



Office of
the Schools
Adjudicator

Determination

Case reference: REF3745

Referrer: Tower Hamlets Council on behalf of the Governing Board for Sir John Cass Foundation and Red Coat Church of England Secondary School and Sixth Form

Admission authority: The Governing Board for Sir John Cass Foundation and Red Coat Church of England Secondary School and Sixth Form, Tower Hamlets, London

Date of decision: 7 August 2020

Determination

I have considered the admission arrangements for September 2021 for Sir John Cass Foundation and Red Coat Church of England Secondary School and Sixth Form, Tower Hamlets in accordance with section 88I (5) of the School Standards and Framework Act 1998 and find that in relation to the nature of the banding testing arrangements, the arrangements do not conform with the requirements relating to admissions. I have also found that there are other matters which do not conform with the requirements relating to admissions 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), a referral has been made to the adjudicator by Tower Hamlets Council (the local authority, the referrer), about the admission arrangements (the arrangements) for Sir John Cass Foundation and Red Coat Church of England Secondary School and Sixth Form (the school). I have decided to use the power conferred under this section of the Act to consider whether the arrangements conform with the requirements relating to admission arrangements. The referral relates to the arrangements for banding tests.

Jurisdiction

2. These arrangements were determined under section 88C of the Act by the school's governing board which is the admission authority for the school. The referrer submitted their referral to these determined arrangements on 19 May 2020 in the form of a request that the arrangements which the referrer believed to have been determined for the school be varied. I am satisfied the referral has been properly referred to me in accordance with section 88I of the Act and it is within my jurisdiction.

Procedure

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

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

- a. the referral from Tower Hamlets Council on behalf of the school dated 19 May 2020 and supporting documents;
- b. the determined arrangements for September 2021 and evidence of their determination on 30 April 2019;
- c. correspondence with the school concerning the above.

Background

5. The referral formed part of the local authority's request that the admission arrangements for Year 7 for eight maintained secondary schools in the borough of Tower Hamlets which use banding be varied. The reason for the request was to change the test arrangements which normally use a test provided by the National foundation for Educational Research (NFER) and replace this by teacher assessment in order to overcome the difficulty caused by the COVID-19 pandemic, which has prevented primary schools from administering the NFER test. The school is one of two Voluntary Aided schools on behalf of which the referrer made this request, although each is its own admission authority. The local authority was under the impression that the school had determined its arrangements in February 2020 and supplied me with a copy of what it believed these arrangements to be.

6. However, the school has subsequently provided me with evidence that its governing board did not determine its admission arrangements for September 2021 until 30 April 2020, which is after the deadline for such determination to take place. These arrangements were different to those which had been supplied to me by the local authority and, unlike those determined for the seven other maintained secondary schools referred to above, these did not contain a description of the banding testing arrangements. There has therefore been no need to vary them so that the arrangements set out the revised procedure. However, the absence of any description of the testing arrangements means

that the arrangements may be insufficiently clear, and therefore in breach of what the Code requires.

The Arrangements

7. The arrangements which were determined by the school's governing board contain the following reference to the banding test arrangements:

"Sir John Cass Foundation and Redcoat School has adopted the Local Authority's policy of banding to ensure that it takes an even balance of children in different ability ranges".

However, the arrangements do not give any description for parents concerning the nature of what the banding test arrangements are, or where to find this out.

8. The arrangements also contain the statement:

"A child with an EHCP needs (sic) naming Sir John Cass Foundation and Redcoat School will be offered a place unless there are particular reasons why the school is unable to do so".

9. Elsewhere, the arrangements provide that 40 of the available 208 places in Year 7 are offered to pupils *"whose families are faithful and regular worshippers in a recognised Christian Church"*.

10. However, the arrangements provide no definition of the phrase *"faithful and regular."*

Consideration of Case

11. Paragraph 1.27 of the Code says that:

*"The admission authority **must** publish the admission requirements and the process for such banding decisions, including details of any tests that will be used to band children according to ability."*

The school's arrangements fail to contain any such detail, or any information about where it may be found, for example in material published by the local authority. The arrangements therefore fail to comply with what paragraph 1.27 of the Code requires.

