with immediate effect (for 2016 entry). All secondary schools **must** use this form for 2017 entry"*. It could not be clearer it seems to me that not only is there general guidance to schools from the diocese which is within the scope of paragraph 1.38 in spite of what it has told me, but that this guidance appears highly directive, as I shall illustrate below. The diocese has also itself referred at other times to the guidance which it has issued, and I have no doubt that I may consider the guidance which the diocese has provided of the Code's provisions relating to such guidance.

25. This directive approach in diocesan guidance is in line with the view expressed to me on behalf of the Catholic Education Service at the meeting with the parties, and in a written note sent to me subsequently, that it is for the relevant religious authority to lay down what any measure of religious practice used for the purposes of giving priority within a school's admission arrangements should be. This view is based on the belief that what paragraph 1.9i of the Code says, and what Cobb J has had to say about religious activities, applies to this matter concerning religious practice and authorises specification of

the means for its demonstration. The view taken is that attendance at Mass is a religious activity for the purposes of paragraph 1.9i and that it is therefore for the religious authority to specify how participation in this activity is to be assessed and by whom. The note sent to me after my meeting by the Director of the CES has the following to say:

“How is a school to determine whether or not a person is a practising Catholic in a way which is consistent with the Code, including what is ‘laid out’ by the Religious Authority (School Admissions Code, paragraph 1.9i)?

• *It asks for evidence from the relevant authority external to the school. The relevant authority in any particular case is the body that is competent to determine the question in hand. In the case of the question whether someone is a practising Catholic, only the authorities of the Catholic Church are competent to determine this matter, not any statutory body (such as an admission authority, local authority or appeal panel).”*

In the London Oratory case, Cobb J stated at paragraphs 90-91 that:

“Para. 1.38 and para 1.9(i) of the Admissions Code address different issues; whereas the former (which concerns faith-based oversubscription criteria generally) permits the schools admission authority to depart from the Diocesan Guidance (as I find, only for clear and proper reason), the latter (which prohibits preferences being given to candidates on account of their hobbies or activities, save for faith-based activities of the candidates or parents who are applying to faith-based schools) does not.”

“I..... conclude that the phrase “laid out” means specifically ‘laid out’ in schools admissions guidance published by the religious authority – ie ‘specifically provided for in or authorised by’ such guidance.”

26. My understanding of this judgement as it concerns paragraph 1.9i is that an admission authority may only use an activity which has been laid out for the purpose of giving preference in admission arrangements by the religious body, but that it goes no further than that. Cobb J has said that if something is a religious activity, it may be used in admission arrangements only if the relevant body says it may be so used. But there is nothing in the judgement that extends this right of censure on the use of an activity by the religious body to a right to say how an activity which may be used will be taken into account. To say so, as the diocese and the CES do, is to misread the judgement, in my view.

27. I have set out above my conclusions on the view that has been expressed to me that paragraph 1.9i of the Code supports the specification by a religious authority of how a religious activity authorised by it is to be taken into account by the admission authority for a school. I will now consider each of the further issues which are related to the use of the CCP by the college as a consequence of this approach.

28. The diocese has provided me with copies of its letters to the college dated 2 February 2016 in which it issued its guidance concerning the arrangements for the two schools for September 2017. In each case, the diocese advised the college to delete the existing definition of 'Practising Catholic' and to replace it with the following definition of the CCP:

"Certificate of Catholic Practice means a certificate given by the family's parish priest (or priest in charge of the church where the family practises) in the form laid down by the Bishop's Conference of England and Wales."

29. The college was also advised in these letters to insert into each set of arrangements the paragraph:

"Certificate of Catholic Practice: Applicants applying under criteria 2,3,4 and 5 must submit a Certificate of Catholic Practice (CCP) by the closing date. This form is available from the school or from the diocesan website. Parents should fill in the top part of the form with their details and then take the form to their parish priest (or the priest at the parish where they normally worship) for signature.... The priest will only sign this form if he knows you and agrees that you are a practising Catholic family."

30. The diocese has written to me saying:

"The Diocese, as the Religious Authority, has issued guidance to its schools which lays out that, where schools give priority to practising Catholics, the production of a Certificate of Practice from the appropriate priest is conclusive proof that the person is a practising Catholic. Admission authorities are not permitted to use any other test."

