



Office of the Schools Adjudicator

Determination

Case reference: ADA3611

Objector: A member of the public

Admission authority: The academy trust (known as the governing board) for St Augustine's Catholic College, Trowbridge, Wiltshire

Date of decision: 14 August 2019

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 2020 determined by the governing board of St Augustine's Catholic College, Wiltshire.

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 member of the public, (the objector), about the admission arrangements (the arrangements) for St Augustine's Catholic College (the school), an academy school designated as having a Catholic religious character for children aged 11-18 for September 2020. The objection is in three parts, the first is to the reference to "received into the Christian church" which the objector believes is unclear, the second part concerns the changed priority for siblings and the third lists what the objector considers to be some drafting errors in the admission arrangements.

2. The local authority (LA) for the area in which the school is located is Wiltshire County Council. The LA is a party to this objection. The school is within the Clifton Diocese (the diocese) and the diocese is a party to the objection as are the academy trust for the school and the objector.

Jurisdiction

3. The terms of the Academy Agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust (which I refer to in this determination as the governing board) on that basis. 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 by providing details of their 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.

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 received on 15 May 2019;
- b) the admission authority's response to the objection and supporting documents;
- c) the comments of the LA on the objection;
- d) the comments of the diocese which is the religious authority for the school;
- e) the LA's composite prospectus for parents seeking admission to schools in the area in September 2019;
- f) an adjudication for another school, published in 2017, ADA3202, which is referred to in the objection;
- g) confirmation of when consultation on the arrangements last took place;
- h) copies of the minutes of the meeting at which the governing board of the school determined the arrangements; and
- i) a copy of the determined arrangements.

The Objection

6. The first part of the objection refers to the phrase "*received into the Christian church*" in the arrangements, which the objector considers makes the arrangements unclear. In note 7 of the arrangements, which is intended to accompany the heading for baptised Christian children, it states: "*where a [baptism] certificate is not available, a statement from a member of the clergy, confirming that the child has been baptised or received into the Catholic or*

Christian Church must be provided". The supplementary information form (SIF) also asks the question, "has the child been baptised or received into the Catholic or Christian Church?"

7. The objector says that this does not comply with paragraphs 1.37 and 14 of the Code. Paragraph 1.37 says "*Admission authorities must ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied*" and paragraph 14 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*".

8. The second part of the objection is that in changing its arrangements from the previous year, the school has not preserved the previous levels of priority for siblings of those children admitted in or prior to 2017. In 2017 St Augustine's admissions policy ranked "*Christian children who will have a brother or sister attending St Augustine's in Yrs 7-11*" higher than the other criteria for (non-Catholic) Christian children but below the criteria relevant to Catholic children. The policy was subsequently changed so that the priority given to baptised Catholic children with a sibling in the school was given higher priority within the oversubscription criteria but the priority for non-Catholic Christian children with a sibling in the school was given a lower priority and placed below the criterion for Christian children attending the feeder schools.

9. The objector says that this does not comply with paragraph 14 of the Code which is quoted above and paragraph 1.8 of the Code which says "*oversubscription criteria must be reasonable, 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 a disability or special educational needs*".

10. The third part of the objection says that there are the following drafting errors in the arrangements:

- The determined admissions policy for 2020/21 states: "*The PAN for Year 7 in 2018/19 is 160*". This should refer to the PAN for Year 7 in 2020/21.
- The determined admissions policy for 2020/21 states: "*APPEALS. Parents whose applications are unsuccessful have the right of appeal by making application to the Clerk to the Governors within 21 days of receiving the letter of refusal. This appeal will be heard independently of the Governing Body.*" The objector points out that the School Admissions Appeals Code states that parents have at least 20 school days in which to appeal.
- "*The footnote for Category 4 should be footnote 3 referring to note 7, not footnote 4 referring to Looked After Children*".

Background

11. The school is a Catholic Secondary Academy within the Diocese of Clifton serving students aged 11-18. It has a published admissions number (PAN) of 160 and is typically oversubscribed.

12. The LA provided the following information about applications including late applications:

	2017	2018	2019
First preference	182	205	200
Second preference	67	68	86
Third preference	59	66	73

13. The oversubscription criteria for 2020/21 are summarised as follows:

1. baptised Catholic looked after children and previously looked after children
2. baptised Catholic children from a feeder primary school. The schools are St Edmund's (Calne), St George's (Warminster), St John's (Trowbridge), St Joseph's (Devizes), St Louis (Frome), St Patrick's (Corsham)
3. baptised Catholic children with a sibling at the school
4. baptised Catholic children from the school's designated area which comprises the following parishes: St Anthony of Padua (Melksham); St Catharine (Frome); St Edmund (Calne); St George (Warminster); The Immaculate Conception (Devizes); St John the Baptist (Trowbridge) including St Bernadette (Westbury), St Thomas More (Bradford on Avon)
5. all other Baptised Catholic children.

The remaining categories are all concerned with children who are not baptised Catholics:

6. looked after children and previously looked after children
7. children of college staff
8. baptised Christian children from a feeder primary school (see list above)
9. baptised Christian children with a sibling at the school
10. baptised Christian children from the school's designated area. The area is defined above

11. all other baptised Christian children

12. children from other faiths

13. all other children.

A map of the parishes in the designated area for the school is available for inspection on its website and hard copies are available on request.

14. The arrangements contain the following note about baptism certificates and this is the subject of the objection.

"Note 7 – Baptism Certificate

In the context of the Admissions Policy, ‘Baptised children’ means those baptised as Catholic or baptised in a Church which is in Communion with the See of Rome or another Christian denomination and who can produce a baptismal certificate or equivalent validation. To be considered in the first round of allocations, the certificate must be submitted by 31 October 2018. Children who have been received into the Catholic Church will be considered in the same way as children who are baptised Catholic and must provide a certificate of reception into the Catholic Church.

Where a certificate is not available, a statement from a member of the clergy, confirming that the child has been baptised or received into the Catholic or Christian Church must be provided."

Consideration of Case

15. There are three parts to this objection and I shall deal with them in turn:

1. Whether the phrase “received into the Christian Church” is clear and in compliance with paragraphs 1.37 of the Code, quoted above, and whether the school has had regard to the guidance from the diocese.
2. Whether the change in the oversubscription criteria to remove priority for siblings is unfair on those children who already have a sibling in the school and in doing so does not comply with paragraphs 14 and 1.8 of the Code which are quoted above. The objector considers that this has an impact on a sibling of children who have been admitted in recent years with a statement of special educational needs or an education and health care plan who seek a place at the school.
3. The typographical or drafting matters in the arrangements set above.

16. I shall first consider the phrase “received into the Christian Church”. The objector comments that without a definition of what it means to be received into the Christian Church

included in the admissions arrangements there is a real risk of applicants not understanding the school's intent, given that there will be a range of different understandings of what being received into the Christian Church means in different denominations. The objector draws attention to a mismatch between the categories used in the supplementary information form (SIF) compared to the arrangements themselves. The objector thinks that "*the school understands being received as referring to a process of converting membership where someone has already received a Christian baptism in a different denomination. On that basis 'or received' already implies a baptism has taken place within a Christian church, so the extra wording is unnecessary.*" The objector suggests that the wording should be amended to read "*baptised or received into the Catholic church; or baptised in the Christian church*".

17. The school responded by setting out its reasons for the use of the phrase and its concerns to ensure that it was being clear in its definitions. It explained that the priority for Catholic children was clearly set out and required baptism or reception into the Catholic Church. It wished to give the next priority to other non-Catholic Christian children and was defining that this meant children who had been baptised or, for those who had not been baptised, received into their respective Church.

18. The diocese made the following comment:

"Because different denominations may have different standards for what they would/would not consider to be a member of their own Church, it can be very difficult to provide a definition of membership that covers all Christian denominations, particularly because not all denominations have infant baptism. Membership of the Catholic Church is via being baptised or 'received' into the Church. Both methods are a formal process that result in the issue of a certificate and so is an easily definable form of membership. However other denominations may or may not have a similar formal process of baptism or of being 'received' into their Church. Other denominations may have more informal memberships and may not use the term 'received'. In view of this, I would say that the definition given in note 7 of the school's policy, would appear not to be compliant with paragraph 1.37 of the Code.

The diocesan guidance document provides much guidance that, as required by Paragraph 1.38 of the Code, schools are required to have regard for and should follow unless they are able to demonstrate that there is a clear and proper reason for departing from it – and this would apply to much of our guidance document. However, for parts of the guidance that the Diocese considers to be only preferable rather than compulsory, the terms 'the Diocese recommends' or 'we recommend' has been deliberately used. It is at the school's discretion, if they follow the recommendations. This was based on advice received from the Catholic Education Service. For the reasons stated above, the Diocese guidance recommended that schools do not include criteria for other denominations or faiths. However, because this was only a recommendation, the school was not required to follow it and so has not breached Paragraph 1.38 of the Code."

19. In the school's response to these comments it recognised there was a possible ambiguity in its arrangements and its use of the phrase referred to by the objector. I have reviewed this matter, and I agree with the diocesan comment about the different ways that denominations may define membership and that the phrase "*received into the Christian Church*" is unclear. It is also unclear as the phrase the Christian Church is itself used in different ways in different parts of the Christian community. I note the comment about having regard to the diocesan advice. Having considered this matter, I uphold the objection about the lack of clarity in the use of this phrase. The Code requires that the arrangements be revised to rectify this matter.

20. The second part of the objection is about whether the change in the oversubscription criteria to reduce the level of priority for certain groups of siblings of existing pupils is unfair on those children who already have a sibling in the school and as a result does not comply with paragraph 14 of the Code which requires arrangements to be "*fair, clear and objective*". The objector is particularly concerned about the families of children who have been admitted to the school in recent years with a statement of special educational needs or an education and health care plan. He argues that for such children it is particularly important that they can be joined by any younger siblings. The objector describes the potential logistical and emotional difficulties that the parents of a child admitted to the school through the education and health care plan process might have if a sibling was not also admitted to the school and instead had to attend a different school. The objector makes reference to an adjudicator determination in 2017 in relation to a different school that concluded that a change in an aspect of the admission arrangements was unfair and that a transitional arrangement was required. The objector also refers to the Public Sector Equality Duty and I return to this matter later.

