



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: REF3344

Admission Authority: The Governing Body of St Anselm's Roman Catholic Primary School, Wandsworth

Date of decision: 24 October 2017

Determination

I have considered the admission arrangements for September 2018 for St Anselm's Roman Catholic School, Wandsworth in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that there are 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 28 February 2018, with the exception of the aspects of the arrangements summarised in paragraph 25 of the determination. These aspects of the arrangements must be revised by 1 December 2017.

The referral

1. Under section 88I(5) of the School Standards and Framework Act 1998, (the Act) the admission arrangements (the arrangements) for St Anselm's Roman Catholic Primary School (the school), for which the governing body is the admission authority, have come to the attention of the adjudicator.
2. In April 2017, an objection was referred to the adjudicator about the admission arrangements of Holy Ghost Catholic Primary School (ADA3280). During the course of my consideration of this objection, it was drawn to my attention that the arrangements for St Anselm's Roman Catholic Primary School, which is a neighbouring school to Holy Ghost School, may not conform with the requirements relating to admission arrangements. I have decided to use the power conferred under section 88I(5) of the Act to consider whether this is the case.
3. The local authority for the area in which the school is located is

Wandsworth Borough Council (the local authority). The body representing the religious denomination of the school is the Catholic Diocese of Southwark (the diocese).

Jurisdiction

4. These arrangements were determined under section 88C of the Act by the school's governing body, which is the admission authority for the school, on 7 June 2017. This was over three months after the latest date for the determination of admission arrangements laid down in Regulation 17 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations. It is also after the deadline for objections to those arrangements with the result that anyone who may have wished to object will have been unable to do so. The failure of the admission authority to determine its arrangements within the statutory timetable does not, however, affect the status of those arrangements now or my jurisdiction to consider them. I am accordingly satisfied it is within my jurisdiction under section 88I(5) of the Act to consider the arrangements.

Procedure

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
6. The documents I have considered in reaching my decision include:
 - a. a copy of the determined arrangements;
 - b. the diocese's guidance to schools on admissions;
 - c. the responses of the school's governing body, the local authority and the diocese to the referral and supporting documents;
 - d. a map of the area identifying relevant schools and parish boundaries; and
 - e. extracts from the minutes of the meeting at which the governing body of the school determined the arrangements.

The Referral

7. Whilst I was considering the objection to the arrangements of Holy Ghost School, the diocese drew my attention to its guidance to schools, which states that "*giving priority for those worshipping in a named Parish must not be used.*" The arrangements for Holy Ghost School give priority for places to those who attend Mass regularly at Holy Ghost Church. The oversubscription criteria of St Anselm's School were also said not to follow this guidance in a similar way. 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.”

8. Having had the arrangements brought to my attention in relation to giving priority for those worshipping in a named Parish, I was concerned that they contained what I considered may be further breaches of the requirements of the Code. I therefore sought the comment of the governing body concerning these matters in addition to that raised by the diocese. The further matters were as follows:
- the definition of previously looked after children did 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;
 - there was no explanation of the process for requesting admission for children out of their normal age group as required by paragraph 2.17 of the Code;
 - the Supplementary Information Form (SIF) for parents applying for a place in the reception year in 2018 did not appear to be published on the school’s website. The SIF is part of the admission arrangements. Paragraph 1.47 of the Code requires that arrangements must be published once admission authorities have determined them; and
 - the arrangements did not make sufficiently clear what is meant by the term “*practising Catholic*.” I considered that this may be a breach of paragraph 1.37 of the Code, which states that,

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

Background

9. The school is a voluntary aided school for children aged four to eleven. Its Published Admission Number (PAN) is 30 and it is generally oversubscribed. The oversubscription criteria can be summarised as:
- (i) Baptised Catholic looked after and previously looked after children.
 - (ii) Baptised Catholic children with at least one parent who is a practising Catholic attending Mass in the Parish of St Anselm’s.
 - (iii) Baptised Catholic children with at least one parent who is a practising Catholic attending Mass in another Parish.
 - (iv) Baptised Catholic children not falling within categories (i), (ii) or (iii).