31. It says that when the college does this: *"they are complying with the guidance from their religious authority in accordance with paragraphs 1.38 and 1.9i of the Code."*

32. I have set out above my view that, on the assumption that religious practice can be seen as a religious activity to which paragraph 1.9i of the Code applies, the specification of how this is taken into account by the admission authority is not authorised by this part of the Code.

33. Paragraph 1.38 of the Code states:

*"Admission authorities for schools designated as having a religious character **must** have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based admission arrangements, to the extent that the guidance complies with the mandatory provisions and guidelines of this Code. They must also consult the person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated."*

34. So the requirement to have regard to advice from the faith body is in respect of *"constructing faith-based admission arrangements"* and the next sentence of paragraph 1.38 places a requirement on admission

authorities to “consult” with the religious body when deciding how “membership and practice of the faith is to be demonstrated”, which is to say much the same thing as “have regard to” guidance on this matter. I do not believe that it is possible to separate what is said about religious practice in paragraph 1.38 from the context of that paragraph as a whole and therefore from the requirement to have regard to the advice of the religious body, or from the duty to have regard to that advice being conditional upon its compliance with the Code.

35. My understanding of paragraph 90 of Cobb J’s judgement in the London Oratory case is that paragraph 1.38 does not permit a religious authority to specify how an admission authority may take practice of the faith into account, since the judgement makes it clear that guidance on this matter may be departed from legitimately (albeit not lightly) if the admission authority has clear and proper reasons for doing so. Nevertheless, in its response to the objection the diocese has said that “*it is the priest alone who makes the decision as to whether or not a person is a Catholic and/or a practising Catholic*”, and that “*the bishop has delegated this duty to his priests*” citing paragraph 1.38 of the Code in support of this arrangement. However, I am clear that paragraph 1.38 says the religious body must be consulted before the school decides how membership or practice is to be demonstrated by applicants, not before it decides whether it has been demonstrated in individual cases (my emphasis) and I reject the view of the diocese that paragraph 1.38 sanctions individual decisions relating to admission oversubscription criteria which are taken by a body outside the school. My view is that paragraph 1.38 establishes that the admission authority must decide how practice is to be demonstrated in consultation with the faith body in order that it may then itself apply that definition without further reference on a case-by-case basis to that body. The admission authority must consult the religious body when setting the criteria that will apply, but has no power to delegate any decision on the application of its oversubscription criteria to other individuals who are not themselves the admission authority, a subject to which I shall return.
36. The phrase which the diocese did not include when citing paragraph 1.38 to me was “*to the extent that the guidance complies with the statutory provisions of this Code*” and yet its inclusion is fundamental to an understanding of how the paragraph 1.38 can be read.
37. The diocese has explained its reasons for wishing to establish a means which allows schools to give priority in their admission arrangements to practising Catholics and at the same time to allow individual extenuating circumstances to be accommodated in the award of that status. These are understandable aims, but the question which I must consider is whether the means by which the college, as guided by the diocese, has chosen to fulfil them is a lawful one. Understandable aims do not diminish the obligation for admission arrangements to comply with the Code. The provisions which are relevant include:

paragraph 14, which says:

*“...admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated”;*

paragraph 1.8, which says:

*“Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation”;*
and

paragraph 1.37, which says:

*“Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.”*

38. Instead of there being clear criteria for being given priority on the grounds of religious practice, the college’s admission arrangements for both schools give priority to those in possession of a CCP, the issue of which is in the gift of an applicant’s parish priest. There is no easy way for any parent to know in advance that they will be able to fulfil the oversubscription criteria under which such priority is afforded. Even those parents who know, because they are ‘practising Catholics’ *“that Canon Law requires that they attend Mass on a weekly basis from at least 7 years of age”* (to use the diocese’s words) and who attend Mass in accordance with those requirements cannot be certain that they will be “granted” (the term used in a letter to me from the diocese concerning one of the other schools) a CCP. The arrangements do not make any reference to this being the case, and a meeting with the parish priest is still required at least in some cases, (although in all cases according to that same letter) before a CCP is issued.

39. At the point of reading the admission arrangements, no parent will know for certain whether or not they will be given a CCP. Such a parent may have attended Mass every week for many years, or they may be a recent convert to Catholicism or a person with extenuating circumstance that have prevented such attendance, but on reading the school’s admission arrangements they would both be in the same position of not knowing whether they would be given priority on the grounds that they are a practising Catholic should they apply for a place at either school. In my view it is clear that this means that the arrangements do not meet the explicit and statutory requirements of paragraph 1.37 of the Code, and I uphold the objection to them which has been made on these grounds.

40. I have explained above the link which exists between the guidance which the college has received and the arrangements determined by it for the schools. It is clear to me that the guidance from the diocese does not comply with statutory provisions of the Code, and so an

admission authority is relieved from the duty to have regard to that part of the advice for which that is the case, under paragraph 1.38 of the Code. Even if paragraph 1.9i applies, on the reading that practice is religious activity, any set of arrangements must comply with the other provisions of the Code in order to be lawful.

41. The diocese and the CES have also stated their view that it is lawful for an admission authority to give priority to those who are in possession of a CCP without defining what is meant by the term “practising Catholic” since this latter matter is a “*separate, but related question of what a person needs to do to become a practising Catholic*” which “*is not a matter for school admission arrangements*”. The analogy is drawn with the making of a professional medical judgement that a child has exceptional medical needs where a school would accept that judgement without being part of the judgement itself. However, the issue of a CCP cannot reasonably be compared to a professional medical judgement about medical needs, which exist independently. The guidance to priests makes clear by contrast that the definition of “practising Catholic” within it is “*for the purposes of (the CCP) only and for no other purpose.*” In any case, there are specific provisions as to what is acceptable concerning faith-based admission arrangements which cannot be so easily put to one side. The Code says how faith-based criteria are to come about and to what requirements they must conform. A comparison with means for giving priority on medical grounds has no effect on these, and I reject the notion which has been put to me.

42. Further, the college, echoing the comments of the diocese concerning the objections made to the admission arrangements of other schools, has told me that:

“To state that a policy must include frequency and duration of attendance is directly contrary to equalities legislation. The Code of Canon Law makes provision allowing a priest to absolve a family who cannot attend Mass as regularly as they would like because of family illness or other grave reason. It would not be right to discriminate against a family in this situation. Equally a child from a family that does not practice, but is taken to Mass every Sunday by a grandparent or sibling must not be discriminated against. These things cannot and may not be carried out by a school or a local authority and it is only the priest in communication with his parishioner who can make these decisions.”

43. That is, the college (and the diocese elsewhere) say that a clear statement of frequency and duration of religious practice in admission arrangements would by virtue of its inflexibility offend against equalities legislation. Neither has explained this assertion in terms of any of the protected characteristics listed in the Equality Act 2010 and it is difficult to see what these might be, with the exception of disability. Even if it were to be established that prescribing levels of frequency and duration of religious practice in admission arrangements were indirectly discriminatory against disabled persons or the children of disabled persons, as to which I have seen no

evidence, it is likely that this could be justified by the need to have clear objective and transparent oversubscription criteria. I do not consider that equalities legislation has any bearing on the matters I have to decide.

44. The diocesan Bishop is the relevant person whom the college must consult in this case, and the diocese says he has authorised parish priests to make case-by-case decision about practice on his behalf. It would clearly be impractical for him to make every decision that is required within the diocese, since a decision is required for every Catholic family seeking priority on the grounds that they are practising Catholics. The bishop has provided parish priests with guidance on the making of those decisions, as the diocese tells me *“to ensure consistency as far as possible”*. I have been provided with a copy of that guidance by the diocese. It says that there should be a single objective test of Catholic Practice and that this is whether the child comes from a practising Catholic family. It then immediately states clearly that:

“It is for a priest to make the judgement whether a child comes from a practising Catholic family.”

