

DETERMINATION

Case Reference: ADA/002236

Admission Authority: The Governing Body of Holy Trinity Church of England School, Crawley.

Date of Decision: 27 January 2012

Determination

In accordance with section 88(5) of the School Standards and Framework Act 1998 I have considered the admission arrangements of Holy Trinity Church of England Secondary School.

I determine that the admission arrangements for Holy Trinity Church of England Secondary School do not meet the requirements of the School Admissions Code.

I uphold the view of the referral body that oversubscription Criterion 4 of the School's admission arrangements does not comply with a mandatory requirement detailed in paragraph 2.16(a) of the School Admissions Code.

There are other matters that do not comply with the School Admissions Code:

The admission arrangements do not include an admission number for admissions to Year 7 as required by paragraph 1.16 of the Code.

The supplementary information form asks for information that is prohibited by paragraph 1.78 of the School Admissions Code and does not meet the requirement of paragraph 1.83 of the Code to ask only for additional information that has a direct bearing on decisions about applying acceptable oversubscription criteria.

The School's admission arrangements are over complex and breach the requirements of paragraphs 1.71 and 2.12 of the School Admissions Code. How account is taken of factors not listed within the oversubscription criteria such as distance from the School; the relevance of siblings; and residence within the three named deaneries is not clear.

The School appears to admit sixth form students from other schools without having published admission arrangements including an admission number for entry to Year 12 in contravention of paragraphs 1.30 and 1.42 of the School Admissions Code.

I have considered whether I should use my powers to make changes for admissions in September 2012, but have concluded that it is too late in the admissions process to do so.

The Referral

1. On 23 November 2011, the Office of the Schools Adjudicator received a referral from the Clerk to the Independent Appeal Panel of West Sussex County Council (the Council) which had considered an appeal made by a parent regarding admission to Holy Trinity Church of England School, Crawley (the School). In their letter, the panel state “The Panel consider that category 4 of the Oversubscription Criteria does appear to breach the mandatory provisions of the School Admission Code” . Paragraph 3.21 of the School Admission Appeals Code specifies that an Appeal Panel must refer to the Schools Adjudicator any arrangements that it identifies in the course of its deliberations that it considers unlawful.

2. The appeal was for a place in Year 7 and therefore was considered under the admission arrangements for admissions in September 2011. I looked at the arrangements for admissions in September 2012 and found that they contain the same oversubscription criterion cited by the appeal panel. I came to the view that I should therefore consider the admission arrangements for 2012.

Jurisdiction

3. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the governing body which is the admissions authority for the School.

4. Under section 88I(5) of the Act, the Adjudicator has the power to consider any admission arrangements that come to his attention by means other than an objection under section 88H or referral by the Secretary of State. Where the Adjudicator decides to consider the arrangements, he must decide whether or not they comply with statutory requirements or the mandatory requirements of the School Admissions Code (the Code). I have concluded that I have the jurisdiction to consider the particular matter referred to me and the admission arrangements as a whole.

Procedure

5. In coming to my conclusions, I have had full regard to all relevant legislation, guidance and the Code. The documents I have considered in reaching my decision include:

- the initial letter from the independent appeal panel submitted on 23 November 2011 and its letter to the parent who submitted the appeal on behalf of her child;

- the admission arrangements for 2012 published by the School in its prospectus which is on the School's website;
- the School's Sixth Form Prospectus published on the School's website;
- the admission arrangements published by the Council, "Admission to Secondary or Intermediate School in September 2012";
- a letter from the Council received on 17 January 2012;
- a letter from the Chair of Governors received on 17 January 2012;
- a letter from the Chichester Diocesan Board of Education dated 6 January 2012; and
- the report of the Ofsted inspection of the School in October 2009.

Background and Consideration of Factors

6. The School is a larger than average co-educational Church of England school serving pupils aged 11-19 in Crawley, West Sussex. It is a voluntary aided school and the governors are the admission authority for the School.

Key issue

7. In the oversubscription criteria in the School's "Application for Admission" published in their prospectus, criterion 4 states: "*Where the child currently attends a Church of England School*".

8. Paragraph 2.16(a) of the Code states that admission authorities **must not** "stipulate any conditions that affect the priority given to an application such as taking account of other preferences for schools made on the same application form or the type of school previously attended by the child unless those schools are named feeder schools in accordance with paragraph 2.72. For example, by saying that priority will be given if all or some other preferences are for a school with particular characteristics (e.g. other schools are of a particular religious denomination) or on the basis that the child attended a particular type of school previously. This includes criteria often described as 'conditionality'."

