



## Determination

<b>Case reference:</b>	<b>ADA3753</b>
<b>Objector:</b>	<b>An individual</b>
<b>Admission authority:</b>	<b>Cranmer Education Trust for The Blue Coat School, Oldham</b>
<b>Date of decision:</b>	<b>26 April 2021</b>

## 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 2022 determined by Cranmer Education Trust for The Blue Coat School, Oldham.**

**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 an individual (the objector), about the admission arrangements (the arrangements) for The Blue Coat School (the school), an academy school in Oldham, with a Church of England religious character, for boys and girls aged 11 to 18, for September 2021. The objection is to the faith-based oversubscription criteria.
2. The local authority (the LA) for the area in which the school is located is Oldham Council. The LA is a party to this objection. Other parties to the objection are Cranmer Education Trust (the trust), a multi-academy trust, the Diocese of Manchester (the diocese), which is the religious authority for the school, and the objector.

## Jurisdiction

3. The terms of the Academy agreement between the multi-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 is the admission authority for the school, on that basis. The objector submitted his objection to these determined arrangements on 14 February 2021. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act.

4. In May 2020 an objection was made to the school's arrangements for admissions in September 2021 [ADA3725], which was partially upheld by the adjudicator on 13 October 2020. Since that objection was determined, the trust has determined the school's arrangements for September 2022 having taken into account the breaches of the Code identified by the adjudicator in ADA3725.

5. Regulation 22 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 and paragraph 3.3(e) of the School Admissions Code state that objections cannot be brought "which raise the same or substantially the same matters as the adjudicator has decided on for that school in the last 2 years". At first sight it appeared to me that the gist of this objection was similar in essence to the previous objection (the upper level of church attendances is too high and disadvantages an identifiable social group), and so I considered carefully whether this second objection should be determined to be out of jurisdiction under regulation 22.

6. On balance, my decision is that the arrangements determined for September 2022 are fundamentally different to those objected to previously as they now incorporate a points system rather than a series of attendance thresholds. There are also more places for non-Anglicans: 60 rather than 24. Where the arrangements now objected to operate differently to the arrangements which were the subject of the previous objection, it cannot be said that any issues determined previously about equality, fairness, reasonableness or clarity are applicable to the new arrangements. I am conscious also that the adjudicator in ADA3725 partially upheld the objection on the basis that it was unreasonable to have an oversubscription criterion which set a threshold that it had never been necessary to reach in order to be admitted to the school. The same argument does not exactly apply to the points-based ranking system now in place. Because the September 2022 arrangements are different to those determined for September 2021, I do not consider that this objection can raise matters which are the same or substantially the same as those considered and determined by the adjudicator in ADA3725. For these reasons, I am satisfied that the objection is within my jurisdiction.

## Procedure

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

8. The documents I have considered in reaching my decision include:
- a. a copy of the minutes of the meeting of the academy trust at which the arrangements were determined;
  - b. a copy of the determined arrangements, including the supplementary information form (SIF);
  - c. the objector's form of objection dated 14 February 2021, supporting documents and subsequent responses;
  - d. the academy trust's response to the objection through their solicitors, supporting documents and subsequent responses;
  - e. details of the allocation of places at the school for admission in September 2020 and previous years (relying upon information in ADA3725);
  - f. the diocesan guidance for secondary schools on admissions and the diocese's response to the objection;
  - g. a determination of the adjudicator relating to the school (ADA3725) published 13 October 2020 and referred to by the objector; and
  - h. a determination of the adjudicator relating to Canon Slade School, Bolton (ADA2576), published in April 2014 and referred to by the objector.

## The Objection

9. There are four parts to the objection. First, the objector claims that the faith-based oversubscription criteria fail to comply with paragraph 1.8 of the Code as they are unclear, unfair, unreasonable, not objective and disadvantageous to children whose parents are on a low-income, shift workers and single parents. This is said to be because parents with lower socioeconomic status lack the resource to maintain the high level of church attendance required in order to meet the oversubscription criteria. The fact that the exact number of church attendances must be counted up to a maximum of 39 per year [for the years 2016/17, 2017/18, 2018/19] will, the objector says, have the effect of exacerbating the disadvantage for low-income families. Indeed, the objector's view is that the arrangements for admission in September 2022 are potentially more unfair to disadvantaged families than the arrangements they have replaced.

10. Second, the arrangements provide for "exceptional circumstances" where work patterns, illness or bereavement have prevented attendance at public worship by the parents. The arrangements provide that attendance of the child accompanied by another family member will be counted where these exceptional circumstances apply. The objector considers the definition of "exceptional circumstances" to be unreasonable because it is capable of being (and likely to be) interpreted inconsistently.

11. Third, the objector says that the relevant priest/vicar/minister/superintendent is required to provide supporting evidence of a bereavement, illness or work patterns. The objector claims that it is not reasonable for them to do so or to be asked to attest to whether illness, bereavement or a parent's working pattern has meant that a member of the family other than the parent has occasionally attended worship with the child.

12. Fourth, attendance at live online church activities is not counted. The objector claims that this is not reasonable, or fair, when attendance at so many other forms of worship in the church building can be counted. The objector also says that, in his experience, children and adults from more deprived backgrounds are more likely to attend live online church activities, including Sunday School and that the necessary technology is not a barrier to more deprived families.

13. The objector cites paragraph 1.8 of the Code, which is relevant to the objection. Other potentially relevant paragraphs of the Code are paragraphs 14, 1.37 and 1.38. These paragraphs are all set out in full in the 'Consideration' section of this determination.

## Background

14. The school is located in the large town of Oldham in Greater Manchester. In view of the subject matter of this objection, I have consulted various websites and reports in order to gain a clearer picture about whether the intake of the school is reflective of the environment in which it is located. Oldham rose to prominence in the 19<sup>th</sup> century as an international centre for textile manufacture. It was one of the first industrialised towns in England and featured factories, cotton mills and coal mines. Residents in other parts of the country and from countries across the then British Empire were encouraged to move to Oldham to provide labour. There is a large proportion of low value residences originally built to house these workers and a high level of South Asian residents. There were race riots in 2001 and community cohesion is said to be poor. Post industrialisation there continues to be a significant presence of factory generated employment. In a report dated October 2019 by Martin Burroughs on the Indices of Deprivation (IDACI) it is said that Oldham has a significant proportion of wards within the most deprived 10 per cent or 20 per cent in England on almost all of the measures within IMD, with the exception of Barriers to Housing and Services. Half of wards are in the most deprived 20 per cent in England overall, as well as in domains on Crime, Employment, Income, Education Skills & Training, and Health. Child poverty as measured by IDACI has also worsened in relative terms since 2015 with some areas having dropped into the most deprived one per cent nationally,

15. The school is part of Cranmer Education Trust, a multi-academy trust that also includes two primary schools in the town. The school has been rated as Outstanding by Ofsted following an inspection in December 2011. The Ofsted Report said that the school draws pupils from a wide area; the percentage of pupils from minority ethnic backgrounds was average; the percentage of pupils entitled to free school meals was below average; and that there were more boys than girls. I bear in mind here that the Report, and the data upon which it was based, are now 10 years old.

