



Office of
the Schools
Adjudicator

Determination

Case reference: REF3755

Admission authority: The Holy Cross School for The Holy Cross School, Kingston upon Thames

Date of decision: 26 April 2021

Determination

I have considered the admission arrangements for September 2022 for The Holy Cross School, Kingston upon Thames in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the matters set out in this determination, the arrangements do not conform with the requirements.

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 and jurisdiction

1. I was sent a document headed "The Holy Cross School Year 7-11 Admissions Policy For entry into Year 7 in Year 2022-23" by a parent objecting under section 88H(2) of the School Standards and Framework Act 1998 (the Act) to the admission arrangements for another school in the same local authority. I was concerned that the admission arrangements as set out for The Holy Cross School (the school) in that document did not, or may not, conform with the School Admissions Code (the Code). In response to my enquiries, I was told by the school's governing board that the admission arrangements for 2022 had not yet been determined. I expressed to the governing board my concerns about the document which I had seen and asked that once the arrangements had been determined they were sent to me.

2. The admission authority for the school is the academy trust which has the same name as the school. The governing board, on behalf of the trust, determined the admission arrangements for 2022 (the arrangements) on 11 February 2021 and sent me a copy. 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 under section 88C of the Act by the school's governing board which is the admission authority for the school on that basis.

3. When I read the determined arrangements it appeared to me that some aspects of them did not, or may not conform with the Code and I decided to use my power under section 88I(5) of the Act to consider the arrangements.

4. The parties to the case are the school, Kingston upon Thames Council (the local authority) and the Archdiocese of Southwark (the archdiocese) which is the religious authority for the school.

Procedure

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

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

- a) a copy of the determined arrangements;
- b) copies of the minutes of the meeting of the governing board at which the arrangements were determined;
- c) comments from governing board on the matters raised;
- d) comments from the archdiocese on the matters raised;
- e) guidance to schools on school admissions published on the archdiocese's website; and
- f) comments from the local authority on the matters raised.

The matters of concern

7. In the part of the arrangements concerning admission to Year 7, my concerns are set out below in the order they appeared in the arrangements.

- a) The first oversubscription criterion gave priority to looked after or previously looked after girls in the care of Catholic families even if the child is not Catholic. Including some non-Catholic girls and not others in the first criterion may not conform with paragraph 1.37 of the Code.
- b) The second oversubscription criterion may not be clear about the period of time that attendance at Mass is required or how those requirements may be met during times that churches have been closed because of Covid-19 restrictions. Paragraph 1.8 of the Code requires that oversubscription criteria are clear, and paragraph 1.37 requires that parents can easily understand how faith-based criteria can be satisfied.

- c) In the seventh oversubscription criterion, it may not be clear which other faiths are given priority.
 - d) Priority was given within each of the oversubscription criteria to a girl “who is currently eligible to receive Free School Meals”. Paragraph 1.9f of the Code prohibits giving priority “according to the occupational, marital, financial or educational status of parents applying.”
 - e) The arrangements said: “All applicants must complete the Supplementary Information Form”. This is not the case, the only form which must be completed to apply for the school is the local authority’s common application form (CAF).
 - f) The arrangements said that if applying under criterion 4 (registered in the Catechumenate) a priest’s reference form is required to support the frequency of Mass attendance. The arrangements did not explain how this will be taken into consideration in this criterion. Paragraph 14 of the Code requires that arrangements are clear.
 - g) The arrangements did not appear to be clear about the admission of girls with an Education, Health and Care Plan (EHCP), wrongly referred to as an Education and Health Care Plan.
 - h) The requirements for supplementary information forms (SIFs) are set out in paragraph 2.4 of the Code. There are a number of ways in which the three SIFs used by the school appeared not to meet those requirements.
8. I had further concerns about the arrangements for admission to the sixth form:
- i) The arrangements appeared to be unclear about the published admission number (PAN).
 - j) Paragraph 1.9m of the Code prohibits interviewing children or parents although it allows a meeting to discuss options and academic entry requirements for particular courses, but this meeting cannot form part of the decision making process on whether to offer a place. It is not clear how a meeting described in the arrangements met this requirement.
 - k) Much of the arrangements for admission to the sixth form appear to be the same as those for admission to Year 7. In a number of places these do not make sense in the context of sixth form admissions. The Code requires that admission arrangements are clear.