- (v) Other looked after and previously looked after children.
- (vi) Baptised children with a parent who is a practising member of another Christian denomination.
- (vii) Children with at least one parent who is a practising member of another religion or faith.
- (viii) Other children.

The arrangements state that the following priorities will be applied in order if there is over-subscription within any “*category*”: (a) siblings, (b) medical social or pastoral need and (c) straight line distance. Where distance measures are identical, priority will be determined by lottery.

Consideration of Case

10. The school gives priority for places to children whose parents attend Mass in the Parish of St Anselm’s but does not give any specific priority for Catholic children who live in the parish. 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.*”
11. 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.”*
12. 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.
13. The governing body gave some consideration to the diocesan guidance at its meeting on 7 June 2017, when the arrangements were belatedly determined. Reference was made to two neighbouring Catholic primary schools, Holy Ghost and St Boniface, which also give priority for places to those who attend Mass in the parish, ahead of those who live in the parish but attend Mass elsewhere. It was felt that St Anselm’s should not change its arrangements unless these two schools were to do

likewise.

14. When invited to comment on this referral, the headteacher and the co-chairs of governors provided further explanation. The school sees itself, with the other two schools,

“as operating within a wider Catholic primary school community in Wandsworth that draws from an overlapping catchment.”

Therefore, in order to avoid *“inequitable and unforeseen consequences”*, any change to admission arrangements should be coordinated between the three schools, in consultation with the local community. The headteacher and co-chairs of governors also commented that the approaches used to verify Catholic practice may differ between churches.

15. They also believe that adoption of the diocesan guidance would

“have the effect of widening the eligibility for entry into the three schools... This will result in a greater number of Catholic children wanting places in Catholic schools, and more frustrated parents who, despite being eligible, will not be able to access the places for their children.”

I understand this to mean that the introduction of a new second oversubscription criterion (after Catholic looked after and previously looked after children) that gives priority to Catholic children with at least one parent who is a practising Catholic living in the Parish of St Anselm's will increase the number of applicants who will need to be considered under the second criterion. It is, in fact, wrong to refer to such applicants as *“eligible.”* Admissions arrangements operate on the principle of priority, not eligibility. Other than at selective schools, there is no threshold of eligibility for a place at a particular school. Changes to the oversubscription criteria will inevitably alter the priority for a place accorded to individual applicants. They may also have the effect, as the school seems to suggest, of encouraging more applications. As the school is oversubscribed, this will, in turn, increase the number of applicants whose priority for a place is not sufficiently high to be allocated one. This may well lead to frustration, but does not seem to me to be a reason for not altering arrangements that are in breach of the diocesan guidance.

16. I think it is important to note that what the school says does not represent a clear disagreement with the diocesan guidance itself. There is no direct attempt to challenge the principles on which the guidance is based. Rather, the school expresses some concern about the practical effect of amending its arrangements, in order to follow the guidance, particularly if this were to be done unilaterally. I recognise the potential benefit in changes being made together by St Anselm's and the two neighbouring schools that do not follow the diocesan guidance, so that any unintended consequences that might otherwise arise can be avoided.