16. Information available on the GIAS (Gov.UK) website indicates that the school attained ratings of above average in 2017, well above average in 2018 and above average in 2019 in the Progress 8 measure of attainment. Broadly, Progress 8 indicates the progress made by pupils between the end of Key Stage 2 and the end of Key Stage 4. The website shows, by way of comparison, that in 2018/19 the school's Progress 8 Score was 54; the local authority average Progress 8 score was 42.1; and the England national average score was 46.7. The school was rated as being above the national average whereas the average score for other schools in the area is below the national average. The GIAS website also says that about 17 per cent of state funded schools in England have above average Progress 8 ratings, and 14 per cent have Progress 8 Scores which are well above average. Unsurprisingly, the school is heavily oversubscribed. The objector has said that the proportion of pupils eligible for the Pupil Premium at the school is low compared with the average for secondary schools in Oldham (17 per cent and 36 per cent respectively). Accordingly, there are indications that the characteristics of the school's pupil intake are atypical of the local area and of the pupil intake of other secondary schools in the area.

17. The school's Published Admission Number (PAN) for admission to year 7 in September 2022 is 243. The oversubscription criteria are set out in full below:

### **Oversubscription Criteria**

If the school is oversubscribed, after the admission of pupils with an EHCP naming the school, the decision upon which children will be offered places will be based on the following oversubscription criteria.

### **The school will admit children under 2 categories:**

1. **Category 1:** Up to **183 places** to applicants of the Anglican faith, in the order of priority set out below:

1.1 **Children of the Anglican faith who are Looked After Children (LAC) or who are Previously Looked After Children (PLAC).**

1.2 **Children whose parent/legal guardian provides evidence that the child and one parent/legal guardian are active members of the Anglican faith.**

Active Membership of the Anglican faith is evidenced by:

- (a) the attendance at public worship of the child and one parent/legal guardian;
- (b) baptism of the child, or a service of dedication.

If there are more applicants in 1.2 than places available, priority will be given to those children who with their parent/legal guardian show the greatest commitment as evidenced by their attendance at weekly public worship in an Anglican Church over a period of up to 5 years. This is measured by allocating 1 point for each weekly attendance (Sunday to Saturday) by the parent/legal guardian and child, up to a maximum of 39 per year (to 31 August each year).

A maximum of 20 points are awarded for the year 2019-20.

Points for attendance at public worship for 2020-21 will not be awarded for the period 1 September 2020 – 31 March 2021, at which point these dates will be reviewed in consultation with the Legal Authority, i.e. Manchester Diocese, and the number of points for attendance available (if any) for the remainder of the academic year up to 31 August 2021 will be confirmed. Details will be published on both the Trust and the school's websites and will be added to this policy as it becomes available. If no attendance may be recorded for 2020-21 then there will be no attendance points available for that year and commitment will be based on previous years' attendance from 2016-17 (School Year 1) to 2019/20.

**In addition**, 5 points will be allocated for the baptism of the child into the Church of England, or a service of dedication, before 31 August 2021. Confirmation of baptism or a service of dedication must be provided by the rector/vicar/priest-in-charge or church official. The minimum points score for eligibility under 1.1 is 5. The minimum points score for eligibility under 1.2 is 15.

**2. Category 2: Up to 60 places** to applicants from

- other Christian churches. A "Christian Church" means a church which is Designated under the Ecumenical Relations Measure 2018, nationally by the Archbishops of Canterbury and York, or locally by a Diocesan Bishop;
- **and** applications from other Major World Faiths that are members of the Interfaith Network;
- **and** applicants of no faith

**in the priority order set out below.**

**2.1 Children not of the Anglican faith who are Looked After Children (LAC) or who are Previously Looked After Children (PLAC).**

**2.2 Up to 30 places** to applicants who are active members of other Christian churches. Active membership of these churches is evidenced by:

- (a) the attendance at public worship of the child and one parent/legal guardian;
- (b) baptism of the child or the denomination's equivalent of making a commitment (e.g. a service of dedication or Salvationist "wrapping in the flag").

If there are more applicants in 2.2 than places available, priority will be given to those children who with one parent/legal guardian show the greatest commitment as evidenced by their attendance at weekly public worship within their church over a period of up to 5 years. This is measured by allocating 1 point for each weekly attendance (Sunday to Saturday) by one parent/legal

guardian and child, up to a maximum of 39 per year (to 31 August each year). A maximum of 20 points are awarded for the year 2019-20.

Points for attendance at public worship for 2020-21 will not be awarded for the period 1 September 2020 – 31 March 2021. Further detail about counting attendance from 1 April 2021 will be published on both the Trust and school's websites and will be added to this policy as it becomes available. If no attendance may be recorded for 2020-21 then there will be no attendance points available for that year and commitment will be based on previous years' attendance from 2016-17 (School Year 1) to 2019/20.

**In addition**, 5 points will be allocated for the baptism of the child or a service of dedication into the denomination (or the denomination's equivalent of making a commitment) before the 31 August 2021. Confirmation of baptism (or a service of dedication, or the denomination's equivalent) must be provided by the minister/leader of worship.

There is no minimum points score required for eligibility under Category 2.1. The minimum points score for eligibility under Category 2.2 is 15.

2.3 Up to **30 places** to applicants who are members of another Major World Faith that is a member of the Interfaith Network (See Definitions). As patterns of worship vary between faiths, commitment is evidenced by the attestation of the leader of worship. If there are more applicants than places available, allocation of places in this category will be first to children of staff employed at The Blue Coat Trust and then by random allocation.

2.4 **Any Other Children**. If places remain in Category 2 after the admission of children under Categories 2.1, 2.2 and 2.3, the remaining places will be allocated to any other children seeking places at the school. If there are more applicants than places, allocation will be first to children of staff employed at The Blue Coat School and then by random allocation.

### **Tie Breaks**

#### **Categories 1.2 and 2.2**

Where 2 or more children achieve the same points within each of these Categories, 1.2 and 2.2 the following tie-break(s) will be used:

#### **(a) Children of staff employed at The Blue Coat School**

If a further tie break needs to be applied between the children of staff employed at The Blue Coat School, staff children who have a sibling attending the school as of 1 September 2022 will be admitted first. If a further tie break needs to be applied between children of staff with siblings attending the school, this will be geographical proximity, using a straight-line measurement between the home postcode and the school postcode. If a final tie break is needed, this will be by random allocation.

- (b) **Non-Staff Children who have a sibling** attending the school as of 1 September 2022 will be admitted next. If a further tie break needs to be applied between non-staff children with siblings attending the school, this will be geographical proximity, using a straight-line measurement between the home postcode and the school postcode.
- (c) If all children with siblings attending the school can be admitted within this category, **geographical proximity using a straight-line measurement between the home (See Definitions) postcode and the school postcode** will be used as a tie-break between the remaining applicants in the group.
- (d) If a final tie break is needed, this will be by **random allocation**.

#### **Categories 2.3 and 2.4**

If there are more applicants than places available, places in each of these categories will be allocated first to children of staff employed at The Blue Coat School and then by random allocation.

18. Other aspects of the arrangements relevant to the objection are the definition of “exceptional circumstances” and the SIF. I have set out this definition in the Consideration section of this determination along with details of what is said in the SIF.

### **Consideration of Case**

19. I will consider each of the four parts of the objection under separate headings A – D, but first I will set out the relevant provisions of the Code and describe what I consider to be the effect of the two previous determinations referred to above upon my consideration of this objection. Neither of these determinations forms a binding precedent upon me and neither concerns the admissions arrangements currently before me. I have, of course, nevertheless considered both of these determinations very carefully indeed as they form part of the background of the arrangements which are before me.

20. Relevant paragraphs of the Code are: Paragraph 1.8 of the Code which states that “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...”