Background

9. The school became an academy in 2012 under a single academy trust. It is a school with a Roman Catholic religious character for girls aged 11 to 18 in New Malden. The Department for Education database lists 17 other state-funded secondary schools within a

three-mile radius of the school. These are across five local authorities and include other Catholic schools, other single sex schools, selective schools and coeducational schools.

10. The school is usually oversubscribed and has a PAN for Year 7 of 150. The oversubscription criteria can be summarised as:

1. Catholic looked after or previously looked after girls
2. Baptised Catholic girls
3. Other looked after or previously looked after girls
4. Girls in the Catechumenate
5. Girls who are members of Eastern Christian Churches
6. Girls who are members of other Christian denominations
7. Girls who are members of other faiths
8. Other girls.

11. Within the second criterion, priority is given based on how many years the girl has attended Mass. Within each stated period of Mass attendance, further priority is assigned based on frequency of attendance. Within these priorities and all the other criteria priority is assigned in the following order:

- A. Sisters of girls who will be roll in September 2022
- B. Girls with “strong” medical, pastoral or social needs
- C. Girls eligible to receive free school meals
- D. Girls whose parents are members of staff
- E. Girls living nearest to the school.

12. The school’s website lists how places have been allocated in the last four years against the above criteria. In only one of those years have places been offered below the fifth criterion (that is members of Eastern Christian Churches) with between 132 and 147 of the 150 places being offered to baptised Catholics in those years.

Consideration of Case

The first oversubscription criterion

13. The first oversubscription criterion was “Catholic Looked After or previously Looked After girls (or those in the care of Catholic families).” Catholic is defined in the arrangements as:

“Catholic means members of the Ordinariate and the Latin and Oriental Rite Churches that are in union with the Bishop of Rome’. In the context of school admissions, Catholic children are defined as children who are baptised or received into the Catholic Church, (children baptised or received into the Eastern Churches in union with Rome and children of members of the Ordinariate [sic].”

The definition does not include “children in the care of Catholic families”. In passing I note that the definition does not make it clear whether children of members of the Ordinariate must be baptised or received to be a Catholic as is required in all other cases.

14. Paragraph 1.37 of the Code says:

“Admission authorities for schools designated with a religious character may give priority to all looked after children and previously looked after children whether or not of the faith, but they **must** give priority to looked after children and previously looked after children of the faith before other children of the faith. Where any element of priority is given in relation to children not of the faith they **must** give priority to looked after children and previously looked after children not of the faith above other children not of the faith.”

This means that either all looked after or previously looked after children must be given first priority regardless of faith or looked after or previously looked after children who meet the definition of being a Catholic must be given first priority with other looked after or previously looked after children given highest priority among non-Catholics. A looked after or previously looked after non-Catholic child who is “in the care of a Catholic family” does not meet the definition of Catholic given in the arrangements.

15. I have noted that the archdiocese’s guidance says: “Governing bodies should also include in the first priority children looked after who are not Catholic but are in the care of Catholic families.” The archdiocese said that this part of the arrangements needed “tightening and clarification” suggesting that “it would include a looked after child who is part of a Catholic family where a letter from a priest demonstrates that the child would have been baptised or received into the Church if it were not for their status as a looked after child.” This would not meet the requirements of the Code because clarification would be needed on what constitutes a “Catholic family”, and previously looked after children are not included alongside looked after children. Furthermore, the decision to declare a child a Catholic because they might have been baptised in other circumstances is not objective. The Code requires in paragraph 14 that arrangements are objective.

16. The local authority agreed with my view that “children in the care of Catholic families” should not be included in the first oversubscription criterion and the school has proposed removing the words “or those in the care of Catholic families”. This change would bring this part of the arrangements into line with the Code.