17. 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 Holy Ghost Primary and St Boniface Primary (Case references: ADA3280 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. It follows that the arrangements of all three schools fail to conform with the Code's requirements. 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 these changes should be made by 28 February 2018, that is, in respect of admissions in September 2019.
18. I turn now to the other matters that I considered might breach the requirements relating to admission arrangements. With the assistance of the local authority, the school corrected the definition of previously looked after children in its arrangements. It also included an explanation of the process for requesting admission for children out of their normal age group. The SIF has been published on the school's website, as required.
19. The term "*practising Catholic*" appears in both the second and third oversubscription criteria. Notes within the arrangements state,
- "Catholic practice is as defined by the Catholic Church in Doctrine and Canon Law, in essence: baptism and attendance at Mass on Sundays and Holy Days of Obligation."*
- Parents wishing to be considered under the second or third criteria are asked to complete the SIF, which includes a question about "*the attendance of the family*" at Mass on Sundays and Holy Days of Obligation. There is a range of possible answers, from "*weekly*" to "*occasionally*" and "*all*" to "*few*" respectively. The arrangements then state that the governing body will seek verification of this information from the appropriate parish priest and that,
- "The St Anselm's Parish Priest has supplied a statement on his approach which is annexed to this guide."*
20. No statement from the parish priest appears in the admission arrangements published on the school's website. When I asked to see a copy of the statement, I was eventually provided with an excerpt from an annex to the school's prospectus, in which it is included. A copy of the prospectus is, in fact, available on the school website, although it is dated 2015. Nowhere in the published admission arrangements is it stated that the parish priest's statement is to be found in the prospectus. I consider that the statement forms part of the admission arrangements, as it provides information as to how oversubscription criteria will be applied. It has not been published on the school's

website, as paragraph 1.47 of the Code requires.

21. The statement explains that the priest will use a range of information in order to verify “*Catholic practice*.” This, he says,

“involves a mixture of personal knowledge, consultation with my parish team, discussion with the parents, if possible to arrive at an agreed position, and, of course, the evidence provided by the Mass attendance forms. No single element is, on its own, determinative; it is ultimately a judgement that I, as the leader of this faith community, am responsible for making.”

22. The second and third oversubscription criteria require a single judgement to be made as to whether at least one parent is a “*practising Catholic*.” The diocesan guidance on admissions is very clear as to how Catholic practice is defined:

“For the purpose of admissions to a Catholic school a practising family is regarded as one where at least one parent or carer is attending Mass weekly.”

Whilst the parish priest’s statement provides some helpful information as to how he will seek to verify Catholic practice, it is not explained in a straightforward way that the judgement he is making is whether the applicant attends Mass on a weekly basis, or not.

23. I do not consider that the school’s arrangements, that is, the notes to the oversubscription criteria, the SIF and the parish priest’s statement taken together, make it sufficiently clear that weekly attendance at Mass is what is required in order to be considered under the second or third criteria. The option on the SIF for parents to state that they attend Mass “*fortnightly*” or “*monthly*” is unnecessary and potentially misleading, as the oversubscription criteria only provide for two possibilities: the applicant is either a “*practising Catholic*” or is not. I therefore find that the arrangements are in breach of paragraph 1.37, as parents might not “*easily understand how any faith-based criteria will be reasonably satisfied*.” In addition, as the SIF asks for information that does not have “*a direct bearing on decisions about oversubscription criteria*”, paragraph 2.4 of the Code is also breached. It will be possible for the admission authority to make the necessary changes reasonably quickly and I determine that this must be done by 1 December 2017.

Summary of Findings

24. The arrangements give priority to Catholic children with at least one parent who attends Mass in the Parish of St Anselm’s. This is contrary to the diocese’s guidance, which requires the highest priority (after Catholic looked after and previously looked after children) to be given to practising Catholics who live in the parish. I do not consider that the school has not provided a clear reason with a proper evidential basis for departing from the guidance. I therefore 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. 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 must be revised by 28 February 2018.

25. The arrangements do not make sufficiently clear what is meant by the term "*practising Catholic*." This is a breach of paragraph 1.37 of the Code. Information is sought in the SIF that does not have a direct bearing on the oversubscription criteria, in breach of paragraph 2.4 of the Code. These aspects of the arrangements must be revised by 1 December 2017.

Determination

26. I have considered the admission arrangements for September 2018 for St Anselm's Roman Catholic School, Wandsworth in accordance with section 88I (5) of the School Standards and Framework Act 1998 and find that there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.
27. 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 28 February 2018, with the exception of the aspects of the arrangements summarised in paragraph 25 of the determination. These aspects of the arrangements must be revised by 1 December 2017.

Dated: 24 October 2017

Signed:

Schools Adjudicator: Peter Goringe