



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: VAR2115**

**Admission authority: The governing board for St Francis de Sales Catholic Infant School, Haringey**

**Date of decision: 18 May 2021**

## Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the governing board for St Francis de Sales Catholic Infant School for September 2021. By virtue of the same provision, I do not approve the proposed variation to the admission arrangements determined by the governing board for St Francis de Sales Catholic Infant School for September 2022.

I determine that for September 2021 the published admission number will be reduced from 90 to 60.

I determine that for September 2022 the published admission number will remain at 90.

I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the ways set out in this determination.

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

## The referral

1. The board of governors of St Francis de Sales Catholic Infant School (the school) has referred a proposal for variations to the admission arrangements for September 2021 and 2022 for the school to the Office of the Schools Adjudicator. The school is a voluntary aided school for children aged 3 to 7 in the London Borough of Haringey (the local

authority). The admission authority for the school is the governing board although the referral was made through the local authority.

2. The proposed variation is to reduce the published admission number (PAN) from 90 to 60 for both years.

## Jurisdiction

3. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which states that:

“where an admission authority (a) have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, but (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined, the authority must [except in a case where the authority’s proposed variations fall within any description of variations prescribed for the purposes of this section] (a) refer their proposed variations to the adjudicator, and (b) notify the appropriate bodies of the proposed variations”.

4. I am satisfied that the proposed variation is within my jurisdiction.

5. I am also satisfied that it is within my jurisdiction to consider the determined arrangements in accordance with my power under section 88I of the Act as they have come to my attention and determine whether they conform with the requirements relating to admissions and if not in what ways they do not so conform.

## Procedure

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

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

- a. the referral dated 18 March 2021, supporting documents and responses to my enquiries from the local authority on behalf of the school;
- b. confirmation from the governing board that the local authority was acting on its behalf and that it was content with the responses and information provided to me by the local authority;
- c. the determined arrangements for 2021 and 2022 and the proposed variations to those arrangements;
- d. a map showing the location of the school and other relevant schools;
- e. comments received on the matters I raised under section 88I of the Act; and

- f. comments received from the Archdiocese of Westminster which is the body representing the religious denomination for the school.

## Consideration of the arrangements

8. When I considered the arrangements as a whole it appeared to me that they did not, or may not, conform with the Code in the following ways:

- i) Paragraph 1.8 of the Code requires that “Admission arrangements must include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.” There appeared to be no provision in the arrangements for cases where two children live the same distance from the school.
- ii) The arrangements did not appear to be clear concerning the priority given to siblings. Paragraph 14 of the Code requires that arrangements are clear.
- iii) The arrangements did not appear to be clear concerning the admission of pupils with an Education, Health and Care Plan (EHCP).
- iv) The arrangements did not appear to be clear concerning deferred entry.
- v) The supplementary information form (SIF) did not appear to meet the requirements of Paragraph 2.4 of the Code.

## The proposed variations

9. The school is situated adjacent to the Tottenham Hotspur Stadium and the parish church. It shares a campus with St Francis de Sales Junior School with which it is federated. There are 63 other primary schools within a two-mile radius of the school’s postcode as listed on the Department for Education (DfE) database. Of these, seven are Roman Catholic schools.

10. The 2021 arrangements were determined by the governing board on 23 September 2019 and the 2022 arrangements were determined by the governing board on 30 November 2020. Both sets of arrangements include a PAN of 90; the oversubscription criteria can be summarised as:

1. Looked after and previously looked after baptised Catholic children.
2. Baptised Catholic children with a sibling at the school.
3. Baptised Catholic children resident in the parish of St Francis de Sales.
4. Other baptised Catholic children.
5. Other looked after and previously looked after children.

6. Christians of other denominations.

7. Children of other faiths.

8. Other applicants.

11. Paragraph 3.6 of the Code states that admission arrangements, once determined, may only be changed, that is varied, if there is a major change of circumstance or in certain other limited and specified circumstances. I will consider below whether the reduction in the PAN from 90 to 60 is justified by the change in circumstances identified in the application.