Length of practice

17. Paragraph 1.8 of the Code requires that oversubscription criteria are clear and paragraph 1.37 of the Code also says “Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.” The second oversubscription criterion consists of three sub-criteria and reads:

- i. Girls who are baptised Catholics who have attended Mass for 3 years or more.
- ii. Girls who are baptised Catholics who have attended Mass for less than 1-3 years.
- iii. Girls who are baptised Catholics who have attended Mass for less than 1 year.”

It did not appear clear to me which three-year or other period was being referred to. For example, would mass attendance during the calendar years of 2014, 2015 and 2016 meet the requirement for admission in 2022? Also, “less than 1-3 years” is the same as “less than 1 year”. Furthermore, it was not clear how this requirement could be satisfied in the period when churches have been closed due to Covid-19.

18. The school agreed that wording in this criterion did not make sense as it had “been worded incorrectly”. It referred to archdiocesan guidance that practice should be measured over the three years prior to application. Both the archdiocese and the local authority agreed that the period for which religious practice should be sustained was not clear. In my view if a three-year, one-year or other period is stated the arrangements must be clear which years they are for example, the three years before 31 October 2021 would be a reasonable period to define as it is the deadline for applying for places in 2022 and entirely clear.

19. Regarding clarity about how practice requirements could be met while churches were closed due to Covid-19, the archdiocese referred to the obligation to attend mass being suspended by the Bishop’s Council. The school said that this was covered on one of the SIFs which it uses called the “Priest Reference Form”. In very small print at the bottom of each page of this form can be found the following words:

“GUIDANCE REGARDING EVIDENCE OF CATHOLIC PRACTICE FOLLOWING THE CORONAVIRUS OUTBREAK

On the advice of the Education Commission of the Archdiocese of Southwark, the governing body of The Holy Cross School has agreed the following statement in order to clarify how its faith-based oversubscription criteria will be interpreted whilst churches are closed or attendance at church is not possible due to COVID 19. This statement has been shared widely with parishes in order to ensure that determinations made by parish priests concerning regular practice of the faith are being made on a consistent basis:

The suspension of the obligation to attend Sunday Mass was announced on 18th March 2020 by Bishops' Conference of England and Wales. If a parent/carer attended Mass at a certain frequency at a particular parish (or parishes) prior to 18th March 2020 then they will be considered to have attended Mass in that parish (or

parishes) at the same frequency since that time. This will remain the case until the Sunday obligation is reintroduced by the Bishops.”

20. I find that presenting this important information in such small print on a supplementary form is not clear. A matter as significant as this should be included in the main body of the arrangements alongside the precise statement of the period in which qualifying practice is required. Even if this statement was given the necessary prominence, it is not consistent with the arrangements because the requirement in the arrangements is for the girl to attend Mass, while the statement refers to the parent or carer’s attendance at Mass.

Other faiths

21. The seventh oversubscription criterion reads “Girls who are members of other faiths and whose membership is supported by their religious leader.” It may not be clear what constitutes another faith. The local authority also considered further explanation of this criterion was necessary. The school said it asked for proof of membership of the faith completed by the leader of the faith at the “designated place of worship” but was unsure of how to list other faiths. This is a matter where guidance from the archdiocese may be helpful.

22. In its comments on this matter the archdiocese said “I am unsure how this can be clarified further. In order to satisfy the Office of the Schools Adjudicator, would the school need to have a specific list of faiths and if so would they be free to make any selection for this list?” This appears to me to be a strange comment when the archdiocese’s guidance provides the following definition:

““Children of other faiths” means children who are members of a religious community that does not fall within the definition of ‘other Christian denominations’ and which falls within the definition of a religion for the purposes of charity law. The Charities Act 2011 defines religion to include: ‘A religion which involves belief in more than one God’, and ‘A religion which does not involve belief in a God’.

Case law has identified certain characteristics which describe the meaning of religion for the purposes of charity law, which are characterised by a belief in a supreme being and an expression of belief in that supreme being through worship.”

23. It is not for me to say which faiths should be listed in the arrangements, but if members of other faiths are given priority for places, then those faiths must either be clearly listed or otherwise defined in the arrangements. In this case, an obvious approach might to use the definition provided by the archdiocese.