21. Paragraph 14 which states that: “In drawing up their 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”.

22. Paragraph 1.37 which requires that “Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied”.



23. Paragraph 1.38 which provides that “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. Church of England schools **must**, as required by the Diocesan Boards of Education Measure 1991, consult with their diocese about proposed admission arrangements before any public consultation”.

24. There appears to be a degree of overlap as between some of the obligations imposed in the above paragraphs, but they are each specific. Paragraph 1.8 applies to any oversubscription criteria, including faith-based oversubscription criteria. Paragraph 14 relates to the practices used to decide the allocation of places. Church attendance and baptism are practices used to determine the allocation of places. Paragraphs 1.37 and 1.38 refer specifically to faith-based admission criteria.

25. In relation to the previous determinations and their relevance, I consider first ADA2576 which related to the faith-based oversubscription criteria in place at that time for Canon Slade School in Bolton. These comprised a points-based priority system based upon how regularly and frequently the child attended weekly worship at a Christian Church; how regularly and frequently at least one parent attended weekly worship at a Christian Church; the number of years the child’s attendance at Church had been sustained; and the number of years the parent’s attendance has been sustained. There also appeared from the SIF to be three different levels of priority afforded.

26. The adjudicator in ADA2576 referred to the most recent Ofsted report on Canon Slade School which indicated that the proportion of pupils entitled to the Pupil Premium was low; pupils were drawn from a wide geographical area; there were very few pupils who had English as a second language; and the number of pupils with SEN and without an EHCP was low. The adjudicator also compared the proportion of pupils entitled to free school meals at the school to the proportion at other Church of England secondary schools in the diocese of Manchester (in the local authority areas of Bury, Manchester, Oldham, Rochdale, Salford and Wigan as well as Bolton). There were 11 such schools including Canon Slade, one of which was a joint Church of England and Catholic school. Some of the schools were sponsored academies which had replaced existing schools with disadvantaged intakes. Leaving those aside, the proportion of children entitled to free school meals ranged from 3.2 per cent at Canon Slade School to 24 per cent. The next lowest to the trust’s was 5.8 per cent. The proportion of such pupils at state funded secondary schools in Bolton was 19.8 per cent and the national average was 16.3 per cent.

27. The school had provided a breakdown of points scored by applicants over the past few years and the number of points needed to gain a place. This number had varied from 252 to 332 which equated to a very high level of sustained attendance. The adjudicator concluded that the stringency of the attendance requirements meant that families who faced constraints on their ability to attend worship so frequently but who were nonetheless

committed Christians were much less likely to secure a place for their child at the school. This (she said) could include families where one or both parents may have had to work shifts which affected their ability to attend services every week or families with caring responsibilities such as an elderly relative or sick child who could not be left. The adjudicator's view was that these challenges were likely to be especially pronounced in families where there was only one adult or where one parent worked away from home. For some families, getting to Church once a month may well have represented a greater logistical achievement than weekly attendance would for others. In this context, a child whose family had attended church 20 times a year for the past four years as well as at least monthly since the birth of the child would not have gained a place at the school in any of the past four years. I pause here to stress that this is not the case in relation to The Blue Coat School.

28. In light of the evidence about the characteristics of the intake of Canon Slade School compared with the characteristics of the area and of other Church of England schools in the area, the adjudicator concluded that the stringent nature of the faith-based criteria caused challenges to some families making them less likely to be able to satisfy the criteria. The adjudicator did not consider that allowing worship upon any day of the week was an adequate measure to counteract the resulting disadvantage to families on lower incomes and so concluded that the arrangements did not comply with the requirement of paragraph 1.8 of the Code that arrangements must not disadvantage directly or indirectly children from a particular social group.

29. The adjudicator in ADA3725 (which relates to The Blue Coat School Oldham) refers to the decision made in ADA2576 because both the nature of the objection and the faith-based oversubscription criteria in operation for the two schools could be said to be comparable. The oversubscription criteria which the adjudicator was considering in ADA3725 in descending order of priority were as follows:

“2. Weekly worship attendance over a minimum period of four years as of 31 August 2020. “Weekly” is defined as at least 45 weekly services per year in separate weeks.

3. Not less than fortnightly worship attendance over a minimum period of four years as of 31 August 2020. “Fortnightly” is defined as at least 24 weekly services per year in separate weeks.

4. Not less than fortnightly worship attendance over a minimum period of three years as of 31 August 2020.

5. Not less than monthly worship attendance over a minimum period of three years as of 31 August 2020. “Monthly” is defined as at least 12 weekly services per year in separate weeks.

6. Weekly worship attendance for at least one full year as of 31 August 2020.”

30. The objection was based upon the suggestion that an attendance requirement of 45 times a year is too stringent a requirement and that it is much more difficult for some

families to meet this requirement than others. One parent families, families where one parent does shift work, and “less well-off families who have less choice to determine their own working hours” were mentioned by the objector. The adjudicator noted that the objector’s evidence was largely anecdotal and that at no point did the objector attempt to put a figure on the number of families who are active members of the Church of England, who would fall into the groups he describes. The adjudicator said:

“27.... I recognise that it would, in fact, be impossible for him [the objector] to do so.

28. Nevertheless, I accept that there will be some families in the position that the objector describes and that they are members of a “social group” within the meaning of paragraph 1.8 of the Code. I agree with the adjudicator in ADA2576 that overly stringent requirements for attendance at worship will unfairly disadvantage this group, for the reasons that both she and the objector describe. I consider that a requirement to attend worship 45 times a year constitutes a threshold that is likely to have such a disadvantageous effect. However, it is the case that it has never been necessary for applicants, that is, the child and a parent, to attend 45 times a year for four years in order to obtain a place at the school. Attendance for 24 times a year for three, or on one occasion, four years, has proved sufficient...Therefore, while the arrangements may, in theory, unfairly disadvantage a social group by requiring attendance at worship for 45 times a year, in practice, it is almost certain they will not, if it is accepted, as the objector appears to, that attendance for 24 times a year does not cause unfair disadvantage. In this respect, this case is different to ADA2576, where the ranking of applications demonstrated that each year a level of attendance in excess of fortnightly was necessary to obtain a place at the school. For this reason, I do not uphold the objection on the ground that the arrangements breach the part of paragraph 1.8 of the Code cited by the objector, by unfairly disadvantaging a particular social group. I should make clear that, if it were necessary for the child and a parent to attend worship for 45 times a year for four years in order to obtain a place, I would have upheld the objection on this ground”.

31. The adjudicator also found that, because the second oversubscription criterion requiring 45 attendances at worship each year for four years, had never been applied, it was illogical to include it in the arrangements and that to do so may also be off-putting to families considering applying for a place at the school. It was therefore not a reasonable criterion and therefore in breach of paragraph 1.8 of the Code.

32. The trust has revised its faith-based oversubscription criteria in light of ADA3725. There is no longer a maximum figure of 45 or a series of thresholds. Instead, there is a points-based system with a maximum level of attendance of 39 per year. The evidence in ADA3725 was that attendance for 24 times a year for the past four years was sufficient for an applicant to be offered a place at the school. The question asked by the objector in relation to the school’s admission arrangements for 2022 is why should there be a higher maximum than 24?

33. Although I can understand the objector's reasoning, my view is that the significance of the maximum number is over-emphasised by him. Its effect in a points-based system is simply that there is no advantage to be gained in terms of priority by attending more than 39 times a year – not that there is a requirement to attend 39 times a year in order to gain priority under the faith-based oversubscription criteria. The question for me, therefore, is whether there is any evidence that a points-based system per se will disadvantage a particular social group. I cannot know the answer to this question based upon any actual evidence because it is simply too early to say how the new arrangements for the school will operate in practice.