12. Paragraph 3.6 of the Code also requires that the appropriate bodies in the relevant area are notified of a proposed variation. The local authority appeared to be unclear about the requirements of paragraph 3.6. For future reference I will set out here that the appropriate bodies are:

- all other admission authorities within the relevant area (except that primary schools need not consult secondary schools);
- whichever of the governing body and the local authority are not the admission authority;
- in the case of schools designated with a religious character, the body or person representing the religion or religious denomination; and
- so far as not covered by the above, all governing bodies for community and voluntary controlled schools in the relevant area.

The relevant area is defined in section 88F(4) of the Act as the whole of the local authority area unless the local authority has determined a different relevant area for the school through the process set out in the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999.

13. Following correspondence with the local authority I am now satisfied that the required notification was made. I find that the appropriate procedures were followed.

## **Consideration of the proposed variation**

14. When an admission authority wants to reduce the PAN at a school before it determines its arrangements, it is required to consult parents and others listed in paragraph 1.44 of the Code for at least six weeks. This allows wide public scrutiny of the proposed new PAN. Once arrangements have been determined, they may only be changed, that is varied, in limited circumstances. The variation process is set out in paragraph 3.6 of the Code. That process is designed for use when there is a “major change in circumstances” occurring since the arrangements were determined. This will include emergencies such as building failure which cannot be predicted and could require speedy action to manage the

issues that arise, leaving no time to consult on any necessary changes to admission arrangements. Hence the lesser requirement to simply notify appropriate bodies in the relevant area of any proposed changes to admission arrangements as there may not be time to consult more widely. I am concerned that parents and others should be able to have their views fully considered when changes are made to admission arrangements whenever possible and as required by the Code. There are also particular issues in relation to changes to PANs which I will explain below that I have taken into consideration.

15. Paragraph 1.3 of the Code says that the admission authority for the school, in this case the governing board, is not required to consult where it proposes to keep the same PAN for the next year. Paragraph 3.3b of the Code prohibits any objection being made to the adjudicator if the governing board decides to keep the same PAN. Consequently, if I agree both the proposed reductions in PAN, then parents in the area will not have had any opportunity to comment on the reduction in PAN in 2021 or 2022, and they would not be able to object if the governing board decided to retain the PAN at the new figure in 2023 and beyond.

16. Local authorities are required to plan the provision of school places and setting a PAN through annual consultation on admission arrangements is one tool they can use. They can also use statutory proposals to open, close or make other changes to schools. All these processes require consultation with parents and others and there are ways in which decisions can be externally scrutinised. I am concerned that, in effect, the variation process is being used to make changes in the pattern of school provision without the same level of consultation with parents and others which is required by the law when the other processes are used.

#### The proposal for 2021

17. The application refers to a fall in the demand for primary school places in Haringey since 2015. It says: "Since March 2020 Covid-19 has led to a pronounced out-migration from Haringey and lowered demand for Reception places further." The application said that in the planning area (Planning Area 4) which the school is in, the number of first preferences fell from 703 in 2020 to 578 in 2021. I was told that for September 2021 the school received 58 first preferences and that 60 places had been offered.

18. It appeared to me that the fall in the demand for places since 2015 would have been known to the local authority, but possibly not the governing board when it set the PAN for 2021. At that time 89 offers had been made for the 90 places available in September 2019. The major change in circumstances since the arrangements were determined which this variation is intended to address is the stated out-migration caused by Covid-19. I asked the school for evidence that the quoted fall in local demand was due to Covid-19.

19. The local authority responded to this question by saying "Given the unique situation of the Covid-19 pandemic we are having to work on the best anecdotal and demand led data to ascertain likely shifts in demand for primary school places." It referred me to reports

from PWC, the Economic Statistics Centre of Excellence (ESCoE) and other sources as evidence of outward migration from London.

20. I found the ESCoE paper particularly interesting. This pointed out possible flaws in the methodology behind the Labour Force Survey and other published data which have not been adjusted to reflect the pandemic. However, it says its own estimates “are crude and illustrative, and will certainly not be accurate”.

21. It seemed to me that if families were moving away from London due to the pandemic, schools would be recording falling rolls in all year groups as well as fewer applications for reception places. I asked for figures which might show changes in other year groups, but none were supplied. I note the number of children expected to be on roll in Year 1 and Year 2 in September are slightly below the number of places offered when those cohorts joined the school but not greatly so.

