



## **DETERMINATION**

**Case reference:** ADA3311

**Objector:** Worcestershire County Council

**Admission Authority:** The Governing Body of St Peter's Droitwich Church of England Academy on behalf of Rivers Multi-Academy Trust, Worcestershire

**Date of decision:** 22 September 2017

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2018 determined by the governing body of St. Peter's Droitwich Church of England Academy on behalf of the Rivers Multi-Academy Trust for St. Peter's Droitwich Church of England Academy, Worcestershire which is the admission authority for the school.**

**I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform to 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 Worcestershire County Council, (the objector), about the admission arrangements (the arrangements) for St. Peter's Droitwich Church of England Academy (the school), for entry in September 2018. The school is a primary academy converter school designated as having a religious character. The objection was to one of the school's faith-based over-subscription criterion, and to the fact that there was no statement in relation to the admission of children outside their normal age group, which the objector claimed did not comply with the School Admissions Code (the Code).
2. The local authority for the area in which the school is located is Worcestershire County Council. The local authority is the objector.

Other parties to the objection are the Rivers Church of England Multi-Academy Trust (the trust), the governing body of the school and the diocese of Worcester (the diocese) which is the designated religious authority for the school.

### **Jurisdiction**

3. The terms of the academy agreement between the trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing body of the school on behalf of the trust, which is the admission authority for the school, on that basis. The objector submitted an objection to these determined arrangements on 15 May 2017. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and 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 Code.
5. The documents I have considered in reaching my decision include:
  - a. the objector's form of objection dated 15 May 2017;
  - b. the governing body's response to the objection and supporting documents;
  - c. the comments of the Diocese of Worcester, which is the religious authority for the school;
  - d. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2018;
  - e. maps of the area identifying relevant schools;
  - f. confirmation of when consultation on the arrangements last took place;
  - g. a copy of the determined arrangements for September 2018; and
  - h. a copy of an amended set of admission arrangements for September 2018 sent to me on 27 July 2017.
6. I have also taken account of information received during a meeting I convened on 20 July 2017 at the offices of the diocese. Those attending the meeting were the Deputy Headteacher and Clerk to the Governors for St. Peter's, and representatives from the local authority and the diocese. A representative from the trust was expected but sent apologies shortly before the meeting was due to start.

## The Objection

7. The objection related to the following aspects of the arrangements, which the objector claimed did not conform to the Code. These were:
  - the criterion which applied to other faith communities did not conform to paragraphs 1.37, 1.38 and 14 of the Code; and
  - there was no statement in the arrangements in relation to the admission of children outside their normal age group, which did not conform to paragraph 2.17 of the Code.

## Other Matters

8. In a letter to the parties dated 7 July 2017 I raised a number of other matters which had not been raised in the formal objection, and which did not conform to the Code. They were subsequently discussed at the meeting on 20 July 2017. These matters (with the relevant paragraphs of the Code in brackets) concerned:
  - late applications (14);
  - updating the reference to a Statement of Special Educational Needs (14 and 1.6);
  - the clarity and objectivity of the criterion relating to children from Church of England families and the conformity of that criterion to paragraphs 1.37 and 2.7 of the Code (14, 1.37 and 2.7);
  - the availability of catchment area maps (14);
  - the waiting list (2.14); and
  - deferred entry and part-time attendance in the reception year (2.16).

## Background

9. The school converted to become an academy on 1 September 2016. It is a mixed primary school with an age range of 5 to 9. The published admission number (PAN) is 90. The school has 439 pupils on roll and a Department for Education assessed capacity of 450. A copy of the Rivers Multi-Academy Trust Scheme of Delegation was sent to me on 20 July 2017, which indicates that the governing body has “*full responsibility and control of admissions*”.
10. There were six oversubscription criteria in the arrangements. The arrangements also contained a description of the process, including the closing date for applications, and the procedure for late applications. There were sections on primary residence; measurement of distance; multiple births; appeals; the waiting list; in-year applications and deferred entry. There was also a “*Supplementary Internal Sorting Form*” which I consider to be a supplementary information form (SIF) within the meaning of paragraph 2.14 of the Code. The

oversubscription criteria are summarised below and I have set out parts of criteria three and four as they are the most pertinent to the objection and my consideration of it:

- 1) Looked after and previously looked after children
- 2) Siblings of children at the school
- 3) “**Denominational.** Children whose families are faithful and committed worshippers in a) the churches comprising the Parish of Droitwich Spa; b) any other church of England church, for whom this is the nearest Church of England school; or c) one of the other Christian Congregations in the town of Droitwich Spa that is a member of Churches Together in Droitwich Spa. For the purposes of criterion 3, a letter of support from their parish priest, minister or church leader must accompany the application”
- 4) “**Other Faith Communities.** Children from families where the parent or child is actively involved in the work and worship of a community of any established faith and for whom this is the nearest Church of England school. A letter from the leader or representative of the religious community providing written confirmation must accompany the application.”
- 5) Catchment
- 6) Distance.

### Consideration of Case

11. The diocese has not produced guidance in relation to the faith-based oversubscription criteria used by its schools. In the response to the objection the diocese stated that it did not offer one-size fits all generic guidance, but does offer advice on a school by school basis where it is sought. The trust responded to the objection but did not send a representative to the meeting. It appeared to me that the school had not been helped by either the diocese or the trust in drawing up its arrangements.
12. The objector refers to the oversubscription criterion relating to other established faiths: “**Other Faith Communities.** Children from families where the parent or child is actively involved in the work and worship of a community of any other established faith and for whom this is the nearest Church of England school. A letter from the leader or representative of the religious community providing written confirmation must accompany the application.” The objector states that the terms “work and worship” and “established religious faith” were not defined, and could not be viewed as being easy to understand. It appeared that each element of the term “work and worship” must be fulfilled, yet there was no definition of what either involved. The objector claimed that this aspect of the arrangements did not conform to paragraphs 1.37, 1.38

and 14 of the Code.

13. Paragraphs 1.37 of the Code states: “*Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.*” Paragraph 1.38 states that “*Admission authorities... **must** consult with the body or person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated.*” Paragraph 14 states: “*In drawing up admission arrangements, 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.*”
14. I agree with the objector that, since the terms “*work and worship*” were not defined, and it was not possible to understand their meaning in the absence of definitions, they were unclear. It would not have been easy for parents to work out whether their application would fall to be considered within this faith-based oversubscription criterion. As parents would not be able to work out whether their practice would “*reasonably satisfy*” the faith-based criteria, the arrangements do not conform to paragraph 1.37 of the Code. The term “*work and worship*” – even undefined as it is – connotes taking part in some activity in addition to worship or it would not say work and worship. Paragraph 1.19i of the Code provides that a school may not take account of any activities undertaken by children with the exception of “*religious activities, as laid out by the body or person representing the religion or religious denomination.*” The judgment in *R (on the application of the Governing Body of the London Oratory School) v The Schools Adjudicator (and others)* (17 April 2015) made clear that “*laid out*” meant laid out in guidance on school admissions. In this case, there is no diocesan guidance on these matters so the school cannot take account of religious activities which might fall within “*work*” even if this term were defined, which it is not. I therefore uphold this aspect of the objection.
15. The objector states: “*It is not for the school to determine what constitutes active involvement in another faith, it is for the body or person representing that faith to determine a specific/measurable criteria for ‘active involvement’ in that faith*”. This statement is not in my opinion correct. Paragraph 1.38 of the Code requires that admission authorities **must** consult with the person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated and **must** take account of any guidance issued by that body. However, it remains for the admission authority to determine the admission arrangements for the school, and to decide whether an applicant meets any faith-based oversubscription criteria. This is subject to the requirement in paragraph 1.9i of the Code that schools with a religious character may only take account of religious activities where these have been “*laid out by the body or person representing the religion or religious denomination*”. In this case, the activities were not laid out in guidance issued by the diocese. I therefore do not uphold this aspect of the objection.

