



DETERMINATION

Case reference: ADA3280

Objector: A parent

Admission Authority: The Governing Body of Holy Ghost Catholic Primary School, Wandsworth

Date of decision: 24 October 2017

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 2018 determined by the governing body for Holy Ghost Catholic Primary School, Wandsworth.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the 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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 1 December 2017, with the exception of the aspect of the arrangements summarised in paragraph 40 of the determination (failure to follow diocesan guidance). This aspect of the arrangements must be revised by 28 February 2018.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a parent (the objector), about the admission arrangements for September 2018 (the arrangements) for Holy Ghost Catholic Primary School (the school), a voluntary aided school for children aged 4 to 11. The objection is to questions that are asked on the Supplementary Information Form (the SIF).
2. The local authority for the area in which the school is located is

Wandsworth Borough Council. The local authority is a party to this objection. The other party to the objection is the Catholic Diocese of Southwark (the diocese), which is the body representing the religious denomination of the school.

Jurisdiction

3. These arrangements were determined under section 88C of the Act by the school's governing body, which is the admission authority for the school. The objector submitted his objection to these determined arrangements on 20 April 2017. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
 - a. the objector's form of objection dated 20 April 2017 and subsequent correspondence;
 - b. the school's response to the objection and supporting documents;
 - c. the diocese's response to the objection and supporting documents, including its guidance to schools on admissions;
 - d. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2017;
 - e. maps of the area identifying relevant schools and parish boundaries;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. copies of the minutes of the meeting of the governing body at which the arrangements were determined and of other meetings of the governing body; and
 - h. a copy of the determined arrangements.

I have also taken account of information received during a meeting I convened on 15 June 2017 at the school.

The Objection

6. The objector says that several of the questions asked on the SIF seek information that the school is prohibited, by paragraph 1.9 of the Code, in using in its admission arrangements. In particular, he identifies the

following four issues:

- a) Because requests for donations are made at services of worship, seeking information about a parent's attendance at worship could be considered a proxy for assessing the willingness of a person to contribute funds. Paragraph 1.9 (e) of the Code says that admission authorities **must not**:

"give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including any religious authority."

Paragraph 1.9 (n) of the Code says that admission authorities **must not**:

"request financial contributions...as any part of the admissions process."

The fact that the parish priest is required to sign the SIF breaches the prohibition in paragraph 1.9 (e) on giving priority on the basis of practical support to a religious authority.

- b) There is only one space on the SIF for the completion of details about the *"Mother's / Guardian's"* and *"Father's / Guardian's"* attendance at worship. This is discriminatory in respect of separated, step or gay parents and is in breach of paragraph 1.9 (f) of the Code, which says that admission authorities **must not**:

"give priority to children according to the occupational, marital, financial or educational status of parents applying."

Additionally, as there is significant correlation between graduates of faith schools and their continued observance of the faith, requiring religious information about the parents is a proxy for enquiring about their educational status.

- c) The request for details about a parent's pattern of worship goes beyond *"taking account of religious activities"*, which is permitted by paragraph 1.9 (i) for schools designated as having a religious character. There is no confirmation as to how this information will be held, which is *"likely in violation of data protection laws."*
- d) The request that the parish priest confirms a parent's pattern of attendance at worship is a breach of paragraph 1.9 (m) of the Code, which prohibits admission authorities from interviewing children or parents.

Other Matters

7. When I considered the arrangements as a whole, I noted a large number of matters that appeared to me not to conform to the requirements relating to admissions:

- the preamble to the school's admissions policy begins with a sentence that reads,

“Admission to the school is normally restricted to baptised Catholic children who have one or two parents who are committed, practising members of the Catholic Church, who attend Mass regularly.”

This appeared to me to breach paragraph 2.8 of the Code, which says that,

*“all maintained schools, including schools designated with a religious character, that have enough places available, **must** offer a place to every child who has applied for one, without condition or the use of any oversubscription criteria.”*

- both the preamble and the SIF refer to levels of frequency of attendance at Mass, whereas the oversubscription criteria only refer to *“practising Catholics...who attend Mass regularly.”* This appeared to me to fail to meet the Code's requirement for clarity (paragraph 14) and to breach paragraph 2.4, which says that admission authorities,

*“**must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria.”*

- there is no mention of the requirement, in paragraph 1.6 of the Code, that all children whose statement of special educational needs or Education, Health and Care plan names the school **must** be admitted;
- the definition of previously looked after children does not reflect the introduction by the Children and Families Act 2014 of child arrangement orders, which replaced residence orders, as laid out in paragraph 1.7 of the Code;
- the term *“practising Christian”* in the oversubscription criteria is not defined. This may not comply with paragraph 1.37 of the Code, which says that *“Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied”*;
- the policy states that applications without a completed SIF will *“receive a lower priority than all other applications.”* This appears to be a breach of paragraph 1.37 of the Code, which requires looked after children and previously looked after children not of the faith of the school (who would not need to complete a SIF) to be given priority above other children not of the faith of the school (who might complete a SIF if applying on faith grounds – see oversubscription criteria below);

- the tie-breaker is unclear;
 - the SIF (incorrectly entitled “Supplementary Application Form”) asks for information about the religion of both parents and the practice of “*the family*.” This appears to be a breach of paragraph 2.4 of the Code, as the oversubscription criteria require “*one or two parents*” to be practising Catholics; and
 - there is a space on the SIF for the parish priest to add “*explanatory or additional comments*”, which may also be a breach of paragraph 2.4.
8. The diocese drew my attention to its guidance to schools, which states that “*giving priority for those worshiping in a named Parish must not be used.*” The oversubscription criteria do not follow this guidance. I considered that this may be a breach of paragraph 1.38 of the Code, which states 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.”*
9. I also noted that when the school appeared not to have consulted on its admission arrangements for more than seven years, which is a breach of paragraph 1.42 of the Code. When the objection was received in April 2017, the admission arrangements published on the school’s website were headed “*Draft*” and the SIF for 2018 was not present. This is in breach of the requirements of paragraph 1.47. I was also, at that time, unable to find information about the complete arrangements, including the SIF, on the local authority’s website, as required by paragraph 1.49 of the Code.

Background

10. The school is situated in an urban area in south-west London. It has a Published Admission Number of 30. It was oversubscribed in 2017, as 48 applicants made the school their first preference. The oversubscription criteria can be summarised as:
- (i) Baptised Roman Catholic looked after and previously looked after children.
 - (ii) Baptised Roman Catholic children who have one or two parents who are practising Catholics and who attend Mass regularly at Holy Ghost Church.
 - (iii) Baptised Roman Catholic children who have one or two parents who are practising Catholics and attend Mass regularly at named neighbouring parishes that do not have a Catholic school.

- (iv) Baptised Roman Catholic children who have one or two parents who are practising Catholics and attend Mass regularly at named neighbouring parishes that do have a Catholic school.
- (v) Baptised Roman Catholic children living in Holy Ghost Parish.
- (vi) Baptised Roman Catholic children living in the parishes named at (iii) and (iv).
- (vii) Other baptised Roman Catholic children.
- (viii) Other looked after and previously looked after children.
- (ix) Baptised children of practising Christian families.
- (x) Other children.

The arrangements state that if there is “*over-subscription*” within any “*category*”, places are allocated according to three “*sub-categories*” in the following order: (a) siblings, (b) medical need and (c) straight line distance. It is not made clear what method would be used if it were necessary to distinguish between applicants in sub-category (a), in order to allocate the final places.

Consideration of Case

11. There are three discrete aspects in this case, which I will consider in turn:
 - the objector’s grounds of objection;
 - the ways in which I considered the arrangements, including the SIF, might not conform to the requirements relating to admissions; and
 - the diocesan guidance on admissions.
12. The objector says that the collection of donations during church services means that to give priority in admission arrangements to those who attend church breaches paragraph 1.9 (e) of the Code, as priority is given to those who give financial support “*to the school or any associated organisation.*” Although both the local authority and the school pointed out that Holy Ghost Church is a separate organisation and is funded entirely differently from the school, I will assume for present purposes that it is an “*associated organisation.*”
13. It was explained at the meeting I convened at the school that those attending Mass at the church are provided with an opportunity to make a donation, either in cash or in an envelope with a personal number. For tax purposes, a record is kept of the donations made in the envelopes. There is no requirement for those attending Mass to make any donation. No information about the making of donations is shared with the school.

14. I am satisfied that the fact that many parents may make donations when attending Mass does not breach paragraph 1.9 (e). The oversubscription criteria give priority on the basis of attendance at Mass; the making of a donation is neither a condition nor an inevitable consequence of such attendance. The school is not informed as to which parents make donations. The signing of the SIF by the parish priest, to which the objector also makes reference, provides confirmation of the pattern of attendance described by the parent. I do not see how it can be understood as being related to any "*practical support*" the parent may provide to the church.
15. The objector's second ground of objection concerns the part of the SIF where parents give details of their pattern of attendance at worship. The objector considers that providing only one space for these details and the use of the words "*Mother's*" and "*Father's*" is discriminatory in respect of separated, step and gay parents and is therefore in breach of paragraph 1.9 (f) of the Code, which prohibits the giving of priority according to the marital status of parents applying.
16. The SIF asks for the name of both the child's mother and father and their religion. In the following section, there is space for only one answer to a series of questions about attendance at worship. It is not made clear how these questions should be answered when the practice of the child's parents differs.
17. In response, the school explained that it is only necessary for one parent to give details of their Catholic practice as the oversubscription criteria require "*one or two parents*" to attend Mass regularly. The local authority argued that rather than being seen as discriminatory, this enables parents to choose on whose religious practice the application will be based.
18. I agree with the school and the local authority that it is only necessary on the SIF to provide one space for details of parental attendance at worship as this is what is required to satisfy the oversubscription criteria. However, the structure of the SIF does not make this sufficiently clear. It is unnecessary to seek information about the religion of more than one parent and, in the absence of any clarification of the term "*parent*", the use of the words "*mother*" and "*father*" might, as the objector suggests, be taken to imply that the school is restricting its definition. I therefore uphold this aspect of the objection to the extent that the SIF is in breach both of paragraph 2.4 of the Code, as it asks for information that is not necessary to apply the school's oversubscription criteria and of paragraph 14, which requires admission arrangements to be clear.
19. I have been provided with no evidence to support the other part of this ground of objection, that there is a correlation between those who have attended a faith school and those who observe religious practice, and that therefore to enquire about attendance at worship is a proxy for giving priority according to parents' educational status. Furthermore, I do not consider that attendance at a faith school confers an educational

status, which I take to refer to the qualifications an individual has achieved.

20. The objector's third ground of objection is that the request that parents give details of their attendance at worship in the SIF "*goes beyond taking into account religious activities*", as permitted by paragraph 1.9 (i). I disagree with the objector. In fact, I do not believe that sub-paragraph is relevant in this respect at all. The arrangements make clear that weekly attendance at Mass is necessary to fulfil the definition of a "*practising Catholic*." It is a means of demonstrating membership of the faith, rather than a "*religious activity*." As the local authority's Common Application Form does not ask questions about religious practice, it is inevitable that the SIF will be largely devoted to gathering this information. I do not uphold this aspect of the objection.

21. With regard to the protection of applicants' personal data, the school said,

"We follow the principles of the Data Protection Act in collecting only relevant and necessary information, and retaining it for as long as it is lawful to do so."

With the assistance of the local authority, it undertook to insert an appropriate statement to this effect into the SIF.

22. The final part of the objection relates to the prohibition, in paragraph 1.9 (m) of the Code, on the interviewing of children or their parents as part of admission arrangements. The objector points to a section in the SIF where the parish priest is asked to confirm that the applicant is known to him and that the details that have been given about attendance at Mass are accurate. He contends that the fact that the applicant must be known to the priest, who is a governor of the school, is in breach of paragraph 1.9 (m).

23. At the meeting I convened, the school explained that, although the diocesan guidance does refer to the possibility of the priest meeting with parents in order to complete this section of the SIF, meetings for this purpose do not, in fact, take place. Having completed their section of the SIF, applicants are asked to leave their forms at the church in order for the priest to complete his section. I am satisfied that this practice does not breach the Code. The mere fact that the priest and the applicant are known to one another does not constitute an interview. In fairness to all applicants, it is necessary that the information provided by parents about their attendance at Mass is confirmed to be accurate. I do not uphold this aspect of the objection.

24. I turn now to the arrangements as a whole and, in particular, to those matters that appeared to me not to conform to the requirements relating to admissions. I discussed these matters at the meeting I convened. The school explained that the statement in the preamble that I quoted above, which could be read as restricting admission to practising Catholics, is simply a description of the usual outcome of the

admissions process in recent years. The school also confirmed that the only frequency of attendance at Mass described by the word “*regularly*” in criteria (ii) – (iv) is weekly attendance and those who attend less frequently would fall into criteria (v) – (vii). It is therefore unnecessary in the preamble to refer to other levels of frequency of attendance. In both these respects, I find that the arrangements do not comply with the Code’s requirement for clarity (paragraph 14).

25. The school also accepted that the arrangements did not comply with the following parts of the Code:

- paragraph 1.6 (no mention of children whose statement of special educational needs or Education, Health and Care plan names the school);
- paragraph 1.7 (wrong definition of previously looked after children);
- paragraph 1.37 (no definition of “*practising Christian*”); and
- paragraph 14 (misleading statement that all applicants submitting a SIF will have priority over those who do not, and an unclear tie-break).

26. With respect to the SIF, in addition to the breach of paragraph 2.4 of the Code, relating to requesting details of the religion of two parents, mentioned above, the school also accepted that seeking information about levels of attendance at Mass other than weekly attendance is unnecessary for the purpose of applying the oversubscription criteria and therefore also in breach of this paragraph. It was explained to me that the part of the SIF inviting the parish priest to make “*explanatory or additional comments*” was intended to give an opportunity to provide evidence of attendance of Mass in other parishes. However, as this is not made clear, there is the possibility of other, irrelevant, comments being made. Therefore, I consider this to be a further breach of paragraph 2.4.

27. Finally, I consider the fact that the school gives priority for places to children whose parents attend Holy Ghost Church, ahead of those who live in the parish, but choose to worship in a different parish church or at an “ethnic chaplaincy”. This is contrary to the guidance provided by the diocese, which states that there is no requirement to attend a particular church in Canon Law and that such a criterion could discriminate against those who attend “ethnic chaplaincies” outside the parish. It also, according to the guidance, favours parents who are more mobile and “*has an adverse effect on the life of some parishes.*”

28. Paragraph 1.38 of the Code places an obligation on the school with respect to the diocesan guidance on admissions. The paragraph begins as follows:

“*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 the Code.”

29. The meaning of the term “*have regard*” was clarified in High Court by Mr Justice Cobb in a judgment about the London Oratory School (Governing Body of the London Oratory v The Schools Adjudicator [2015] EWHC 1012 (Admin)). Mr Justice Cobb held that to “*have regard*” to guidance from their religious authority does not mean that admission authorities are obliged to follow such guidance, but that they must have a “*clear reason*” with a “*proper evidential basis*” for a decision to depart from diocesan guidance.
30. It is certainly the case that the governing body of the school has given this matter some consideration. The diocese drew the attention of the governing body to its guidance in March 2015. The governing body considered the matter in April 2015 and expressed a willingness to amend the admission arrangements. However, governors understood that two neighbouring Catholic primary schools (St Anselm’s Primary and St Boniface Primary) also did not follow the guidance. It was felt that a change should be made simultaneously by the three schools.
31. With respect to the arrangements for 2018, the governing body met on 2 November 2016 and again considered the diocesan guidance. The minutes of the meeting show that the governors were concerned that as currently over 50 per cent of applications for places at the school are made by families living outside the Holy Ghost Parish, a significant number of families who regularly worship at the Holy Ghost Church would be placed at a disadvantage if the oversubscription criteria were to be changed to give a higher priority for children who live in the parish. In addition, it would be necessary for the arrangements to give continuing priority for younger siblings of current pupils who live outside the parish. It was again stated that any change should be made in consultation with the two neighbouring schools.
32. At the meeting I convened at the school, I invited the governing body to provide me with a definitive written statement of their reasons for not following the diocesan guidance on admissions. This statement, along with further correspondence from the school, provided a little more detail. The school says that the cost of housing within Holy Ghost Parish is the most expensive in the local area. The current arrangements effectively widen the area in which pupils who attend the school live. This, according to the school, has created a greater “*social and ethnic mix*” than would be achieved by a criterion based on residency. The school also makes the point that many families who do not reside in the Holy Ghost Parish nonetheless “*feel a strong sense of connection*” with the parish as they worship at Holy Ghost Church. The school believes that in order both to take into account these considerations and to avoid potential confusion for parents who may have to consider rather different admission policies, changes to its arrangements to meet the diocesan guidance should be made collectively with the two neighbouring schools. It says,

“The change, if not co-ordinated, has potential to have an unintended negative impact on the social and ethnic mix of the school, and to longstanding families who have worshipped here.”

33. I consider that it is important to note that throughout its discussions on the matter and in the submissions it has made, the school has not expressed a settled refusal to follow the diocesan guidance on admissions. Rather, it has provided reasons why it believes it is inappropriate for it to make changes to its arrangements at this point in time. Whilst it has made several assertions about social and economic factors that will need to be taken into account if and when changes are made, I have been provided with no statistical information or analysis that would, in my view, constitute a *“proper evidential basis”* for departing from the diocesan guidance. In a response to the school’s statement, the diocese expressed disagreement that changing the arrangements could have a *“negative impact”* on families wishing to apply for a place at the school. Without a significant amount of more detailed data, it is not possible for me to come to a view as to whether the school or the diocese is right.
34. I have come to the conclusion, however, that it is not necessary for me to consider the competing arguments. The school is not unwilling to change its arrangements but it feels strongly that it should do so collectively with the two neighbouring schools. I consider that there is some merit in this view, as the arrangements of the three schools do interlock to some extent, particularly with respect for priority for admissions for applicants who live in other neighbouring parishes that do not have a Catholic School.
35. Therefore, I find that the arrangements are in breach of paragraph 1.38 of the Code. The school has not provided a clear reason with a proper evidential basis for not following the diocesan guidance; it has primarily provided reasons why it should not do so without acting collectively with neighbouring schools. I have also considered the arrangements of both St Anselm’s Primary and St Boniface Primary (Case references: REF3344 and REF3345) and have determined that they too do not follow the diocesan guidance and have not met Mr Justice Cobb’s test for departing from it. All three schools thus fail to comply with what the Code requires. In order for appropriate analysis of the effect of making changes to its arrangements to be made, followed by consultation in accordance with the Code’s requirements, I determine that changes be made by 28 February 2018, that is, in respect of admissions in September 2019.
36. The school acted quickly to remedy the breaches in its arrangements that I refer to in paragraphs 18, 24, 25 and 26 above, that is, the matters other than its failure to follow the diocesan guidance on not giving priority for places for those worshiping in a named parish. I have been provided with a proposed new admissions policy, including revised proposed oversubscription criteria and definitions, and a proposed revised SIF. Both the proposed policy and the proposed SIF now appear to me to conform to the requirements relating to

admissions. It will be necessary for the governing body to determine the amended arrangements in accordance with section 88E of the Act and as provided for in paragraph 3.6 of the Code. This should be done so that they can be used for those applying for a place at the school in September 2018. Accordingly, I determine that these aspects of the arrangements be revised by 1 December 2017.

Summary of Findings

37. The objection was made on four grounds, which argued that the school's SIF and admission processes are in breach of parts of paragraph 1.9 of the Code. For the reasons given above, I do not uphold three of these grounds of objection, that is, that the taking of a collection at Mass breaches the prohibition on taking into account a parent's financial status, that asking for details of a parent's pattern of worship goes beyond the taking into account of religious activities and that asking the parish priest to endorse the completed SIF breaches the prohibition on interviewing parents.
38. I do uphold the part of the objection relating to the request on the SIF for the "*mother's*" and "*father's*" "*religion*." The oversubscription criteria only require one parent to be a practising Catholic. The request is therefore in breach of paragraph 2.4 of the Code, which prohibits admission authorities from seeking information that is not necessary for them to apply their oversubscription criteria. As there is no definition of "*parent*", this aspect of the arrangements is also unclear and therefore breaches paragraph 14 of the Code.
39. I find that there is a large number of other ways in which the arrangements do not conform with the requirements relating to admissions, as listed in paragraphs 24, 25 and 26.
40. I also find that the arrangements are in breach of paragraph 1.38 of the Code, which requires admission authorities to have regard to guidance on admissions provided by its religious body. The arrangements give priority to those worshipping at Holy Ghost Church. This is contrary to the diocese's guidance and the school has not provided a clear reason with a proper evidential basis for departing from it. I have come to a similar judgment in respect of two neighbouring schools and determine that this aspect of the arrangements of the three schools should be revised by 28 February 2018.

Determination

41. 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 2018 determined by the governing body for Holy Ghost Catholic Primary School, Wandsworth.
42. I have also considered the arrangements in accordance with section

88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

43. 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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 1 December 2017, with the exception of the aspect of the arrangements summarised in paragraph 40 of the determination (failure to follow diocesan guidance). This aspect of the arrangements must be revised by 28 February 2018.

Dated: 24 October 2017

Signed:

Schools Adjudicator: Peter Goringe