34. In considering whether I think this outcome is likely based upon what I do know, the questions then become whether it is irrational to set a maximum level of attendance that is unlikely to be needed in order to be offered a place; what the effect of that might be in terms of whether it would deter some parents from applying; if it is the case that some families may find it more difficult to attend public worship than others, whether the arrangements should make some allowance for this; and whether any allowance made is reasonable.

A. The faith-based oversubscription criteria are unclear, unreasonable and operate to the disadvantage of an identifiable group?

35. The objector submits that the general attendance requirements set out in arrangements are in breach of paragraph 1.8 of the Code. Paragraph 14 is also relevant because church attendance is a practice used to decide the allocation of places, and paragraph 1.37 is relevant in terms of the requirement for clarity. In terms of paragraph 1.37, the trust has consulted the diocese about its faith-based oversubscription criteria and has had regard to the relevant diocesan guidance (by which I mean that the trust has considered and followed the guidance, departing from it only where it has a clear and proper reason to do so). The objector considers that the arrangements are unclear, not objective or reasonable, and that they disadvantage unfairly a particular social group. Taking each aspect in turn:

*Clarity (paragraphs 1.8, 14 and 1.37)*

36. The objector claims that the faith-based oversubscription criteria are not sufficiently clear. The trust's view is that the arrangements explain clearly how the points system is intended to operate, and the maximum number of points which apply for each year. I agree with the trust generally that the oversubscription criteria are indeed sufficiently clear. Parents looking at the arrangements will be able to understand that they will have the highest chance of their child being offered a place at the school if at least one of them has attended church on a weekly basis with the child during the five-year period prior to making the application during the period when churches were open. Attendance can be on any day. There is one point for each attendance for one parent together with the child, but no additional points are gained by attending more than 39 times in the years 2016/2017, 2017/2018 and 2018/2019, or more than 20 times for the year 2019/20.

37. I did consider whether the adoption of maximum levels of attendance risks confusing parents into thinking that there is no point in applying if they have not attended church with

their child on the maximum number of times specified in order to be afforded priority. If so, this would be misleading. My conclusion on balance, however, is that the wording of the arrangements is sufficiently clear on its face and is therefore not misleading. I will deal with the clarity (or otherwise) of the “exceptional circumstances” provision below.

38. The exception to this general conclusion on the clarity of the faith-based oversubscription criteria is the church attendance requirements for the period from 31 March 2021 – 31 August 2021. These are not set out clearly. Indeed, they are not set out at all because they had not been determined at the point in time when the rest of the arrangements were determined and have still not yet been determined. This is in breach of paragraphs 1.8, 14 and 1.37 of the Code, and the trust will need to make the attendance requirements and maximum number of points for this period clear within two months of the date of this determination. Imposing this as a requirement in this determination will save the trust needing to seek permission from the Secretary of State for Education to vary this aspect of its arrangements (which the trust was intending to do).

*Reasonableness and objectivity (paragraphs 1.8, 1.38 and 14)*

39. The test for whether a policy is reasonable is an objective test, namely whether any reasonable public authority in possession of all relevant facts would have determined the admission arrangements for the school which have been determined. In considering reasonableness, it is first necessary to establish whether the grounds for adopting the aspect of the admission arrangements in question are reasonable. It is then necessary to consider whether the effect of operating this aspect of the arrangements is also objectively reasonable. Considerations of whether or not the effect of an aspect of arrangements is reasonable may overlap with and be closely related considerations of fairness but is still a separate question. It would be possible to have an objectively reasonable set of admission arrangements which could nevertheless operate unfairly to disadvantage a particular person or group. The reasons for adopting the school’s current set of arrangements stem partly from the fact that the school was required to revise its arrangements following ADA3725. Compliance with such a legal requirement of course is a very good reason to make revisions. However, an adjudicator cannot dictate the nature of any revisions to be made in a case where he/she has identified a breach of the Code. It is for the admission authority to determine how any identified breach should be remedied, and there does exist the possibility that an admission authority may replace an unreasonable set of arrangements with a different set of arrangements which are also unreasonable.

40. My starting point is that the faith-based oversubscription criteria are certainly not arbitrary. The evidence I have been provided with indicates that the trust has considered carefully the revisions to its oversubscription criteria; it has consulted on the proposed revisions; taken into account consultation responses (including the objector’s response, albeit that the trust does not agree with the objector’s views); consulted the diocese; and had regard to the relevant diocesan guidance. The diocese sent me a copy of its general guidance to schools in relation to admission arrangements dated 19 November 2020. This refers to a tool entitled Admissions Builder (which I note has been produced by the Church of England nationally) which in the words of the guidance purports to “... offer options for

school admission arrangements that are legally compliant while taking into account the school's character and local context". Admissions Builder is said to focus on the most frequent issues encountered during admissions work and does not provide an exhaustive kind of manual for all the possible permutations the Admissions Code permits, nor a detailed legal guide to admissions law. The trust's solicitor has explained that the admissions policy was well advanced at the point in time when the Admissions Builder tool was released. It was accessed but was found to be unfit and still in a very early and pilot stage. It was concluded that it would not add value to the process of developing the 2022 arrangements which had already been undertaken by using Admissions Builder.

41. The guidance suggests that, although churches were open in the summer of 2020, admission authorities needed to make provision in their arrangements for people not attending church because they were shielding or clinically vulnerable and judged the risk of attendance at public worship to be too great for themselves or another family member. The guidance also says that provision should be made for the fact that some people will have been unable to attend church services due to the fact that the number of places available had been taken up. It suggests that people falling within these categories should be treated as though the church was closed to public worship and enabled to provide evidence that they fell within these categories. The trust determined its arrangements on 26 January 2021 but made no provision for these factors. Apparently, the trust did take this aspect of the guidance into account and consulted local clergy including the objector. The trust was told that this aspect of the guidance was unworkable. Indeed, the view of local clergy apparently was that church attendance requirements should be abandoned altogether during the period 1 September 2020 – 31 August 2021.

42. The trust consulted the diocese upon its proposed arrangements for September 2022 admissions. The diocese responded on 6 November 2020 which obviously preceded the guidance of 19 November 2020. Broadly, the diocese judged the proposed arrangements to be compliant with the Code, specifically that they were "clear enough – if a little complex", and that the policy was set out in a "fair, clear and objective way that parents will be able to understand". In addition, the response said:

"As Blue Coat admissions criteria covers a period of 5 years the effects of Covid 19 will impact upon the school for a significant length of time. For example, children who will be applying to join Blue Coat in 2025 will still have their applications impacted by Covid restrictions in 2020. As you recognise restrictions on attending church worship may impact into 2021. You may wish to consider such implications. It would be useful to see the Supplementary Information Form (not 'Supplementary Application Form') also - as they technically form part of the Admissions Arrangements for the Academy. Sometimes the SIFs can ask for too much information which is a breach of the code – as I am sure you are aware SIFs are only allowed to ask for the additional information - basically the church attendance bit. FYI the Board of Education continue to discuss the most appropriate strategies to address the issue of no access to worship/restricted access to worship. We are hopeful of being in a position to provide more specific guidance in the coming weeks, recognising that some churches may, following the recent lockdown resume restricted attendance at

worship. How evidence of church commitment can be recognised during such circumstances is being considered at board and Bishop level. We will ensure all schools are made aware of such guidance so that it can be ‘published on school and Trust websites’ as you state”.

Broadly, therefore, it is fair to say that the diocese did not express concerns about the faith-based oversubscription criteria.

43. The objector submitted a response to the consultation which was supportive of some of the proposed revisions to the arrangements, but he maintains that a maximum attendance figure of 39 would impose over-stringent requirements which it would be more difficult for some families to meet and might therefore deter them from applying and that the number 39 is illogical, given the conclusions of the adjudicator in ADA3725 that it is not necessary to attend church more than 24 times in order to be offered a place. The objector also submitted some earlier guidance which had been issued by the diocese. It has now been confirmed by the diocese that the most recent guidance should be regarded as current, rather than the historic documents which the objector had referred to.

44. I sought evidence from the local authority about the offers made on 1 March 2021 to see whether it remains the position that all applicants who attend public worship at least 24 times a year are offered places at the school. The authority sent in the information set out in the table below.

<b>Outcome - 2021 Entry (as at 1st March 2021)</b>	
<b>Number of places awarded to children with a Statement of SEN</b>	<b>6</b>
<b>Number of places awarded to children in Category 1 (Anglican Looked After Children)</b>	<b>6</b>
<b>Number of places awarded to children in Category 2 (Anglican)</b>  “weekly worship attendance over a minimum period of four years before the date of application. ‘Weekly’ means attendance at 45 weekly services per year”	<b>45 with sibling</b>  <b>84 without sibling</b>  <b><u>129 in total</u></b>
<b>Number of places awarded to children in Category 3 (Anglican)</b> “a worship attendance of not less than fortnightly over a minimum period of four years before the date of application. ‘Fortnightly’ means attendance at least 24 weekly services per year”	<b>23 with sibling</b>  <b>50 without sibling</b>

<b>Outcome - 2021 Entry (as at 1st March 2021)</b>	
	<b><u>73 in total</u></b>
<b>Number of places awarded to children in Category 4 (Anglican)</b> "a worship attendance of not less than fortnightly over a minimum period of three years before the date of application. 'Fortnightly' means attendance at least 24 weekly services per year"	<b>4 with sibling</b>  <b>1 without sibling</b>  <b><u>5 in total</u></b>
<b>TOTAL</b>	<b>219</b>

The final place was offered in Criterion 4 No Sibling at a distance of 0.804 miles, which appears to me to be reasonably local.

45. The local authority's view is

"As the 2021 allocation almost came exclusively from category's [sic] 2 and 3 I [the authority] do believe this does evidence the need for a higher category as currently set out. I believe the above data does evidence that many families offered a place attain the higher number of attendances required. I can see that should the bar be lowered that would advantage more local pupils should school get into such demand that all places are offered from category 3 upwards".

46. The information provided by the authority confirms that all applicants who attended church 24 times a year over a period of four years were offered a place this year. Some who attended 24 times a year over a period of three years were also offered a place, but it was in this category that the PAN was reached and exceeded. The objector makes the point that the trust makes no reference to these figures in its response to the objection and considers that this information further underscores the point that there is no reason to have such a high cap on the number of church attendances. He suggests that a figure based on a church attendance 24 times a year strikes a balance between demonstrating genuine faith commitment and being within reach of families where shifts or zero-hour contracts are worked, "so reducing the disadvantage resulting from the policy".

47. I questioned the trust specifically about why it had chosen 39 (as opposed to 24) as the maximum number of attendances and why it had chosen to award only 5 points for baptism. I should emphasise that the question for me to consider is NOT "why not 24?", it is "why 39?" In relation to the adoption of 39 as the maximum number of attendances, the trust's solicitors have explained the rationale to be that the trust is concerned to ensure that



places are offered to Anglican applicants who are genuinely committed to the Anglican faith. The school is oversubscribed, and the admission authority wishes to draw a distinction between “genuine” applicants and those applicants who are “gaming the system”. The faith-based oversubscription criteria envisage a points system which incorporates church attendance as “one of the more decisive factors” in determining priority. The figure of 39 is “sufficient to demonstrate a high level of commitment to weekly public worship and the faith. There are 52 weeks in a year which allows at the very top end of the attendance cap a margin of some 13 weeks per annum where evidence of public worship is not awarded any further points”. The trust believes it is wrong to develop oversubscription criteria which excludes those who attend church regularly (although I note that the objector has never suggested that the trust should do this). The trust says that church services are not confined to one day and the oversubscription criteria do not seek to limit the days for which evidence of attendance can be drawn from.

48. According to the solicitors, the trust “determined that a move from a best-fit category system to a points system, offered greater fairness, objectivity and transparency and the trust “fundamentally disagrees with the view that the proposed maximum number of attendances (39) discriminates unfairly against an identifiable group, namely those of lower socioeconomic status”. It also “took the view that introducing more granularity into the admissions policy, over a 5 year period, was a reasonable and fairer way of prioritising genuinely committed families, for whom attendance at worship was a sustained part of their lives, as opposed to creating a very specific, designated gateway signposted for the well-organised, i.e. it would be fairer to committed Christians, whatever their socio economic status. It allows for a balance in the application process and allowing an acknowledgment for those who have demonstrated a high level of commitment to the faith over the 5 years considered”. The trust’s solicitors say:

“The Objector seeks to rely upon a previous determination made in relation to the old admissions arrangements for the school. Those arrangements were more rigid in their allocation of preference of applications and did not accommodate granular consideration on a case by case basis to generate a truly fair ranking system. Whilst we do not wish to labour on passed determinations which may detract from this individual case, it is important to note that when the Objector last pursued his dislike of anything more than 24 attendances the Adjudicator in that case (ADA3725) did not conclude, as the Objector appears to suggest, that anything more than 24 was unfair. He concluded that attendance at 24 times a year would not cause unfair disadvantage in view of the fact that most applicants clustered at this category of the oversubscription criteria. There was certainly no factual determination made that any consideration of attendance over 24 would result in unfairness and therefore a breach of the Code. The determination was clear on this point at paragraph 30 when the arrangements were not found to be in breach of paragraph 1.8 of the Code and no unfairness found as argued by the Objector. What was determined was that the top category of 45 weekly attendances should come out if all those who were offered places qualified under another category so as to make its inclusion unreasonable in the circumstances”.

The solicitors argue that practical impact of using a lower number, such as 24 would be to create a swell of applications which would need a tiebreak and that would fall to a distance test. It would also have the effect of potentially excluding children from the wider area who do not have any other faith school to attend. The trust's view is that it is entirely fair to have the flexibility of a points-based system which allows for ranking.

49. I agree with the trust's solicitors that the adjudicator in ADA3725 did not say that 24 was the magic number or indeed that requiring anything more than that 24 attendances would cause unfairness. What ADA3725 does suggest is that, in light of the evidence, 24 would appear to be a number which was sufficient as a requirement, therefore it is understandable that the objector is suggesting this particular number. Although there is no obligation imposed upon the trust by the adjudicator to choose 24, it might appear to be the obvious reasonable choice. However, if the trust is able to put in place a cap on the maximum number of attendances (and I see no reason why it should not) it can have whatever maximum it chooses provided there is a rational basis for adopting any particular number so that the arrangements cannot be said to be arbitrary. The solicitors have said:

"39 weekly attendances per annum is the number which our Client accepts is a comfortable cap for applicants to demonstrate the highest level of commitment to the faith through weekly worship. Now that the system has been opened up to award points for weekly attendance from 10 to 39 weeks [attendances?] per annum over a five year period, focus on the number 24 now has no contextual meaning, save that it was once a figure used in the old category oversubscription criteria. So in order to allow greater fairness and flexibility, it would be wrong to cap the level of attendance at 24 as the Objector claims. This would be less than half a year's worth of attendances and does not allow the oversubscription criteria to accommodate those who can genuinely demonstrate a higher level of commitment to the faith and who attend more regularly at their church. To be clear, it is not the case that for a child to be able to get the offer of a faith place that there must be evidence of 39 weekly attendances per annum. The oversubscription criteria is not that rigid nor has it ever intended to be, quite the contrary as referenced above.