Free School Meals

24. The arrangements say that within each of the eight criteria priority is given to girls “currently eligible to receive free school meals”. Eligibility for free school meals is a measure

of a parent's financial status. Paragraph 1.9f of the Code says that admission authorities must not:

“give priority to children according to the occupational, marital, financial or educational status of parents applying. The exceptions to this are children of staff at the school and those eligible for the early years pupil premium, the pupil premium and the service premium who may be prioritised in the arrangements in accordance with paragraphs 1.39 – 1.39B”

Paragraph 1.39 A says:

“Admission authorities may give priority in their oversubscription criteria to children eligible for the early years pupil premium, the pupil premium and also children eligible for the service premium. Admission authorities should clearly define in the arrangements the categories of eligible premium recipients to be prioritised.”

25. The final sentence of paragraph 1.39A could be read as requiring admission authorities to be clear which of the three premiums recipients are prioritised. However, the DfE advice “Using the pupil premium, service premium or early years pupil premium in admission arrangements” published in December 2014 says “School can ... limit priority to specific eligible sub-groups. For example, restrict the admissions priority to children currently in receipt of Free School Meals”. Therefore I find that this part of the arrangements does conform with the Code.

The Catechumenate

26. The arrangements said that if applying under criterion 4 (registered in the Catechumenate) a priest's reference form is required to support the frequency of Mass attendance. The arrangements did not explain how this will be taken into consideration when deciding priority for admission. Paragraph 14 of the Code requires that arrangements are clear.

27. The school agreed with this point and proposed to rely on a letter from a priest confirming that the girl was enrolled in the Catechumenate to demonstrate that this criterion was met.

Education, Health and Care Plans

28. The arrangements include a section about EHCPs. It says: “The admission of students with an Education and Health Care Plan (EHCP) is dealt with by a completely separate procedure.” For a child whose EHCP does not name the school this is not the case. Their parent must submit a common application form (CAF) in the same way as for other children and they will be given priority for places according to the oversubscription criteria. It is only when the EHCP names the school that the child must be admitted without reference to the oversubscription criteria. This was recognised by the parties. Paragraph 14 of the Code requires that arrangements are clear and the school will need to revise this part of the arrangements accordingly.

Supplementary Information Forms

29. The arrangements say on the third page “All applicants must complete the Supplementary Information Form” and “If applying under criterion 8, you must complete the Supplementary Information Form”. This is not the case. Any application made on a local authority’s CAF must be considered by the school and be prioritised on the basis of the information contained in it. For example, a non-Catholic looked after girl would not need to complete a SIF to be given priority under the third criterion.

30. Where it is necessary for the school to collect additional information to assign a girl the correct level of priority, paragraph 2.4 of the Code sets out the requirements:

“In some cases, admission authorities will need to ask for supplementary information forms in order to process applications. If they do so, they **must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability. They **must not** ask, or use supplementary forms that ask, for any of the information prohibited by paragraph 1.9 above or for:

- a) any personal details about parents and families, such as maiden names, criminal convictions, marital, or financial status (including marriage certificates);
- b) the first language of parents or the child;
- c) details about parents’ or a child’s disabilities, special educational needs or medical conditions;
- d) parents to agree to support the ethos of the school in a practical way;
- e) both parents to sign the form, or for the child to complete the form.”

31. The school uses three SIFs. The first is called the “Supplementary Information Form”. It says: “Please note if not received, the Governors will not be able to apply their admission criteria and your application will be considered under criterion 8.” Without a SIF, governors would be able to apply the oversubscription criteria, based on the information on the CAF. I have pointed out above the example of how a non-Catholic looked after girl could be given the correct priority on the basis of the CAF alone.

32. This form begins by asking for the girl’s name, address and date of birth. This information is clearly necessary to match the SIF with the CAF. It then asks for the name of the parent or carer, their contact number and email address. I asked the school why this was requested as it seems to be unnecessary to make decisions about oversubscription criteria. The school responded by saying that it receives applications on the SIF many months before the CAF is received through local authorities and that sometimes they receive a SIF without a CAF and need to contact parents to remind them of the process. The school also said it needed the information to contact parents if the form was incomplete or the information is incorrect.