22. In the application I was told that “If capacity is not taken out of Planning Area 4 financial pressures on many schools will increase to the extent that they will become unsustainable.” The implications of possible school closure were stated as undermining the range of types of school in the area and loss of flexibility to accommodate any future growth in pupil numbers. I asked for details of how the school would be organised in September 2021 if the PAN remained at 90 and how this would be different if the PAN was reduced to 60.

23. I was told that if the PAN remained at 90 in September 2021, then the school would organise as follows:

	Class 1	Class 2	Class 3	Total
Year R	20	20	20	60
Year 1	23	23	22	68
Year 2	27	27	27	81

And if the PAN was reduced to 60, the organisation would be:

	Class 1	Class 2	Class 3	Total
Year R	30	30	-	60
Year 1	23	23	22	68
Year 2	27	27	27	81

24. The school's funding is driven by the number of children on roll. With an expected 209 pupils it will be easier to fund eight classes than nine. However, I do not think it is necessary to reduce the PAN to 60 in order to be able to operate with eight classes. Infant class size regulations require that infant classes, that is those where the majority of children are aged 5, 6 or 7, should not contain more than 30 pupils with one teacher. They do not prohibit children of different ages being in the same class, so the 149 Year 1 and Year 2 children could be formed into five classes. Mixed age teaching is a common way of organising classes in primary schools when the numbers of children on roll require it.

25. It is often misunderstood that the PAN only applies to the normal year of admission. Admission to other year groups can be refused if would prejudice the efficient provision of education or the efficient use of resources. So, combining 149 Year 1 and Year 2 pupils into five classes would mean that there would be room for one more pupil to be admitted to those years before any class size prejudice might arise. Whether it did or not would be a matter for an independent appeal panel to decide.

26. Among other possible organisational patterns, the school could leave Year 1 and Year 2 in six classes as planned and set up two Year R classes for the 60 pupils already offered places. If there were further applications for Year R then with a PAN of 90 the school could not refuse them, however, it would not be required to set up a new class as the new pupil could be placed in a class of Year 1 children. Given that the local authority is arguing that families are moving out of the area and the number on roll in existing year groups at the school is fewer than the number of places originally offered, it would seem unlikely to me that growth in this year group will occur.

27. I am of the view that there are other ways which the school could operate with an eight-class structure in September 2021 which do not require a reduction of the PAN from 90 to 60. However, I appreciate that to reduce the number of classes through a reduction in PAN may be the least disruptive approach for existing pupils. These considerations must also take into account any impact reducing the PAN would have on parents moving to the area requiring a school place in Year R for a child. The local authority's data show that of the 14 primary schools in Planning Area 4 only one is fully subscribed for September 2021. There are currently 930 places available in Year R for September 2021 and 638 places have been allocated. If I approve the proposed reduction in PAN for 2021, there would still be more than sufficient places in the area for families moving in or for late applications, even if I approved this and another proposal for a reduced PAN at a school in the same planning area. The archdiocese has said it supports the proposal and so would appear not to have concerns about the supply of Catholic places.

28. In conclusion, I do not think that the proposed reduction in PAN is necessary for the school to reduce the number of classes and so address budgetary problems. However, because reducing the PAN as a way of moving to an eight-class organisation would have the least effect on the children already at the school and would not prevent people moving into the area from finding a local school place, I approve the proposed reduction in PAN for 2021 from 90 to 60.

## The proposal for 2022

29. In the papers which accompanied the application was a table which stated that the PAN for the school for 2022 was 60. I asked the school for the minute of the meeting at which the governing board had determined the arrangements for 2022 and for details of the consultation which the Code requires take place before a PAN is reduced. The response provided by the local authority revealed that the governing board had not consulted on a PAN of 60 for 2022 and had in fact determined one of 90 in November 2020. Because the PAN for 2022 had been determined, my decision on the proposed reduction for 2021 would not change it. The request for the 2022 PAN to be reduced through the variation process was made following my enquiries on this matter.

30. I have explained above that if I approve this reduction, then the admission authority would be able to keep the PAN at 60 in 2023 and afterwards without parents being able to comment on the reduction or lodge an objection to it with the adjudicator.