... our Client considered how a points system should work, and mindful of the previous adjudication, sought to set an upper limit which would be fair and entirely achievable by regular and committed worshipping families. Before determining a cap on the number of weekly attendances our Client wanted to sample what other faith based admissions arrangements did in terms of a top level number of attendances for which applicants could rank higher in preference under the admissions arrangements. In doing so it identified a range between 45 and 36. It was agreed that the figure of 39 was reasonable as a cap. This allowed for a number that was not so high as to be unobtainable and therefore redundant, but to also allow a figure which landed between those included in other schools' arrangements and which would serve as a realistic number of weekly attendances for those able to demonstrate a high level of commitment...

The data shows a substantial number of places awarded under the old criterion of 45 weekly attendances. The data also shows the trust has highly subscribed to so there is no evidence that “many” are put off applying. It is a further unsubstantiated assertion made by the Objector”.

50. The response from the trust’s solicitors in relation to the points awarded for baptism was: “Our Client spent time considering an appropriate figure [for baptism]. Commitment to the Anglican faith is demonstrated in two ways; one is baptism and the other is commitment to worship. The points system starts from 10 points so it was deemed appropriate that using half of that figure made sense to acknowledge baptism or a service of dedication as commitment to the faith. This figure would not give it disproportionate weight over attendance at worship across a five-year period as this gives a better evidence base to consider sustained commitment prior to the application being made. If baptism was given any more points it could be abused by applicants to achieve a higher ranking to mask the lack of attendance at worship in the preceding five years”.

51. I have seen a very large number of faith-based oversubscription criteria during the last 12 months in the course of approving variations to admission arrangements in the light of Covid-19. I am aware that there is no one-hat-fits-all approach within the Anglican church as to what the nature of faith-based oversubscription criteria should be; different dioceses make different recommendations in relation to church attendances; schools may accept the recommendations of their diocese, but they do not have to do so if they have a valid reason to do something different; and this appears from the examples I have seen to generally be accepted by the dioceses.

52. These arrangements do not impose a requirement of weekly attendance, or indeed fortnightly attendance. It is clear that a high number of applicants who were offered places under the school’s 2021 arrangements did attend church at least 45 times a year. The trust’s express intention is effectively to reward greater commitment to the faith as evidenced by higher attendance at church. I accept the trust’s arguments on this point. I do not consider that having a maximum level of 39 attendances for the reasons given and in the context of a points-based system is unreasonable (or not objective). I do not need to consider whether it would be reasonable for the arrangements to require 39 attendances per year in order to obtain priority under the faith-based oversubscription criteria because the arrangements do not operate to this effect.

53. It is important to bear in mind that, in the context of a simple points-based system in which one attendance by parent and child equals one point, the only significance of the number 39 is that exceeding it does not bring any advantage. There is no requirement upon parents and children to attend public worship 39 times in order to obtain priority for a place at the school. I do not consider these faith-based oversubscription criteria to be such that no reasonable admission authority of a highly oversubscribed faith school would have adopted them. The arrangements do make an allowance for exceptional circumstances in which a parent may not be able to attend church, which in my view is an essential element to their reasonableness. I have dealt with this issue separately because I have some

concerns about the drafting of these provisions, but my view is that an allowance for exceptional circumstances is needed.

### *Unfairness to an identifiable social group*

54. In considering whether the arrangements operate unfairly, it is necessary to employ a subjective test. The question is to whom are the arrangements unfair and in what way and why? There must be an identifiable social group. The objector argues that “single parent families where only one parent can be available to take the child to church, rather than two” and “less well-off families where the parent(s) have less choice to determine their own working hours” constitute social groups that are disadvantaged by the criteria giving priority for what he describes as the “high level of church attendance (of parent/guardian and child) required to gain a place through the school’s oversubscription criteria.” The approach adopted by previous adjudicators on this issue is that socio-economic status and those who have such a status in common can constitute a social group for the purpose of paragraph 1.8 of the Code. I am willing to adopt this approach, but I have concerns about whether this group is identified adequately by the objector.

55. The adjudicator in ADA3725 accepted that there was some evidence that there may be some disadvantage to a group of particular socio-economic status. Personally, I am rather more sceptical about reaching conclusions based almost exclusively upon anecdotal evidence and lower levels of eligibility for the Pupil Premium. I do accept that there is evidence that the social characteristics of pupils at the school may be at odds with those prevalent in the area local to the school, and that this outcome may have been arrived at in previous years at least in part as a result of the trust’s choice of faith-based oversubscription criteria. I also accept the possibility that some families might find it more difficult than others to attend public worship on a weekly basis (although weekly attendance is not required by the faith-based oversubscription criteria or as a matter of fact). Who are these families? It is necessary to identify a social group in considering whether the arrangements operate unfairly. The trust does not accept the “bald assertion” that social groups are disadvantaged in a clear evidenced way. The trust’s solicitors have examined the “group” identified by the objector. They say:

- “Already-disadvantaged – the objector fails to adequately describe this alleged social group to enable our Client to properly respond in any meaningful way.
- Low-income – to suggest that because one belongs to a family of low income means that would prevent attending public worship to any significant degree is wrong and narrow in its interpretation. Churches serve congregations of all means. Even the poorest members of a congregation can seek to worship many times in any one week and show varying levels of commitment through church attendance. The Objector offers no evidence that the application of the school’s determined oversubscription criteria would prevent this social group from attending at least one service per week up to a maximum of 39 weeks in any one year. It is simply too remote a probability to suggest that low-income families as a group would be disadvantaged in a points system capped by 39 weekly attendances per annum over a 5 year period.

- Single-parent – our Client’s position here echoes that which has been said for low-income families. It is perverse to make a sweeping and unsubstantiated statement that simply because a child has one parent means they cannot attend church or, if they wanted to, demonstrate up to a maximum of 39 weekly attendances at church.
- Shift-working – the oversubscription criteria does not require attendance on any specific day so those who wish to demonstrate commitment to the faith through attendance at public worship may do so on any day at which a service is held Sunday to Saturday. Our Client rejects the assertion that those who may be assigned to this perceived social group are subject to a disadvantage by having a cap of up to 39 weekly church attendances in a year”.

56. The solicitors point out that both parents/guardians are not required to attend. The requirement that the child attend with a parent or guardian [at all] is included to acknowledge the age of the pupils concerned at the point of application (10 to 11) and to demonstrate that the child is from a committed family. I am inclined to accept these arguments. I am unclear as to why the objector assumes that a person who is committed to a particular religion would attend church less frequently because they are disadvantaged in some way. Even if both parents work at weekends, if they genuinely wanted their children to be brought up in a particular faith, there would be no reason why the parents would not find a local church service on another day which one or other of them could take their children to. Having a cap on the maximum number of attendances cannot be said to be imposing a requirement to attend public worship on that maximum number of occasions in order to attain priority. It does not have that effect.

57. In summary then, my view is that there is insufficient evidence to demonstrate that the applicants described by the applicant will be disadvantaged by having a points-based priority system based upon church attendance. I do not find the arrangements in breach of paragraphs 1.8, 1.37, 1.38 or 14 of the Code for the reasons alleged by the objector. However, I do find that the arrangements for church attendance in 2020/2021 are unclear, and the arrangements will need to be revised in order to set these out.

B. The application of the definition of exceptional circumstances is unclear, unreasonable and risks operating unfairly because it allows for the possibility of families in similar circumstances being treated depending upon which person signs the SIF (paragraph 14)

58. There is a section in the arrangements entitled “Exceptional Circumstances” which reads:

- a. For members of church communities, where circumstances such as illness, bereavement or work patterns have meant that a member of the family other than the parent/legal guardian has occasionally attended worship with the child, supporting evidence should be provided by the priest/vicar/minister/superintendent for these attendances to be counted in the relevant priority.
- b. When attendance at public worship re-opens, there may be specific health related reasons why the parent/legal guardian and child cannot attend public worship in the church but participates online or by other means. In this case,

supporting evidence should be provided by the priest/vicar/minister/superintendent for these attendances be counted in the relevant category. Any places which are awarded based on exceptional circumstances will be deducted from the relevant faith priority.

59. The SIF states that the religious leader must insert the number of weekly attendances (Sunday to Saturday) by the child and one parent/legal guardian. The form sets out the maximum number of attendances for each school year. It also states the minimum number of points for an application to be accepted under each category where applicable. The religious leader is also to sign to confirm that the child should be allocated 5 additional points if they were baptised prior to 31 August of Year 5.

60. The SIF does not explicitly require the religious leader to supply supporting evidence of the exceptional circumstances. What it says is: "If you feel that exceptional circumstances (please refer to the Admissions Policy) are applicable in any given family situation, please do send an accompanying letter to explain the situation and how the points have been calculated". It is unclear whether 'you' refers to the clergy member signing the form or to the applicant but, as it falls to the clergy member to calculate the number of points, there is an implication that the letter is to be written by the clergy member. As set out above, the section entitled "Exceptional Circumstances" in the arrangements does say in terms that the religious leader must supply the evidence. In order to understand the meaning of the term "exceptional circumstances", the religious leader would need to refer to the definition in the admission arrangements, which presumably the parent would bring with them when asking the religious leader to sign the form, or which the religious leader will need to look up online.

61. The objector considers that the "exceptional circumstances" provision is too vague and therefore is not objective. He asks how many "occasional attendances" are necessitated by bereavement? Is the religious leader supposed to judge one bereavement as more disruptive than another? If so, how? How many "occasional attendances" are reasonable if a lone parent works shifts? The lack of clarity (he says) risks that families with very similar circumstances will be treated differently by different clergy members.

62. I have to say that, when I read the arrangements alongside the SIF, I was inclined to agree with the objector's view that what appears to be intended does risk operating unfairly for the reasons he suggests. This is because the wording of the arrangements suggests that it is for the relevant priest/vicar/minister/superintendent to judge whether there are exceptional circumstances which warrant attendances to be counted which would not otherwise be the case. The provision is designed to confer a discretion and I was concerned that the effect of a discretion being exercised by numerous persons at different places of worship could indeed result in applicants being treated inconsistently. The conferment of a discretion may well be intended to allow flexibility, but in order to ensure fairness and consistency of treatment, there would either need to be clear parameters within which decisions are made, or the discretion would need to be exercised by the same person or body for all relevant applicants. Ideally both. There are no such clear parameters in the arrangements.

63. However, I now understand that my concerns were caused by a lack of sufficient clarity in the drafting. The trust's solicitors have provided an explanation about how the exceptional circumstances provision is intended to work. This is what they have said:

"The Exceptional Circumstances section has been inserted into the School's admissions arrangements as a form of 'safety valve [sic – I think what is meant is valve] to allow further flexibility for **applicants to state a case where they feel that they can demonstrate to the School's admissions committee a reason(s) why occasional church attendance has been impacted through circumstances beyond their control** [My emphasis by bold]. In particular, it is envisaged that this section may be used to address the difficulties faced by some families during the pandemic, and what the Church of England itself acknowledges may well be an endemic virus which could cause local restrictions for years to come. There is yet to be an accord between local clergy and the Diocese/National Society regarding how to tackle public worship in the circumstances. Our Client has had to be very mindful and careful to ensure it does not adopt a rigid system which would be unfair due to a lack of consistency in approach to making public worship in church available to all".

64. I pause briefly here to say that my view is that the operation of any oversubscription criterion which counts the exact number of church attendances would need to allow for exceptional circumstances in order to operate reasonably, regardless of whether or not it was being operated during a global pandemic. There will always be genuine reasons for non-attendance even amongst the most devoted worshippers. The solicitors continue:

"In respect of the evidence sought to support attendance under exceptional circumstances, it is entirely reasonable for those who keep records of attendance to reference when a child has had to be accompanied by an alternative family member. It is not onerous at all to mark the record accordingly and for the religious leader to support the case for attendance. Furthermore, this section of the admissions arrangements has not [been] objected to by any other church, clergy nor the Diocese of Manchester on developing the policy or through the consultation process. The Objection concerns itself with a level of evidential burden that simply is not required of religious leaders under the exceptional circumstances section. It is significantly less onerous than that required by the Diocesan Board of Education in its November guidance which advises clergy to ask for medical evidence, something which clergy regard as unworkable and unmanageable".

65. I found this last sentence puzzling, since the definition of 'exceptional circumstances' says in terms that supporting evidence of bereavement, work patterns and ill health "should be provided by the priest/vicar/minister/superintendent for these attendances to be counted", and the SIF does imply that it is the priest/vicar/minister/superintendent who should make the case in a letter setting out what the exceptional circumstances are and how the points have been calculated. The solicitors have said:

"Having discussed this extensively with local clergy our Client believes that, overwhelmingly, the clergy know their congregation and if there is a change in a church's religious leader, their churchwardens know who attends and have records

which evidence that. Confirmation that such attendances have taken place with alternative family members or by alternative means for the reasons given is all that is called for along with any supporting evidence submitted with the application for exceptional circumstances. Our Client's admissions committee will consider each case on its merits and the evidence available. It is not intended to be prescriptive in nature and is flexible to meet the needs of each individual case.

Our Client does not ask, nor does it seek, religious leaders to investigate or make such determinations on its behalf. There is no reason to doubt the veracity of what is said by religious leaders when providing records which note what reasons [that] were given when attendance has been with alternative family members or alternative means. **What will count for occasional will be for the admissions committee to determine in line with the ordinary dictionary definition of the word.** [My emphasis in bold] In summary, the exceptional circumstances section is present to allow for attendances at public worship, other than those with a parent/guardian or on some occasions, by the child in person, when there is an exceptional reason for occasional deviation from the requirements of the oversubscription criteria. In the event that the decision of the admissions committee is not accepted which results in an offer not being made the applicant is entitled to make an appeal before an independent panel".

66. It is clear from this explanation that it is the school's admissions committee which will be making the relevant decisions. This should mean that some consistency will be achieved by virtue of the fact that the same people will be making the decisions in individual cases. However, this is certainly not clear from the arrangements and they do need to make this clear. Indeed, if the solicitors' explanation of their operation is correct, the definition is confusing, and makes no mention of the admissions committee being the decision-maker. Is the role of the relevant priest/vicar/minister/superintendent simply to forward any evidence he/she has been provided with? This is unclear.