33. Paragraph 2.10 of the Code says:

“In the normal admissions round, offers of primary and secondary places **must** be sent by the home local authority and schools **must not** contact parents about the outcome of their applications until after these offers have been received. Admission authorities **must not** provide any guarantees to applicants of the outcome of their application prior to the formal notification of any offers of a place in a suitable school by the home local authority.”

While the school may be trying to be helpful, contacting parents during the application period could leave it a risk from challenge. Consider two parents who complete the forms and accidentally omit a key piece of information. One family is known to the school and receives a friendly telephone call which leads to a revised application and the child being offered a place. The other family is not known to the school and so the omission is not identified and a place is not offered because of the omission.

34. The next form is called the “Priest Reference Form”. This requests details of the parish of residence, the usual place of worship and the day and time of mass attended. None of these is required to decide about the oversubscription criteria and so must not be asked for on a SIF. The archdiocese also had concerns with this part of the SIF and the school said it would remove this question.

35. There is also a box with the heading:

“Please add here any information you may feel is relevant to the school’s Admissions Policy with regard to religious practice e.g. reasons why religious practice may not be weekly e.g. illness”

There is nothing in the arrangements which says how this information would be used to make decisions about the over subscription criteria. Again, the archdiocese was concerned with this part of the form and the school said it would remove it.

36. The third SIF is called the “Faith Leader Reference Form” and is intended to assess applicants against criteria number 5, 6 and 7. It has similar issues to the “Priest Reference Form” and asks for the place of worship and additional information not required to make decisions about oversubscription criteria.

Sixth Form

37. Paragraph 1.2 of the Code says: “As part of determining their admission arrangements, all admission authorities **must** set an admission number for each ‘relevant age group’. A relevant age group is the age group at which pupils are or will normally be admitted to the school e.g. reception, Year 7 and Year 12 where the school admits external applicants to the sixth form as this school does. The arrangements say: “A minimum of 10 places will be offered to external girls”.

38. The PAN is not a minimum other than in the sense that it is the minimum number of places that must be offered if there are more applicants than places. It is also – to put it another way - the maximum number of places that will be allocated before oversubscription criteria may need to be applied. This figure can be exceeded if more places become available, for example if fewer girls transfer from Year 11 to Year 12 than expected. The school said it would set a PAN for Year 12.

39. The arrangements say:

“All girls applying to our Sixth Form, whether internal or external, will be invited to a meeting to discuss course options and will be required to provide the following:

1. A commitment on the part of the student to contribute to the ethos of a Catholic school.
2. Predicted or actual GCSE grades or equivalent.
3. Evidence of the appropriate motivation
4. A commitment on the part of the student to contribute to the life of the school and to act as a "role model" for the younger students.”

40. Paragraph 1.9m of the Code says that admission authorities **must not**:

“interview children or parents. In the case of sixth form applications, a meeting may be held to discuss options and academic entry requirements for particular courses, but this meeting cannot form part of the decision making process on whether to offer a place.”

I cannot see how an interview covering commitment to the Catholic ethos, motivation and commitment to the life of the school is in accordance with the Code.

41. Elsewhere in the sixth form arrangements it appears that they are simply a repetition of the arrangements for Year 7. This leads to a number of anomalies one example of which is referring to the application deadline of 31 October and the national offer date of 1 March, neither of which apply to sixth form admissions. This renders the arrangements unclear overall.

42. In its comments on these matters the school said it would amend the sixth form arrangements to clarify them.

Summary of Findings

43. I have set out above how these arrangements do not conform with the Code. I would like to emphasise the requirement for admission authorities to ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied. Where religious practice is part of the oversubscription criteria, the arrangements must be clear about both

the required frequency of worship and the period of time for which that worship must have been sustained for. Where places of worship have been closed because of Covid-19 restrictions, arrangements must be clear on how those restrictions will be taken into account when deciding whether faith-based criteria have been met.

Determination

44. I have considered the admission arrangements for September 2022 for The Holy Cross School, Kingston upon Thames in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the matters set out in this determination, the arrangements do not conform with the requirements.

45. 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: 26 April 2021

Signed:

Schools Adjudicator: Phil Whiffing