21. The school responded that nothing in the Code requires that a priority which would have been available to an applicant in a particular year should be preserved for those applying in subsequent years. It points out that any revision of the oversubscription priorities runs the risk of disadvantaging some applicants, while being to the advantage of others. It says "*This is unfortunate, but not unfair. Any other approach would mean that the priorities could never be changed.*"

22. The diocese commented that "*whatever criteria is used, no child is ever guaranteed a place and no parent has the right to expect that their child will be admitted to any particular school. This also applies to all Catholic children applying for a Catholic school. Even if the policy had remained the same, the numbers applying for any school can vary from one year to another and the school may reach its PAN before it reaches those with a sibling link. A sibling link is never a guarantee of a place at any school and particularly so at schools where initial priority is given to those of religious faith and where siblings were only ranked as the 10th criterion.*"

23. I have reviewed the objection and the comments from the school and the diocese and am not persuaded that there is unfairness in the changes made. The LA responded to say that it did not have any comments to add in respect of this objection. It is the case that the priority for baptised Catholic siblings has been promoted in the criteria and the priority

for non-Catholic Christian siblings has been reduced by a category. The school is permitted by the Code to make changes and there is no requirement to build in transition measures. The objector refers to a determination written two years ago for a different school where there was a requirement to make some transitional arrangements. It should be borne in mind that each adjudication case is different and determinations do not set precedents that have to be followed, my determination in this case is based on the information that is pertinent to this case at this time. In this particular case the objector considers that a sibling of a child admitted to the school through an education or health care plan will be disadvantaged. There are several points that could be made about this but the key one is that the education and health care plan process is separate from the main admission process because it is about finding the school that can meet an individual child's particular needs. There is no requirement that siblings of such a child should be found places at the school and I do not think that such siblings are a group that is being particularly disadvantaged or that requires special arrangements to be made. By definition, while one child is at secondary school and his or her sibling is still at primary school they attend different schools so in some respects there is no added disadvantage if they do not gain a place at this school. While I agree with the objector that it is helpful for parents that their children should be able to attend the same schools if that is what is wished I am not persuaded that the desirability of this requires special transitional arrangements or makes arrangements which do not give a high priority to all siblings unlawful. The school makes the point that it is permitted to make changes and by definition, a change will benefit some and disadvantage others. I agree that this is the case.

24. I return now to the Public Sector Equality Duty. The Code states that "*Admission authorities are subject to the Public Sector Equality Duty and therefore must have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity, and foster good relations in relation to persons who share a relevant protected characteristic and persons who do not share it.*" The relevant protected characteristics in relation to admissions include, so far as is relevant here, disability and religion or belief. I understand the objector's view to be that an admission authority must give a high level of priority in admissions to siblings of children with a protected characteristic in order to meet this duty. I do not agree that this is what the Code requires. The school works with and within the formal processes that place children who have special educational needs and education and health care plans in the appropriate school that can meet their particular needs. Giving a high priority to siblings of such children is not a prerequisite of fostering good relations between people with a relevant characteristic and people without that characteristic. Nor can it be reasonably said that not giving high priority to siblings of certain children amounts to a failure to have due regard to the need to eliminate discrimination, harassment and victimisation and to advance equality of opportunity.

25. The third part of the objection is that there are drafting errors, which are set out above, in the arrangements. The school has accepted that this is the case and will rectify these. This part of the objection is upheld.

Summary

26. The objector drew attention to a perceived lack of clarity in the definitions used in the arrangements with the use of the phrase “*received into the Christian Church*”. I have concluded that I uphold the objection on the grounds that there is ambiguity about which groups this provision refers to and how it could be interpreted in different denominations within Christianity making it unclear and therefore not compliant with paragraph 14 of the Code.

27. The second part of the objection concerns the change in priority given to siblings. The objector believes that siblings of a child admitted to the school through an education, health or care plan could be particularly disadvantaged. The school is permitted to make changes and I do not agree that in this case there need to be transitional arrangements as the objector suggests. I have not upheld this aspect of the arrangements.

28. I have upheld the third part of the objection which sets out some drafting errors in the arrangements. The school has agreed that it will rectify these.

29. The Code requires the admission authority to consider its arrangements and make changes to ensure that they comply with the Code. Paragraph 3.1 of the Code requires the admission authority to revise the admissions arrangements within two months of the date of this determination unless an alternative timescale is specified. In this case I am not minded to specify an alternative timescale. I therefore set a deadline of two months from the date of this determination for the admission authority to revise its arrangements.

Determination

30. 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 2020 determined by the governing board of St Augustine's Catholic College, Wiltshire.

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

Dated: 14 August 2019

Signed:

Schools Adjudicator: David Lennard Jones