Other matters

12. Paragraph 1.6 of the Code says:

*"All children whose statement of special educational need (SEN) or Education, Health and Care (EHC) plan names the school **must** be admitted."*

There can, in my view, be no *"particular reasons"* for a school not to admit a child under these circumstances as the school's determined arrangements state, since the requirement

to admit a child if the school is named in the way set out in paragraph 1.6 of the Code is absolute. I have asked the school for its comment on my concern that the statement in the arrangements does not satisfy what the Code sets out and it has stated its willingness to rectify the current statement. When the school's governing board redetermines the arrangements in response to this determination, it will need to ensure that the statement which deals with these admissions does not contain any qualification of what paragraph 1.6 of the Code says. However, as determined, the arrangements are in breach of the Code.

13. Paragraph 1.37 of the Code says:

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

The arrangements provide no explanation of how parents qualify as being "faithful and regular" worshippers, and go on to say that:

"Written evidence of applicant's (sic) commitment to their place of worship (In the form of a clerical reference) will be required at the time of their application."

Neither the arrangements, nor the school's supplementary information form, gives any explanation of what is required for a clerical reference to be provided.

I have asked the school for its comments on my concern that the absence of any definition of "faithful and regular" meant that the arrangements did not comply with what paragraph 1.37 requires, and it has replied in the following terms:

"By the term faithful and regular, we consider this to be twice a month for a period of two years. We fully understand this should be more explicit in our policy and under your guidance will adjust it accordingly."

The Diocese of London had been made aware of these concerns.

14. Paragraph 1.38 of the Code says:

*"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 with the body or person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated."*

15. The school's representative body is the relevant authority for the Diocese of London, the Board for Schools, which issued guidance on this matter to schools in December 2017. This guidance says:

*"**Defining commitment.** There are several ways of defining commitment to a church: the most common is to use attendance at worship. Whether governors*

use “regular worshipper”, “committed member”, or another term, it must be clear to applicants what is meant. ‘Regular’ is too imprecise. Governors will need to state whether they are looking for weekly or monthly (or whatever) attendance.The LDBS considers that attendance once a month or alternatively twice a month for two years is an appropriate threshold.”

Had the school’s definitions fallen outside the guidance which has clearly been provided by the Diocese, the school would have needed to have a compelling justification for this being the case. However, the definition is in line with Diocesan guidance, and so in order to be compliant with everything the Code requires concerning the definition of faith commitment, the school need only include a statement in its arrangements to the effect of the statement provided to me.

However, as they were determined, the arrangements fail to comply with what paragraph 1.37 requires.

16. The recent COVID-19 pandemic has meant that the definitions of frequency and duration of practice provided in school admission arrangements are, for admissions in September 2021, impractical. I am aware that the Diocese of London has therefore sought variations to determined admission arrangements which contain faith-based oversubscription criteria in order to accommodate these effects.

17. The school has referred to this situation in its most recent communication with me, as follows:

“We would be grateful if the adjudicator would consider the following statement being included as part of the adjudication:

In the event that during the period specified for attendance at worship the church has been closed for public worship and has not provided alternative premises for that worship, the requirements of these admissions arrangements in relation to attendance will only apply to the period when the or alternative premises have been available for public worship.”

18. As I have mentioned above, the school will need to revise its admission arrangements in order to comply with this determination. In doing so, it will need to ensure that a clear statement of the period for which attendance at worship is necessary in order to be given priority for admission under the determined oversubscription criteria in normal circumstances, in the way I have described above. The additional statement the school now proposes in order to accommodate the consequences of the COVID-19 will then be meaningful if added to the revised arrangements. However, in as much as this additional statement is now necessary to render the arrangements clear for parents in line with paragraph 3.17 of the Code, this does not need any action on my part. The school will be able to add the statement set out above when it revises its arrangements.

Summary of Findings

19. The arrangements fail to satisfy what the Code requires:
- (i) in paragraph 1.27 because they do not give details of the banding tests;
 - (ii) in paragraph 1.6 because they say that some children whose EHC plan names the school may not be admitted, and
 - (iii) in paragraph 1.37 because they do not say what frequency and duration of religious practice is required to be considered for the designated Foundation places.

Determination

20. I have considered the admission arrangements for September 2021 for Sir John Cass Foundation and Red Coat Church of England Secondary School and Sixth Form, Tower Hamlets in accordance with section 88I (5) of the School Standards and Framework Act 1998 and find that in relation to the nature of the banding testing arrangements, the arrangements do not conform with the requirements relating to admissions. I have also found that there are other matters which do not conform with the requirements relating to admissions in the ways set out in this determination.

21. 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: 7 August 2020

Signed:

Schools Adjudicator: Dr Bryan Slater