67. The operation of this aspect of the arrangements does not appear to have been thought through properly. The arrangements have only been in existence since 29 January 2021, but the number of church attendances for each applicant during the years 2016 – 2020 will already have been established. Will churches have records dating back to 2016 which indicate specifically whether a child attended church with another family member and the reasons for this? Also, why make allowances for circumstances where the parent is unable to attend public worship due to illness or bereavement under a. but not the child?

68. Accordingly, although I do not necessarily consider that these provisions risk operating unfairly because they will be operated inconsistently by different people, I also do not consider them to be sufficiently clear to comply with the requirement in paragraph 14 of the Code that the practices and criteria used to decide the allocation of school places are clear and I therefore uphold this part of the objection. Furthermore, the trust intends the admissions committee to have a discretion, which is reasonable in principle, but there are limited circumstances signalled as falling within the definition of 'exceptional circumstances', and the definition needs to be clearer about whether these are what amounts to the sum



total of exceptional circumstances or merely examples. The definition will need to be revised.

69. The objector makes a number of valid points which the trust may at least wish to consider when revising this aspect of the arrangements. As I have said above, it is not for me to suggest specific wording for admission arrangements and, in any event, the trust will have knowledge which I do not have about local churches in terms of which services they offer, size of congregation, attendance record systems in place and views of local clergy. The objector's points are:

- there may not be an alternative family member to bring some children to church;
- there may be circumstances (such as long-term serious illness or death of a parent/guardian which may mean that it will be necessary for another person to bring the child to church for a prolonged period);
- that in some larger churches church officers do not know the situations of the families involved. The objector mentions an example of where 150 family members attend a midweek service and leave immediately afterwards (I do not know whether this is based upon a real example);
- the Diocese of Manchester proposals for Mission Communities may weaken the relationship between its clergy and their parishioners;
- parishes already operating with reduced numbers of clergy do not have the resources to offer services at multiple different times of the week;
- it may not be considered reasonable or practical in some parishes that they should modify their *modus operandi* in order to facilitate the school's admissions processes;
- that when a family changes churches, information may well be lost.

C. It is not reasonable to expect that the relevant priest/vicar/minister/superintendent is required to provide supporting evidence of a bereavement, illness or work patterns (paragraph 14)

70. I agree with the objector that this would be an onerous requirement to impose upon the relevant priest/vicar/minister/superintendent clergy, and I would have upheld this part of the objection had this been what is intended. I now understand that it is not the intention of the trust to place the onus upon the clergy member signing the form to actively seek out evidence or investigate the veracity of explanations given by the parents - despite the wording of the arrangements.

71. I understand the intention to be that the priest/vicar/minister/superintendent will be able to look at an attendance register which differentiates between attendances of the child with one parent and attendances of the child with another family member (although as I have said, I wonder whether churches would have registers with this level of detail in place dating back to 2016). In some churches, the priest/vicar/minister/superintendent will know

why the child is not attending with a parent (because he/she knows the families who attend regularly) and will simply write an explanation of why x number of attendances with another family member should be counted. The priest/vicar/minister/superintendent might ask the parents to provide him/her with medical evidence or other relevant evidence if he/she thinks the admissions committee may question the validity of counting any attendances which would not otherwise be counted. But all of this needs to be made clear.

72. As I have said, my view is that it is reasonable to have an allowance for exceptional circumstances in any arrangements where priority is afforded on the basis of the number of times an applicant attends church. Where such an allowance is made however it is necessary for the arrangements to have steps in place which ensure that any discretion is exercised fairly, transparently and consistently. I consider that it is reasonable for the admissions committee to make decisions as to whether exceptional circumstances apply and to exercise discretion in making a judgment on this point. I do not consider it reasonable to provide that decisions about what are exceptional circumstances are to be made by each relevant individual priest/vicar/minister/superintendent, or for that person to do anything other than forward evidence supplied by parents to support a request that exceptional circumstances be taken into account by the committee. The exercise of discretion by an indeterminate number of individuals risks subjectivity, unfairness and inconsistency in the circumstances prevailing here, particularly as the priest/vicar/minister/superintendent will know the applicant personally. The exercise of discretion by a single body within clearly drafted parameters and no personal knowledge of the applicants provides the best assurance of objectivity, fairness and consistency. As stated by the solicitors, parents whose child is not offered a place at the school because their exceptional circumstances have not been taken into account may challenge any such decision before an Independent Appeal Panel. The arrangements are not sufficiently clear about the operation of the exceptional circumstances' provisions. By stating that it is for the priest/vicar/minister/superintendent to "provide evidence", the arrangements could be taken to mean that it falls to the clergy member to obtain it. This aspect of the arrangements therefore fails to comply with paragraph 14 of the Code and will need to be revised.

D. It is unreasonable not to count online attendance as church attendance during the period when churches were closed or could only accommodate access to a limited number of worshippers (paragraph 14 of the Code. Paragraph 1.38 is also relevant)

66. The objector suggests that, in his experience, children and adults from more deprived backgrounds are **more likely** to attend live online church activities, including Sunday School: the technology is not a barrier to more deprived families.

73. In response to this, the trust argues that it was following diocesan guidance in not counting online attendance, and the solicitors cite paragraph 1.38 of the Code, which is set out above and which requires admission authorities for schools designated as having a religious character to have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based admission arrangements.

74. Following diocesan guidance is a valid reason for adopting any aspect of faith-based admission arrangements, and so I would generally not uphold any aspect of an objection where this is the reason given for adopting a particular provision. The exception to this would where, in the individual circumstances prevailing, it is patently unreasonable to follow guidance which is written in general terms. I note that subparagraph b. of the 'exceptional circumstances' definition does allow for online participation to be counted where there are health-related reasons why the parent/legal guardian and child cannot attend public worship when churches re-open. I also note that online attendance would simply not have been relevant prior to 2020 and that allowances have been made for the attendance requirements in 2019/2020, and will be made for 2020/2021.

75. It is entirely a matter for the trust in line with any relevant guidance to determine how to judge attendance. A preference for giving priority in respect of actual attendance at public worship in circumstances where such attendance is reasonably practicable is not unreasonable, and I can understand that the act of a congregation meeting physically to perform collective worship is something which the church would wish to encourage where this can happen safely. I do not uphold this aspect of the objection.

## Summary of Findings

76. Based upon the evidence, it appears that the trust has set a maximum level of attendance at public worship for each relevant school year. It is unlikely that applicants will need to attend public worship on the specified maximum number of occasions in order to be offered a place; however, I do not find the maximum level of 39, which is the subject of this objection, to be irrational. I find no evidence that having a maximum level of 39 will deter some parents from applying. I find that some families may find it more difficult to attend public worship than others, and that the arrangements need to make some allowance for this. I do not find the allowances made in these arrangements to be set out clearly and, as a result, the allowances appear to be unreasonable.

77. More specifically, I find that the school's faith-based oversubscription criteria which confer priority based upon church attendance are not in breach of requirements in the Code as alleged by the objector, and I do not uphold part A of the objection. I find that it is reasonable to make allowances for exceptional circumstances which enable church attendances with a person other than a parent to count for the purposes of affording priority, however I also find that the arrangements as drafted are unreasonable which is in part due to the fact that they are unclear. On this basis, I uphold parts B and C of the objection. I do not find that a failure to count online attendance other than in circumstances where physical attendance at public worship in a church is impracticable or unsafe to be unreasonable and I note that this provision is in line with the relevant diocesan guidance, therefore I do not uphold part D of the objection.

## Determination

78. 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 2022 determined by Cranmer Education Trust for The Blue Coat School, Oldham.

79. 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: 26 April 2021

Signed:

Schools Adjudicator: Dr Marisa Vallely