45. If a judgement has to be exercised as to whether a family is practising, it seems to me that this is not an objective measure, and so neither is the test of Catholic Practice. The guidance does say that: *“for the purposes of the Certificate of Catholic Practice, a person is a practising Catholic if they observe the Church’s precept of attending Mass on Sundays and holidays of obligation”*. The guidance then, however, goes on to discuss circumstances under which the CCP may also be granted which involve ascertaining Mass attendance on *“most Sundays”*, *“for a substantial period of time”*, with neither term quantified. It also says that *“Sometimes, unusually, a different pattern of practice may be judged by the priest to be equivalent”*, but that *“priests should enquire very carefully into the circumstances where the pattern of practice has not continued over several years.”* Again, *“several years”* receives no definition or explanation and it is clear that there is no single objective definition of the term ‘practising Catholic’ anywhere in the guidance. It seems to me entirely plausible, indeed almost inevitable, that different parish priests will apply slightly different standards when deciding whether a family should be issued with a CCP given all these uncertainties, potentially affecting admissions to the same school. This will be true for any school to which this approach applies, including the two St Richard Reynold’s schools. I consider this does not meet the requirements of reasonableness, clarity, objectivity and procedural fairness for the college’s admission arrangements for both schools in paragraph 14 and 1.8 of the Code.

46. Decisions about which children are admitted to the schools require, indeed depend on, judgements made by individuals which are not accessible to scrutiny or verification. I consider that it is of great concern that this should be the case, since any system which

introduces the potential for patronage of any kind is open to abuse.

47. The diocese has also said that:

- a. the CCP itself is not part of the college's admission arrangements, but the property of the Bishop's Conference of England and Wales;
- b. the Bishop's guidance to priests on their completion of the CCP is similarly not part of the college's admission arrangements, so much so that schools generally are not made aware of its contents; and
- c. neither the form nor the guidance to priests are therefore necessarily included in consultations carried out by the admission authority prior to its determination of its arrangements.

48. I shall now address these further issues.

The admission arrangements

49. The diocese has stated that the CCP is not part of the college's admission arrangements and so does not need to be published or consulted on as part of those arrangements. Instead it is published on the diocese's own website and the diocese says that "*The Certificate of Catholic Practice is a document that belongs to the Conference of Bishops of England and Wales. There is no point in sending it out to consultation as it cannot be altered or amended in any way*".

50. The note provided to me by the governor of one of the schools who was present at the meeting and who is also the Director of the CES says that the process for establishing evidence about religious practice used by a school in its admission arrangements is not part of those arrangements themselves. The situation, it says, is analogous to that for establishing membership of a faith or of exceptional medical needs. The note refers me to section 88(2) of the Act which says: "*...admission arrangements, in relation to a school, means the arrangements for the admission of pupils to the school, including the school's admission policy.*"

51. The diocese has written to me saying that the definition of admission arrangement in footnote 4 to the Code, which is: "*the overall procedure, practices, and supplementary information used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered.*" cannot enlarge the scope of that contained within the Act, and that any conflict between the two must be resolved in favour of that contained within the statute. The CES and the diocese imply that their view that the CCP is not part of the admission arrangements of the college, but rather, and in accordance with the definition of admission arrangements given in the Act, simply evidence used in their

application, conflicts with the definition in the Code.

52. My view is that the definition of admission arrangements in the Code does not act to provide a definition wider than that in the statute, but is merely clarificatory in its effect. In any case, Section 84 of the Act obliges the governing body of a school to act in accordance with the relevant provisions of the Code in force from time to time when exercising their function as an admission authority. The CCP exists only for the purposes of school admissions. It is plainly and unarguably a device or means used to determine whether a place is to be offered, just as the PRF was. It is clear that the CCP is a part of the arrangements which fall under this definition and so the college must include it as part of its admission arrangements. It is different to a baptismal or medical certificate in that these are evidence that a child meets a particular oversubscription criterion. In the admission arrangements which the college has determined, being able to obtain a CCP acts as an oversubscription criterion in itself.
53. For the same reasons it is also the case in my view that the guidance issued to priests forms part of the admission arrangements of the college, since parents would need to read it to be able to assess their prospect of obtaining a CCP, and since its purpose is to act in a way that regulates or determines whether a place is offered, notwithstanding the fact that it would not be capable of doing so objectively, as I have said.
54. While this is of secondary importance given my view about the employment of the CCP in the form in which it is used by the college in the first place, nevertheless, both the CCP itself and the guidance to priests should be published as part of its admission arrangements and form part of any consultation about those arrangements. The college did not carry out a consultation prior to determining its 2017 arrangements, saying that *“any changes to the previous year were purely to reflect changes in terminology or to add clarity only.”* I have set out why I do not consider that the introduction of the use of the CCP can be described in such terms, since it is itself part of the admission arrangements. Paragraph 1.42 of the Code requires admission authorities to consult if proposing to make changes to their arrangements and the college has failed to do so in respect of both schools.