31. Whereas for 2021 the level of demand for places at the school is known, and I am satisfied that reducing the PAN will not adversely affect parental preferences or lead to children not being able to find a local school place, that is not the case for 2022. The local authority itself has said that its school level projections are “not particularly robust” and it is “currently re-visiting school role projections in light of Covid-19”. I am also aware that reductions in PAN have been sought for other schools in this and neighbouring planning areas in the local authority. The effect of these on patterns of parental preference is not yet known and the local authority has referred to reports of how population forecasts in London are not reflecting the impact of the pandemic. I do not have confidence that there is a firm grasp of the need for places in 2022 in the area.

32. The number of places offered at the school for 2022 will be known in mid-April 2022 (if not shortly before) and the school will have until the end of May 2022 to set its staffing levels based on the number of children that it expects to have on roll in the following September. If at that time, there is a need to adjust the PAN then an application could be made, and a decision taken based on the circumstances as they exist at the time. The governing board will also have set the PAN for 2023 by then and if it thinks that a PAN of 60 will be required in future it would have had the opportunity to set it at that figure after full consultation with parents and others.

33. I have reached the decision that it would be premature to reduce the 2022 PAN at the school until the demand for places is better known. More fundamentally, approving the reduction now would lead to the admission authority being able to keep it at the new level in subsequent years without consulting parents and others. Consequently, I do not approve the proposed reduction in PAN for 2022.



## Other matters

34. Paragraph 1.8 of the Code requires that “Admission arrangements must include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.” The governing board agreed that there was no provision in the arrangements for cases where two children lived the same distance from the school and proposed using random allocation if such a situation arose.

35. The second oversubscription criterion is for baptised Catholic children with a sibling at the school. Later, the arrangements say that attendance of a sibling at either the infant or junior school will increase the priority of an application with each category. It was not clear to me what “increase the priority” meant or how this is applied in the second criterion or if having a sibling at the infant school gave greater priority than having a sibling at the junior school. I also noted that the SIF does not request any details of siblings at the junior school so it would not be possible to assess this.

36. The governing board agreed this was unclear and proposed wording which would clarify that children with siblings at either the infant or junior school would be given equal priority in the oversubscription criteria.

37. The arrangements say: “The admission of pupils with an Education Health and Care Plan (EHC) is dealt with by a completely separate procedure.” This is not always the case. A child can have an EHC plan which does not name the school; an application for such a child should be made in the same way as for any other child. The governing board agreed this was unclear and proposed wording to address the issue.

38. The arrangements were not clear to me concerning deferred entry. At one point they say: “Applicants may defer entry to school up until statutory school age i.e. the first day of term following the child’s fifth birthday.” This is not correct for children born between April and August as it is not possible to defer entry beyond the beginning of the summer term. It is possible for a summer born child’s entry to be delayed (rather than deferred) until the beginning of the school year following their fifth birthday but that is a different thing. Although the correct details are found later in the arrangements, arrangements cannot be clear if they contain contradictory statements. The governing board agreed with this and proposed to revise this aspect of the arrangements.

39. Paragraph 2.4 of the Code sets out the requirements for SIFs. They may only ask for additional information when it has a direct bearing on decisions about oversubscription criteria. The SIF requested the address of a parent, which parish the child lived in if not St Francis de Sales, the place of baptism and whether the child was looked after. None of these is required information to make decisions about oversubscription criteria and if a child is looked after, that should be known from the common application form. The governing board agreed to revise the SIF accordingly.

## Determination

40. In accordance with section 88E of the School Standards and Framework Act 1998, I approve the proposed variation to the admission arrangements determined by the governing board for St Francis de Sales Catholic Infant School for September 2021. By virtue of the same provision, I do not approve the proposed variation to the admission arrangements determined by the governing board for St Francis de Sales Catholic Infant School for September 2022.

41. I determine that for September 2021 the published admission number will be reduced from 90 to 60.

42. I determine that for September 2022 the published admission number will remain at 90.

43. I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the ways set out in this determination.

44. 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: 18 May 2021

Signed: Phil Whiffing

Schools Adjudicator: