



DETERMINATION

Case reference:	ADA3257
Objector:	A parent
Admission Authority:	The Governing Body of St John's (Thornham) Church of England Voluntary Aided Primary School, Manchester
Date of decision:	19 September 2017

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2018 determined by the governing body for St John's (Thornham) Church of England Voluntary Aided Primary 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 this 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 for September 2018 (the arrangements) for St John's (Thornham) Church of England Voluntary Aided Primary School (the school), for boys and girls aged four to 11 years in Middleton, Manchester. The objection is that the oversubscription criteria do not include a priority for children of other faiths.**
- 2. The local authority for the area in which the school is located is Rochdale Borough Council. The local authority, the school's governing body, and the objector are parties to this objection. The Church of England Diocese of Manchester (the diocese) is also a party to the objection by virtue of its role as the designated religious authority for the school.**

Jurisdiction

- 3. The arrangements were determined under section 88C of the Act by the**

school's governing body, which is the admission authority for this voluntary aided school. The arrangements were determined on 20 March 2017, which is after the deadline specified in paragraph 1.46 of the Code.

4. The objector submitted her initial objection to the arrangements published on the school's website on 13 March and provided clarification on 15 March 2017. However, the arrangements on the school's website at that time were for 2017, the previous admission year. The objector resubmitted her objection on 23 March 2017, following the determination and publication of the 2018 arrangements.
5. The objector has asked to have her 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 a 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

6. In considering this matter I have had regard to all relevant legislation and the Code.
7. The documents I have considered in reaching my decision include:
 - a. the objector's form of objection dated 13 May 2017, and subsequent correspondence;
 - b. the school's initial response dated 17 March 2017, subsequent correspondence and supporting documents including copies of the minutes of meetings of the governing body and its committees;
 - c. the response to the objection from the diocese dated 27 March 2017, supporting documents and further correspondence;
 - d. the local authority's response to the objection on 21 March 2017, supporting documents and further correspondence; and
 - e. the determined arrangements published on the school's website.
8. I arranged a meeting at the school (the meeting) with representatives of the school, the local authority, and the diocese at the school on 19 May 2017. The objector was not in attendance as she had requested to remain anonymous. I have considered the representations made to me at the meeting and the documentation and correspondence submitted before and after the meeting.

The Objection

9. The objector expressed concern that the arrangements do not include a priority for children of other faiths in the oversubscription criteria. The objector explained further that *"most faith schools state on their admissions criteria that they do accept a small percentage of children from other faiths. St Johns do*

not. This means that families of other religions won't be offered a place at the school even though they live close to the school. I feel that St Johns should add to their admission criteria that they welcome children from other faiths to apply to the school."

Other Matters

10. When I considered the arrangements as a whole, there were other matters which appeared to me not to meet the requirements relating to admissions (relevant paragraph of the Code in brackets):
 - i. the deadline by which any waiting list must be maintained (2.14);
 - ii. the inclusion of the information about appeals in the same section as information about the admission of children below compulsory school age could make the arrangements unclear and confusing to parents (14);
 - iii. the admission of children below compulsory school age and deferred entry to school (2.16);
 - iv. the admission of children, including summer born, outside their normal age group (2.17);
 - v. the method by which the distance from home to the school will be measured (1.13);
 - vi. the inclusion of service families in the oversubscription criteria (2.18);
 - vii. the statement with respect to fraudulent applications refers to a catchment area but the school does not have one (14);
 - viii. the reference to children with a statement of special educational needs (1.6); and
 - ix. the reference to children in public care (1.7).