Priority to those admitted to ‘open’ places at the primary school

55. The college’s initial response to the second part of the objection was to agree that what was stated was unclear, and that it would amend the arrangements for the secondary school to state that priority would be given in a future year to children from the primary school who had been admitted to an ‘open’ place there as first priority following the admission of looked after or previously looked after Catholic children.
56. The objector then pointed to the requirement of paragraph 1.37 that if priority for admission to a faith school is given to children not of the

faith, looked after and previously looked after children not of the faith must be given higher priority than other children not of the faith. Since most children from 'open' places would be non-Catholics, this provision would be breached by what the college was now saying was meant by its arrangements.

57. However, the college confirmed that it had not varied its arrangements at this point and so had not introduced this change into them. That being the case, the objector's new concern did not constitute a further objection to admission arrangements which had been determined by the college. Nevertheless, the college again conceded that it could not give the priority it intended to 'open' place children from the primary school without also giving first priority overall to all looked after and previously looked after children, Catholic and non-Catholic alike, and that it would do so in time for the first year in which there could be admissions from the primary school.

58. The college subsequently provided me with revised admission arrangements for September 2017 for both schools and evidence that these had been determined by the college. In the revised arrangements for the secondary school, no mention was made of a priority to be given in a future year to children from the primary school. However, as originally determined and objected to, the arrangements did so and were unclear, failing to meet the requirement of paragraph 14 of the Code. I uphold this part of the objection. The arrangements do now conform in this regard and the school need take no further action.

Other matters

59. The college has not commented directly on the other matters concerning its arrangements which I have raised, saying that the diocese would do so.

Concerning the secondary school and the primary school

60. The diocese has assured me that the criterion giving priority to those of "other faiths" for both schools is "*intended to be inclusive*" and that it "*knows of no example ofany applicant claiming to be a member of another faith and not being placed in this category*". The arrangements for both schools, as originally determined and in their revised form, do not state which faiths are given priority for admission, only that a member of such a religion is "a member of a non-Christian religion". However, it is for the admission authority and not the diocese to say how it would view applications against its oversubscription criteria, and so I have nothing which leads me to believe that the college would itself defer to the view of any parent who claimed faith membership in order to secure priority for admission. It seems to me that the arrangements determined by the college for both schools are unclear as a result. They therefore fail to meet the requirement of paragraph 14 of the Code concerning their clarity, of paragraph 1.8 concerning the clarity of oversubscription criteria and of 1.37 of the

Code because it is not easy for parents to see how this faith-based oversubscription criterion would be reasonably satisfied.