16. The objector claimed that there was no clear statement of the school's arrangements for admission of children outside their normal year group, and that this did not conform to paragraph 2.17 of the Code. This states: *"Parents may seek a place for their child outside of their normal age group, for example if the child is gifted and talented or has experienced problems such as ill health. In addition, the parents of a summer born child may choose not to send that child to school until the September following their fifth birthday and may request that they are admitted out of their normal age group – to reception rather than year 1. Admission authorities **must** make clear in their admission arrangements the process for requesting admission outside the normal age group."* Since there was no such statement in the arrangements, this claim is correct and it therefore follows that the arrangements do not conform to paragraph 2.17 of the Code. I therefore uphold this aspect of the objection.
17. I now turn to consideration of the further matters raised by me under section 88I of the Act, and have set out my conclusions below. A number of these matters relate to paragraph 14 of the Code which I have set out above and which requires that arrangements are fair, clear and objective.
18. The section relating to applications received between 16 January 2018 and 28 February 2018 did not make clear the circumstances in which an application would have been treated as being received on time. This made the arrangements unclear and means that they did not conform to paragraph 14 of the Code.
19. The reference to a Statement of Special Educational Needs needed to be updated to include current terminology by referring also to children with an Education, Health and Care (EHC) plan. Paragraph 1.6 of the Code makes clear that children with EHC plans which name the school must be admitted. By not including a reference to such children, the arrangements were unclear in breach of paragraph 14 as well as being in breach of paragraph 1.6.
20. Criterion 3 which concerns the priority given to children from Church of England families was unclear and so failed to conform to paragraph 14 and in addition breached paragraph 1.37 of the Code. I have set out above, in the context of discussing the objection to criterion 4, a number of the Code's requirements as they relate to the use of faith-based arrangements in schools with a religious character and need not repeat those here. In relation to criterion 3, the term *"faithful and committed worshippers"* was not defined, and there was no description of what the *'letter of support'* was meant to contain. This meant that the arrangements were unclear and that parents would not know whether their own practice met the school's understanding of what represented a *"faithful and committed"* worshipper. In addition, the use of a *"letter of support"* with no clear and precise definition of what this was to cover left open the possibility that it might contain factors not mentioned in the arrangements which could have been taken into account in determining admission. In addition to breaching paragraphs 14 and

1.37 this also means that the arrangements failed to conform to paragraph 14 by failing to be objective. Finally, paragraph 2.7 requires that admission authorities “**must allocate places on the basis of their determined arrangements only**” and, as pointed out above, the use of the letter of support introduces the possibility that factors not in the arrangements might be taken into account in the consideration of applications and allocation of places.

21. Criterion 5 stated that details of the catchment area were available from the school.. The catchment area is part of the admission arrangements and must be published as part of those arrangements. The failure to include the catchment area in the published arrangements made them unclear and in breach of paragraph 14 of the Code

22. In the section headed “*Waiting Lists*”, it was stated that the waiting list would be maintained until the last day of the Autumn Term 2018. Paragraph 2.14 of the Code requires that “*the admission authority must maintain a clear, fair and objective waiting list until at least 31 December of each school year of admission*”. The Autumn Term 2018 will end well before 31 December 2018. Therefore, this aspect of the arrangements did not conform to paragraph 2.14 of the Code.

23. The section headed “*Deferred Entry*” stated that applicants wishing to defer taking up a place allocated to them must discuss this with the school. It therefore failed to make clear that, in specified circumstances, parents have a right to defer entry until later in the school year, and for their child to attend part-time up to the point at which the child reaches compulsory school age. This did not conform to paragraph 2.16 of the Code which provides that:

*“Admission authorities **must** provide for the admission of all children in the September following their fourth birthday. The authority must make it clear in their arrangements that, where they have offered a child a place at the school:*

- a. That the child is entitled to a full-time place in the September following their fourth birthday;*
- b. The child’s parents can defer the date their child is admitted to the school until later in the school year but not beyond the point at which they reach compulsory school age and not beyond the beginning of the final term of the school year for which it was made; and*
- c. Where the parents wish, children may attend part-time until later in the school year but not beyond the point at which they reach compulsory school age.” (Paragraph 2.16).*

24. The school has cooperated fully throughout this process. The deputy headteacher and clerk to the governors attended a meeting on 20 July 2017 to discuss the matters raised in the objection and the other matters I raised under section 88I of the Act. The school has worked

hard to produce a proposed set of arrangements which conform to the Code. They deserve full credit for their cooperation and for the speed within which the proposed revisions were made. The further action required is for the governing body formally to vary their determined arrangements in order to adopt the proposed revisions they have sent to me, and for the revised arrangements to be published on the school's website.

### **Summary of Findings**

25. Having considered the arrangements for admission to the school in September 2018 which were referred to me by the objector on 15 May 2017 together with the relevant paragraphs of the Code, my findings are that some of the matters referred to by the objector did not conform to the Code. There is one aspect of the objection which I do not uphold. There are a number of other matters raised by the adjudicator in relation to aspects of the arrangements which also do not conform to the Code. These were shared with the school at the meeting on 20 July 2017. The school acted promptly in sending me a proposed revised set of arrangements which, once they are adopted as the arrangements through the process of variation, will address the breaches of the Code.

### **Determination**

26. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2018 determined by the governing body of St. Peter's Droitwich Church of England Academy on behalf of the Rivers Multi-Academy Trust for St. Peter's Droitwich Church of England Academy, Worcestershire.
27. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform to the requirements relating to admission arrangements.
28. 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: 22 September 2017

Signed

Schools Adjudicator: Dr. Marisa Vallely