9. I take the view that criterion 4 of the School's admission arrangements, "*Where the child currently attends a Church of England School*", is equivalent to the example given in paragraph 2.16(a) of the Code: "...or on the basis that the child attended a particular type of school previously". The School seeks to give priority to children who have attended a Church of England School and thus the criterion contravenes paragraph 2.16(a) of the Code.

10. In its response the Chichester Diocesan Board of Education stated that it believes paragraph 2.72 of the Code concerning the inclusion of feeder schools as an oversubscription criterion can be interpreted as supporting the above criterion on the grounds that the criterion is objective and consistent.

11. The chair of governors advances a similar argument but goes further: “ We feel that to name specific schools would not “support geographical links” but in fact restrict them,” He also argues that the intent of the criterion is not to introduce any form of conditionality and not to “unfairly disadvantage children from more deprived areas near the school”

12. The Council state that they were aware that: “criterion 4 was not consistent with the wording of paragraph 2.16a of the School Admission Code 2010, but that the school did not intend to use “conditionality” which is what this section aims to prevent”.

13. Paragraph 2.72 says that the use of named feeder schools can support good curriculum and geographical links and local continuity between phases in an area and it is those feeder schools that must be selected on an “objective and consistent” basis. The criterion refers to any Church of England school, wherever situated, and does not name specific schools. This would make “good curriculum and geographical links and local continuity” referred to in paragraph 2.72 impossible. I do not accept the view that naming specific feeder schools would restrict geographical links.

14. Although I accept that specifying attendance at a Church of England school is objective and consistent in that a child either attends such a school or does not, the other features needed to qualify as a feeder school are not met. I do not agree that the criterion can be interpreted as referring to feeder schools. Whilst accepting the chair of governor’s assurance that it is not the aim of the criterion to introduce conditionality or to disadvantage children from more deprived areas near the School, neither of these factors have material bearing on the acceptability of the criterion under the Code.

15. The naming of a particular type of school is prohibited by paragraph 2.16a of the Code and I do not accept the argument that the criterion refers to feeder schools is valid. Nor do I accept the argument that the criterion is acceptable because it was not intended to use it as a conditionality criterion. I therefore conclude that the arrangements for 2012 admissions contravene the Code in respect of oversubscription criterion 4.

Other matters

16. Having considered the specific matter on which the arrangements were referred, I have looked at the School’s admission arrangements as a whole.

17. **Admission Number:** Paragraph 1.16 of the Code requires an admission authority to set an admission number for “each relevant age group”. Determined admission arrangements need to show clearly the number of places available at a school and the oversubscription criteria that will be applied if there are more applications than places available. Although there are oversubscription criteria, I can

find no statement of the admission number for admissions to Year 7 as part of the School's admission arrangements as included in the School's prospectus. Whilst the admission number is given in the summary list for all schools in the Council's booklet on admissions published on its website, it is not given by the admission authority, the School, in its admission arrangements. Therefore, I conclude that the School's arrangements contravene the Code by not making explicit its admission number for Year 7 as an integral part of its admission arrangements.

18. **Supplementary Information Form:** Paragraph 1.83 of the Code states "Given the potential for discrimination, admission authorities **must** only use supplementary application/information forms that request additional information when it has a direct bearing on decisions about acceptable oversubscription criteria..." The School's admission arrangements include a supplementary information form which contains requests for information that is either prohibited by the Code or in my view does not have a direct bearing on applying the oversubscription criteria and thus contravenes the Code. Paragraph 1.78a of the Code says that admission authorities must not ask for personal details about parents and families. In section A of the form there is a request for both "Mother's and father's title, initials and surname". This is seeking personal details beyond what is necessary and acceptable. In sections B and C the requirements seems to be for both parents to attend a Christian Church or a place of worship at one of the specified frequencies, but makes no reference to how the criteria would be applied where one but not both parents attend, or where a parent has been widowed, for example. Similarly, there is no mention in sections B and C that covers circumstances when the child lives with a guardian. As formulated the requirements are challengeable in terms of discriminating against certain groups of children or on giving priority on the basis of the marital status of parents which is contrary to paragraph 2.16d.

19. Also in section A of the form "Present School attended" can only refer to oversubscription criterion 4 which itself contravenes the Code.