61. The diocese has agreed that the SIF for both schools should not be completed by all applicants. The college's revised arrangements make this clear, but those originally determined for both schools did not do so and were not clear, and failed to comply with paragraph 14 of the Code. However, this point has been addressed and the college need take no further action in this regard.
62. I have also considered whether it is lawful in the context of the prohibition concerning interviews for the admission arrangements of the college to involve parents meeting their parish priest as part of their decision-making process as to whether or not to issue a CCP. I have therefore sought the comments of the parties on this point.
63. The college has expressed itself content that the comments of the diocese on this matter should stand also as its response. The arrangements as originally determined by the College for both the primary and secondary school say that parents should *"take the Certificate of Catholic Practice"* to their parish priest for signature. The revised arrangements say simply that the CCP may be obtained from the priest. Diocesan guidance to priests concerning these encounters with parents says that *"priests should enquire very carefully into the circumstances where the pattern of practice has not continued over several years"*. My reading of the arrangements in conjunction with this guidance leads me to believe that the intention is for there to be a meeting involving a dialogue between parent and priest, at least in some cases, and I have put this to the parties.
64. The diocese has responded by saying that neither the arrangements nor the CCP itself refer to a meeting and that *"so far as we and the school are aware such meetings do not take place"*. It accepts that the enquiry by the priest *"could, of course, include a meeting with parents"* but that the statement in the diocesan guidance should be seen in the context of the *"judgement"* to be made by the priest (to which I have referred earlier), the statement in the guidance that he (the priest) *"should have enough information to allow him to build up a complete picture of the family and its circumstances in order to exercise that judgement"* and that the guidance says that *"The test for Catholic practice....is susceptible to proof by reasonable evidence based on observation."* It points to the test given for priests in the guidance (set out earlier in this determination) being based on Mass attendance and therefore *"capable of being observed objectively"* and the use in the guidance of the phrase *"by their own observation or other evidence"* concerning how a priest might be expected to make that assessment. It accepts that the guidance does refer to a meeting with parents, also involving the previous parish priest, in the case of a priest new to a parish but says that this is *"surprising"* and that it will raise this point with the CES and suggest to the Bishops' Conference that it be removed.

65. The diocese has also impressed upon me as "*the crucial point*" and also "*the key point*" that the diocesan guidance to priests is not a public document, but is internal to the Church and so its contents would not be known to school governors in their role as admission authorities. The diocese takes the view that, since admission authorities will not know the process attached to the granting of a CCP, they cannot be held to account even if that process involves interviews since they could not be said to be "requiring" or "authorising" any interview with an applicant. It says the guidance to priests is "*of a different order to the Certificate*", which I take to mean that it is not subject to the same considerations, for some reason. It certainly says the guidance to priests is not part of the school admission arrangements and perhaps that is what is meant.
66. Nevertheless, I have previously set out why I do consider the diocesan guidance to priests to be part of the college's arrangements, and so do not accept that what it says cannot be laid at the feet of admission authorities which have given it currency by relying on the CCP in their admission arrangements. I shall now look at the other points made to me by the diocese in turn. My concern is to come to a view as to whether meetings which could take the form of interviews are taking place, or are likely to take place, as a result of the use by the college of the CCP and the means by which parents obtain it.
67. The diocese tells me that it and the college are not aware that there have been such meetings, but equally they do not say that there have not been any. This is the first year in which the CCP has been employed, and the deadline for making applications for secondary school places was 31 October 2016 and that for primary school places will be 15 January 2017. So at the time of the diocese writing to me it is probably unlikely that any evidence of any meetings would have been available. It seems to me that the diocesan guidance to priests does expect an objective assessment to be made that may not necessitate any meeting so far as the frequency of Mass attendance is concerned, but that this is far less clearly so concerning the length of practice, which it is also necessary for the priest to be satisfied about before issuing a CCP. I had pointed this out to the parties, and the diocese has not allayed my concerns. Having referred to its own view as to the status of the guidance to priests, the diocese has in its response said: "*Even under the guidance, it would be at the discretion of the parish priest as to whether a meeting is held and in most cases this would not be necessary*".
68. In other words, the guidance to priests does not rule out priests' holding meetings and in some cases suggests that they take place. The diocese does not rule out the possibility of meetings and implies that in some cases they would be necessary. Even if admission authorities cannot be said to have direct knowledge of meetings which could take the form of an interview being involved, it is they who are the admission authority, and they who have decided to give priority to children who have a CCP over those who do not. The wording of the Act prohibits interviews if they are taken into account "to any extent" in

determining admissions to schools. It is clear that the possession of a CCP has the effect of determining which children are admitted to the college and which not, and it is clear that the process for obtaining a CCP will involve, in some cases at least, meetings between priests and parents that may have the effect of interviews.

69. My view is therefore that the college's arrangements for both schools breach the prohibition on interviews in section 88A(1) of the Act, a prohibition repeated in the Code in paragraph 1.9m).

Concerning the secondary school only

70. The diocese wishes me to accept its view that it is possible for an admission authority to make a statement in its admission arrangements about how it intends in a future year to give priority for admission at the school but yet for any such a statement not have to conform with what the Code says about admission arrangements. It takes this stance by citing Regulation 13(2) of the Regulations which sets out requirements for consultation about admission arrangements and says that:

“consultation must relate to the arrangements (including any supplementary form) which the authority propose to determine as the admission arrangements for the school for the particular academic year.”

71. The diocese says that the school's arrangements for September 2017 do not give priority in September 2017 to children who have attended the primary school and so do not have to name it as a feeder school. I take a different view. The arrangements determined for September 2017 say that:

“it is the expectation that children attending St Richard Reynolds Catholic Primary School holding an open place at the school will have top priority.....This criterion is expected to apply to the first cohort of primary children applying in Year 6 for places in Year 7 for September 2019 and to each subsequent cohort.”

72. Of course, the college has not yet determined admission arrangements for the secondary school for September 2019 (or indeed for September 2020, the date referred to in the college's most recent letter to me, which I believe to be the correct date on which children first admitted to the Year R at the primary school in September 2013 could be admitted). Neither may it do so, as the diocese has pointed out to me, since admission arrangements must be determined annually. However, the college has determined admission arrangements for September 2017 and it is these with which I am concerned. They make as clear a statement as it is possible to make concerning future admissions which, as the diocese tells me *“was simply to assure parents that those children currently with open places in the primary school will be offered places in the High School for September 2020”*. It is precisely my concern that the arrangements are the relevant and current ones affecting all those who read them, not only those applying for a place

at the secondary school in September 2017. The statement about priority for children attending a particular primary school forms part of the secondary school's admission arrangements, the definition of which was discussed earlier in this determination. As I have explained, the college has removed the reference to this priority in its most recently determined arrangements. The arrangements do now conform in this regard and the school need take no further action. However, as originally determined, the secondary school's arrangements for 2017 refer to priority being given to children who are currently attending a particular primary school and in my view this made the arrangements unclear.

Concerning the primary school only

73. The arrangements, both in their original form and as re-determined by the school, say that there are 20 Foundation places and 10 Open places. The diocese has stated that this complies with what the Code requires because there is nothing to prevent a school from defining more than one set of places and for the stated oversubscription criteria for those places to apply to them. It believes that neither paragraph 1.2 of the Code, which says: "*As part of determining their admission arrangements, all admission authorities **must** set an admission number for each 'relevant age group.'*" nor paragraph 1.6 which says: "*The admission authority for the school **must** set out in their arrangements the criteria against which places will be allocated at the school when there are more applications than places and the order in which the criteria will be applied.*" prevents arrangements which do this from being compliant.
74. For each set of places, the arrangements state a priority order (as described previously) in which they are allocated "*whenever there are more applications than the number of places available*". However, a school may only use oversubscription criteria when there are more applications for places than the total available as defined by the admission number for the year group (that is to say, in the case of this primary school more than 30 applicants for the 30 places available). This is made abundantly clear in the Code, for example in the definition of "oversubscription" which it gives as: "*Where a school has a higher number of applicants than the school's published admission number.*" Similarly, paragraph 1.36 makes it plain that the requirement of oversubscription against the admission number is of critical importance in the case of a faith school in particular, since it says: "*Schools designated by the Secretary of State as having a religious charactermay use faith-based oversubscription criteria and allocate places by reference to them where the school is oversubscribed*".
75. So if 29 children applied for a place at the primary school it could not use any faith-based criteria and must admit all these children, and this is also plainly stated in paragraph 1.36. The arrangements for the school do not say that this would be the case, and so in my view fail to comply with what is set out in paragraph 1.36.

76. Foundation and Open places may only be designated in a situation of overall oversubscription. They are therefore oversubscription criteria themselves, but the arrangements do not say which of the two is applied first to the applications made for places at the school, as paragraph 1.6 of the Code says they must. The reason for the Code saying this is that there are practical consequences for the admission process if this is not clear. In the case of the school, for example, both “groups of places” that is, oversubscription criteria, give priority to looked after and previously looked after children not of the Catholic faith. It is possible as a result to imagine scenarios in which different children will be allocated the 30 available places if the order in which the criteria are applied is different. By failing to state this order, the arrangements breach paragraph 1.6 of the Code.
77. The arrangements also do not state what happens to residual places if all of those in one of the two groups are not used, which of course may happen under conditions of overall oversubscription. As set out, the arrangements also give the impression that applications are made only to one of the two groups of places, but of course parents apply for a place at the school. A parent with an unsatisfied application even though they were eligible to be given priority for one of the groups of places may be allocated a place within the other group based on the way priority for those places is determined, but only if their application is also under consideration when these places are allocated. An example in this case where this could happen but for which the effect of the admission arrangements as set out is not clear, would be a baptised Catholic who did not possess a CCP but who lived near to the school.
78. For all these reasons, I consider that the arrangements are unclear, and breach paragraph 14 of the Code. The school’s admission number acts in the arrangements only to define the total of the two defined sets of places, each of which is then treated independently. In my view this fails to conform with what the Code requires when an admission authority determines an admission number for a year group and so fails to conform with what paragraph 1.2 of the Code requires.
79. I should make clear, however, that there is nothing to prevent a school from giving priority, if it is oversubscribed, for some of the available places but not for the others on a given stated basis by including an appropriately worded oversubscription criterion in its arrangements. So, a school with a religious character such as this could for example give priority for some of its places only without reference to faith matters (that is, to have what this school calls open places) without breaching what the Code sets out. It need only state that at a particular point in the application of all the oversubscription criteria to the applications for places at the school priority would be given in respect of a stated number of places on such a basis. It can, of course, similarly give priority for the balance of its places on the basis of faith-based criteria.
80. When the college made a re-determination of the primary school’s

arrangements, it included a statement concerning part-time attendance of children below compulsory school age under a separate heading. However, this simply repeated the statement in the arrangements as originally determined, saying the parents could “request” part-time attendance for their child. Paragraph 2.16c) of the Code requires admission arrangements to make a clear statement that part-time attendance is available as a right to reception year children prior to them reaching compulsory school age. This can only be achieved in my view if any reference to a parent making a request is avoided. As originally determined, and in their revised form, the arrangements state only that part-time attendance can be requested, and so fail to meet the requirement of the Code.

Summary of Findings

81. I have explained above why I have concluded that the college’s admission arrangements for both schools do not meet the requirement that parents can look at them and understand easily how places will be allocated. It is not possible for any reader to know whether or not they would be given the Certificate of Catholic Practice which is used by the college to give priority to some applications. As a result I have upheld the objection that they do not meet the requirements of paragraph 1.37 of the Code.
82. The college has followed diocesan guidance in the construction of this part of its admission arrangements, and I have said why it is relieved of the duty to have regard to this guidance as a result of the latter’s failure to be compliant with statutory provisions within the Code. I have also explained why I am of the view that there is no other provision within the Code which sanctions specification by the school’s religious body of the form in which a religious activity which it wishes to take into account is to be demonstrated. The Code makes specific provision for the establishment of any faith-based oversubscription criteria to be used by a school with a religious character in conjunction with its religious authority and these cannot be put to one side by the diocese or the school. It is the duty of the admission authority to construct its admission arrangements and in doing so to comply with the law and the Code. As part of this duty it must also consult prior to determining arrangements containing changes it is proposing to make. The college failed to do so prior to the determination of its arrangements for 2017 and is in breach of paragraph 1.42 of the Code.
83. I have also upheld the second part of the objection that the admission arrangements were unclear concerning the stated intention to give priority for admission to the secondary school to children who had attended the primary school, in breach of paragraph 14 of the Code.
84. Also, as originally determined by the school, the arrangements for both schools fail to comply with paragraphs 14, 1.8, 1.37, and 1.9m) of the Code, those of the secondary school with paragraph 1.9b) and those of the primary school with paragraphs 1.2, 1.6, 1.36 and 2.16c)

and I have set out the ways in which they do so and my reasons for coming to this view about them.

Determination

85. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined for September 2017 by the governing body of St Richard Reynolds Catholic College, Richmond-upon-Thames for St Richard Reynolds Catholic Primary School and St Richard Reynolds Catholic High School.

86. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

87. By virtue of section 88K(2), the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

Dated: 2 November 2016

Signed:

Schools Adjudicator: Dr Bryan Slater