Background

11. St John's (Thornham) is a voluntary aided Church of England primary school in Middleton, Manchester. It has a published admission number (PAN) of 12.
12. The arrangements were determined on 20 March 2017 by the governing body's Admissions Committee. In the meeting on 19 May 2017, the school stated that this committee had the relevant delegated authority to determine the arrangements, and that the full governing body had ratified the decision made by the Admissions Committee at its meeting on 16 May 2017.
13. In the meeting, the school also apologised for the late determination of the arrangements, and explained that the governing body had been undertaking a lengthy recruitment process to appoint a new headteacher for September 2017, and as a result, the governing body had missed the deadline specified in paragraph 1.46 of the Code.
14. The arrangements make clear that if there are more applications than the 12 places available, then after the admission of children with a statement of

special educational needs which names the school, the remaining places will be allocated according to the priority order of the oversubscription criteria which I have summarised below:

1. looked after and previously looked after children (children in public care);
2. children with exceptional medical needs or exceptional welfare considerations;
3. children with an older sibling at the school at the time of admission;
4. 25% of the admissions number based on proximity to the school;
5. baptised or dedicated children whose parent/guardian/carer is in regular attendance at St John's Church, Thornham;
6. baptised or dedicated children whose parent/guardian/carer live in the parish of St John's Church, Thornham, *"and are in regular attendance at another church which is a member of Churches together in Britain and Ireland, or a local Churches together organisation"*;
7. *"children of service families of UK service personnel are subject to frequent movement within the UK and from abroad, often at relatively short notice. A school place can be allocated in advance of the confirmed posting, even if there is uncertainty about the exact future address"*; and
8. any other children decided by proximity to the school.

Where there are more applications for the available places within a "category", then priority for admission will be given to children who live closest to the school. Distance will be calculated *"using the Rochdale Local Authority's system, which is based on the walking distance between the front door of the child's family home (normal place of residence i.e. the place where the child sleeps for the majority of the week) to the main gate of the school."*

The final tie breaker will be by random allocation, by drawing lots, supervised by someone independent of the school.

15. The local authority confirmed in its email of 21 March 2017 that for admission in September 2017 there were 26 on-time applications, 16 of which have expressed a first preference of St John's Thornham.

Consideration of Case

16. The objector was concerned that the arrangements do not include a priority for children of other faiths in the oversubscription criteria. The objector said on the objection form that *"the school accepts members of St John Thornham Church... other Christian churches... this school does not accept other faiths to the school... nowhere on the admissions criteria do they mention any other faiths being admitted to the school."*
17. The school responded by email on 22 March 2017, making clear that *"the school has been designated as a school with a religious character (Church of England)... the Code allows such schools to use faith-based oversubscription*

criteria and allocate places by reference to faith when the school is oversubscribed.”

18. The school explained that *“The governing body has had regard to guidance from Manchester Diocesan Board of Education when constructing its oversubscription criteria. For example, the governing body gives highest priority to looked after and previously looked after children, regardless of faith; includes regular attendance at public worship as an element of its faith-based criteria; and gives some priority to the wider Christian community. The first four oversubscription criteria used by the school, and the last two, make no reference to faith.”* The school added that it is *“affiliated to St John’s Thornham Church and therefore **one** (5) of the statements on our oversubscription criteria is attendance”* at this church.
19. The diocese notes in its letter of 27 March 2017 that *“of the eight oversubscription criteria used by the school, the first four and the last two make no reference to faith. Criterion five and six do refer to faith.”*
20. The diocese notes that criterion five refers to *“baptised or dedicated children whose parent/guardian/carer is in regular attendance at St John’s Church, Thornham”* and points out that *“regular attendance”* is defined in the Notes section of the arrangements. I note that criterion five and the definition follows the diocesan guidance.
21. Criterion six in the oversubscription criteria relates to *“baptised or dedicated children whose parent/guardian/carer live in the parish of St John’s Church, Thornham, and are in regular attendance at another church which is a member of Churches together in Britain and Ireland, or a local Churches together organisation.”* I note that this criterion also follows the diocesan guidance.
22. The diocese makes clear that paragraph 1.36 of the Code that *“schools designated as having a religious character may use faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed.”*
23. The local authority said in its email of 21 March 2017 that *“the first 4 criteria do not refer to any faith. They clearly prioritise on the basis of need of the child whether that is emotional, physical or practical. It is the 5th criterion that first defines any priority based on faith; children of other faiths can therefore be prioritised above those who are members of the Church’s community where there is a need.”*
24. The school is designated by the Secretary of State as having a religious character (commonly known as a faith school). Paragraph 1.36 of the Code makes clear that, as with other maintained schools, faith 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.”* Therefore, if the school were to be undersubscribed, then every applicant would be offered a place at the school, no matter whether of the faith, another faith, or none.

25. The Code at paragraph 1.6 requires that the governing body *“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.”* Where the school is oversubscribed, the governing body is permitted by paragraph 1.36 to use faith-based oversubscription criteria and to allocate places by reference to faith. Paragraph 1.10 makes clear that it is for the governing body, as the admission authority, *“to decide which criteria would be most suitable to the school according to the local circumstances.”*
26. Where the school is oversubscribed, the governing body has decided that children of the faith will receive an element of priority for a place at the school. However, this element of priority comes only after all looked after and previously looked after children, those with exceptional medical needs or welfare considerations, siblings of those already at the school, and 25% of the PAN of 12 living closest to the school, without reference to faith.
27. This is a small school with only 12 places available in the Reception year. The governing body is permitted to prioritise applicants on the basis of faith and, in doing so, it has considered carefully the needs of vulnerable children, siblings and local children, irrespective of faith. The last of the eight oversubscription criteria is *“any other children decided by proximity to the school”* which is, again, irrespective of faith. The governing body is not required to specify in the oversubscription criteria a priority for children of faiths other than Christian. I do not uphold this part of the objection.
28. The objector commented in the email which accompanied the objection form that *“the Admissions Code point 1.8 says that oversubscription criteria should be clear, objective, procedurally fair and comply with all relevant legislation, including equalities legislation. Admission authorities must ensure that their arrangements will not disadvantage unfairly either directly or indirectly, a child from a particular social or racial group or a child with disabilities or educational needs.”* The objector suggested that the school is *“indirectly disadvantaging children from other racial groups/ faiths in the area, who would like to apply to the school but feel that if the school was oversubscribed, they would not be considered for entry to the school as St Johns do not mention any other faiths/religious groups in their oversubscription criteria...”* I have taken this concern to be the second part of the objection.
29. The relevant legislation is the Equality Act 2010 (the Equality Act) and discrimination which is against the Equality Act is unlawful. Section 10 of the Equality Act prohibits discrimination on the grounds of religion or belief and section 85 applies this prohibition to schools concerning admissions. However, section 89 applies exceptions set out in Schedule 11, and paragraph 5 of that schedule disapplies Section 85 *“so far as relating to religion or belief”* to a school designated by the Secretary of State as having a religious character.
30. Being designated by the Secretary of State as having a religious character, it is lawful, therefore, for the governing body of the school to give priority in the oversubscription criteria on the basis of the faith for which it is designated, provided it does so in accordance with admissions law and the provisions of

the Code. Paragraph 1.38 of the Code requires that the governing body *“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.”* As demonstrated in the paragraphs above, the school has had due regard to the diocesan guidance when constructing the faith-based oversubscription criteria.

31. The school is permitted to give priority in the oversubscription criteria on the basis of faith, and has done so in accordance with admissions law and the provisions of the Code. There is nothing in admissions law or the Code that requires this faith school to include a priority for *“other faiths/religious groups”* in its oversubscription criteria, and the absence of such a priority is not a breach of equalities law.
32. I note that the objector included *“other racial groups”* in her assertion that the school indirectly disadvantages *“children from other racial groups/ faiths in the area.”*
33. Indirect discrimination arises where a policy, practice or rule is applied to all equally but has the effect of disadvantaging people with a characteristic protected under the Equality Act, and race is one such protected characteristic. It seems to me that the objector considers that the oversubscription criteria, which apply to all applicants in the same way, have a worse effect on children from *“other”* racial groups compared to children who are not members of *“other”* racial groups. The objector, however, has not specified the *“other”* racial groups which may have been disadvantaged nor has any evidence been provided to support the assertion that the oversubscription criteria disadvantage these *“other”* racial groups. Consequently, I am unable to pursue this matter any further. I do not uphold this second part of the objection.

Other matters

34. In reviewing the arrangements, I noticed that there were other matters that appeared not to comply with the requirements relating to admission arrangements, so I have used my powers under section 88I of the Act to review the arrangements as a whole. These other matters were brought to the attention of the school during correspondence, and were discussed in detail during the meeting at the school, and I am grateful to the school, the local authority and the diocese for the openness of those discussions.
35. In the meeting, the aspects below which appeared to contravene the Code were discussed. As these aspects could be amended immediately by the school as a permitted variation under paragraph 3.6 of the Code, I offered the school the opportunity to amend the arrangements to comply with the Code, and agreed to note the progress in my determination.
36. The Code at paragraph 2.14 requires that an *“admission authority must maintain a clear, fair and objective waiting list until at least 31 December of each school year of admission”* but the arrangements state that the *“waiting list will only operate until the end of the autumn term that a child starts school.”* I

consider that the reference to “*autumn term*” is rather vague as that term will end each year before Christmas and hence well before 31 December each year. For example, the school publishes on its website that the autumn term for the current academic year ends on 20 December 2017. The arrangements have been amended appropriately to make clear that the waiting list will be maintained until 31 December of the relevant admission year.

37. The arrangements published at the time of the objection contained information about a parent’s right of appeal in the same section as some of the information related to the admission of children below compulsory school age. This was likely to be confusing for parents, contrary to paragraph 14 of the Code which requires that the “*criteria used to decide the allocation of school places are ... clear...*” The arrangements have been amended so that the two sections are now clearly separate.
38. The published arrangements at the time of the objection did not satisfy the requirements of the Code at paragraph 2.16 because the mandatory information about the admission of children below compulsory school age and deferred entry to school was not provided. The school has now fully addressed this omission in the amended arrangements.
39. The arrangements did not provide the mandatory information required by paragraph 2.17 of the Code regarding the admission of children, including summer born, outside their normal age group. The amended arrangements now include the required information and comply with the Code in this respect.
40. The method by which the distance from home to the school will be measured did not comply with the Code at paragraph 1.13 which requires that “*admission authorities **must** clearly set out how distance from home to the school will be measured...*” The arrangements stated that “*distance between home and school will be calculated using the Rochdale Local Authority’s system...*” but the definition provided in the arrangements did not match that provided by the local authority. The arrangements have now been amended to provide the local authority’s definition which states clearly how distance will be measured.
41. The seventh oversubscription criterion related to the children of service families and paragraph 2.18 of the Code, but it had been inserted erroneously as a result of the school’s misunderstanding an admissions bulletin from the local authority. It has been removed from the amended arrangements.
42. The wording of the statement related to fraudulent applications was not clear, and did not meet the requirements of paragraph 14 of the Code, as it referred to a catchment area which the school does not have. This statement has been suitably rectified in the amended arrangements.
43. In the published arrangements at the time of the objection, the reference to children with a statement of special educational needs did not meet the requirements of paragraph 1.6 of the Code which requires that “*all children whose statement of special educational needs (SEN) or Education, Health and Care (EHC) plan names the school **must** be admitted.*” The relevant statement

in the amended arrangements has been modified but does not yet fully comply with paragraph 1.6 of the Code.

44. The first oversubscription criterion with respect to looked after and previously looked after children contained a reference to "*children in public care*". The wording of the first criterion in the amended arrangements now complies with paragraph 1.7 of the Code.
45. The school, the local authority and the diocese are to be commended in having worked constructively together to amend the arrangements.

Summary of case

46. I have not upheld either part of the objection for the reasons stated in the paragraphs. Accordingly, I do not uphold the objection to the admission arrangements for St John's (Thornham) Church of England Voluntary Aided Primary School for September 2018.
47. Having considered the arrangements as a whole, I found a number of other matters which did not meet the requirements of the Code. The school has amended the arrangements so that all but one of these matters now comply with the Code, but the wording of the reference to children with a statement of special educational requires further revision to comply with paragraph 1.6 of the Code.
48. Paragraph 3.1 of the Code requires the admission authority to revise its arrangements to give effect to the Adjudicator's decision within two months of the date of this determination.

Determination

49. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2018 determined by the governing body for St John's (Thornham) Church of England Voluntary Aided Primary School
50. 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.
51. 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 this determination.

Dated: 19 September 2017

Signed:

Schools Adjudicator: Ms Cecilia Galloway