20. I am of the opinion that that the School's Supplementary Information Form breaches the requirements of the Code.

21. **Complexity:** Paragraphs 1.71 and 2.12 of the Code state that: "The admission system can appear very complex to some parents and admission authorities **must** make every effort to ensure that all parents are able to understand the process, in particular how oversubscription criteria will be applied", and are able to "assess whether they have a reasonable likelihood of gaining a place at a particular school". The School's admission arrangements contain statements which could be viewed as either sub- criteria of individual oversubscription criteria or tie-breakers. After the oversubscription criteria the arrangements have a paragraph labelled "N.B." which states that if oversubscription is reached within one of the oversubscription criteria the governors will use the place of residence to allocate up

to 84 places across all categories and then use distance to allocate any remaining places. This does not make clear exactly how places would be allocated and there is no information to assist parents in knowing whether there is a realistic chance of their child gaining a place at the School.

22. Furthermore, under a separate heading at the very end of the arrangements there is a paragraph that says governors will give priority to siblings within each category. This is not listed within the oversubscription criteria, and if priority is to be given to siblings in each oversubscription criteria that must be stated within the criterion.

23. In the section of the arrangements headed "How and when to apply" there is a statement that the Governors hope to admit an equal number of boys and girls. Whilst it goes on to say that there is no policy of positive discrimination if a balance is not achieved using the oversubscription criteria, as a co-educational school it would be unlawful for the School to apply the criteria to ensure that an equal number of boys and girls are admitted. The oversubscription criteria must be applied to all applicants irrespective of gender. The inclusion of such statements is potentially confusing and as they have no place in admission arrangements they should be removed.

24. I am of the opinion that there are elements of the School's arrangements that are indeed complex and difficult to understand. The School needs to clarify its oversubscription criteria to include, if it wishes, siblings and residence in particular deaneries and then determine a clear tie-breaker, taking note of what is required in a tie-breaker. The School may wish to use distance, followed by ballot using random allocation in the event that two or more applicants cannot otherwise be separated.

25. **Sixth form admissions:** The School's admission arrangements in the section "How and when to apply" make reference to applicants "who seek entry at sixth form level". The School's sixth form prospectus published on its web site makes several references to students from other schools joining the School, for example, "Whether you are currently studying at The Holy Trinity School or are a student at another school or college ..." This indicates to me that the School recruits students new to the School into its sixth form. If this is the case, and it "sets out to admit external candidates to its sixth form" (see paragraph 1.43 of the Code) the School must, under paragraphs 1.30, 1.42 and 1.43, publish admission arrangements including an admission number for this point of entry to the School. If the School rarely admits students to the sixth form then this should be clear in the material available to parents and especially to any Year 11 pupils seeking a place for study in the sixth form.

Conclusion

26. Given that the independent appeal panel considered that the arrangements may contravene the Code, the panel was right to refer this matter to the Adjudicator in accordance with the requirement set out in the School Admission Appeals Code that it must do so. For the reasons given above, I have concluded that over-subscription criterion 4 of the School's admission arrangements breaches the mandatory requirements of the Code.

27. I have therefore considered whether I should use my powers under section 88J(2)(a) and section 88J(2)(b) to amend the arrangements. However, I share the concern of both the chair of governors and Council that it is very late in the admission process for entry in September 2012 and I note that the Council expects the school to be undersubscribed for entry in 2012. Therefore, since applications for a place in September 2012 closed on 31 October 2011 I am of the opinion that I should not make any changes to the arrangements for admissions to Year 7 for admission in 2012. However, if the School does intend to recruit to the sixth form in September 2012, at the very least it should publish an admission number and set out how places will be allocated in the event that the School is oversubscribed. Preparing such arrangements would enable the School to make progress towards meeting the mandatory requirements of the Code in relation to admissions to the sixth form.

28. A new School Admission Code is to come into force on 1 February 2012 that will apply for entry to schools in September 2013. The School will need to review its admission arrangements carefully in the light of this determination to ensure that its future arrangements are fully compliant with the expected new Code.

Determination

29. In accordance with section 88I(5) of the School Standards and Framework Act 1998 I have considered the admission arrangements of Holy Trinity Church of England Secondary School.

30. I determine that the admission arrangements for Holy Trinity Church of England Secondary School do not meet the requirements of the School Admissions Code.

31. I uphold the view of the referral body that oversubscription Criterion 4 of the School's admission arrangements does not comply with a mandatory requirement detailed in paragraph 2.16(a) of the School Admissions Code.

32. There are other matters that do not comply with the School Admissions Code:

The admission arrangements do not include an admission number for admissions to Year 7 as required by paragraph 1.16 of the Code.

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The School appears to admit sixth form students from other schools without having published admission arrangements including an admission number for entry to Year 12 in contravention of paragraphs 1.30 and 1.42 of the School Admissions Code.

I have considered whether I should use my powers to make changes for admissions in September 2012, but have concluded that it is too late in the admissions process to do so.

Date: 27 January 2012

Signed:

Schools Adjudicator: Dr M. J. Kershaw