



## **DETERMINATION**

<b>Case reference:</b>	<b>ADA2898</b>
<b>Objector:</b>	<b>Worcestershire County Council</b>
<b>Admission Authority:</b>	<b>The Governing Body of the Blessed Edward Oldcorne Catholic College, Worcester</b>
<b>Date of decision:</b>	<b>25 August 2015</b>

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of the Blessed Edward Oldcorne Catholic College.**

**I have also considered the arrangements in accordance with section 88I(5). I determine that they do not conform with the requirements relating to admission arrangements.**

**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 this decision.**

### **The referral**

1. Under section 88H(2) of the Schools Standards and Framework Act 1998 (the Act) an objection has been referred to the adjudicator by Worcestershire County Council, the local authority (the LA) for the area, in an email dated 16 June 2015, concerning the admission arrangements for September 2016 (the arrangements) for the Blessed Edward Oldcorne Catholic College (the school), a voluntary aided Catholic mixed secondary school in Worcester, in the Archdiocese of Birmingham (the diocese). The objection is to an oversubscription criterion which gives priority to children of former students of the school.

### **Jurisdiction**

2. The objector submitted the objection to these determined arrangements on 16 June 2015. I am satisfied that 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

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
  - a. the objection, dated 16 June 2015;
  - b. the school's admissions policy for 2016/17, determined at a meeting of the governing body on 16 October 2014;
  - c. minutes of the meeting of the school's governing body held on 16 October 2014, and accompanying papers;
  - d. the school's response to the objection, dated 1 July 2015, and reply to the adjudicator's further enquiries, dated 7 July 2015;
  - e. advice concerning the 2014 Code circulated by the LA to own admission authority schools on 7 January 2015;
  - f. advice concerning the 2014 Code circulated to schools by the diocesan education service on 21 January 2015;
  - g. the diocesan education service's response to the objection, and copy of model admission arrangements for 2016/17 for Catholic middle and secondary schools, dated 24 June 2014;
  - h. copies of emails exchanged between the LA, the school and the diocese, on various dates between 18 September 2014 and 18 June 2015 ;
  - i. the LA's response to a further enquiry from the adjudicator in emails dated 5 August 2015; and
  - j. the school's website.

## The Objection

5. The LA has objected to the inclusion, in the oversubscription criteria within the school's arrangements, of a criterion that gives priority to children of former students of the school. The LA contends that this criterion does not meet the requirement of paragraph 14 in the Introduction to the Code for criteria to be "*fair, clear and objective.*" The LA's objection refers also to section 1.8 of the Code, which requires oversubscription criteria to be "*reasonable, clear, objective, procedurally fair*" and to "*comply with all relevant legislation, including equalities legislation.*"
6. The LA's objection is that the oversubscription criterion in question might apply to "*a huge number of children*" and that this could disadvantage "*children who have only arrived very recently in the country*" as well as "*a child living on the doorstep of the school ... it is*

*of concern that a point would be reached whereby a child new to the area not having had any connection to the school previously through family members, would not stand a realistic chance of getting a place in a nearby school because priority is given to those that may have had a parent at the school over 25 years ago, even though they lived further away.” In summary, the LA’s position is that “Parents must be able to look at a set of arrangements and be able to assess the likelihood of gaining a place. As the pool of potential applicants is so huge under this criterion, this does not seem to be fair in accordance with the Code. This criterion could unfairly discriminate against pupils and families who have recently moved into the area and are seeking a place at their local secondary school.”*

### **Other matters**

7. In the course of considering the objection I reviewed the arrangements as a whole and brought to the attention of the school that the section entitled ‘Waiting Lists’ did not meet fully the requirements set out in paragraph 2.14 of the Code. At the time of making this determination I was unable to find the arrangements on the school’s website; not to publish the arrangements there once they have been determined contravenes paragraph 1.47 in the Code.

### **Background**

8. The school is a voluntary aided Catholic mixed secondary school for pupils between the ages of 11 and 16, with just over 1000 pupils on roll. It was judged to be good overall in its Ofsted inspection of February 2013; the most recent section 48 diocesan inspection evaluated its provision and outcomes as a faith school as outstanding.
9. The arrangements for 2016 were determined by the governing body on 16 October 2014. Subsequent to determination, in February 2015, a section was added to the arrangements concerning applications for children to be admitted into a class outside of their normal age group, in response to advice from both the LA and the diocese following publication of the revised Code in December 2014.
10. The school has a planned admission number (PAN) of 210. The arrangements provide, as required, that children with a statement of special educational needs, or an Education, Health and Care plan, in which the school is named, will be admitted. Oversubscription criteria are then, in summary:
  1. Baptised Catholic looked after or previously looked after children
  2. Baptised Catholic children from named Catholic feeder primary schools
  3. Other baptised Catholic children
  4. Non-Catholic looked after or previously looked after children
  5. Siblings of current students at the time of admission
  6. Siblings of former students

7. Children attending named Catholic feeder primary schools at the time of application
  8. Other children attending a named Church of England feeder primary school
  9. Children of staff employed by the governing body in the college
  10. Children with specific health or other needs, verified by medical or social agencies documentation
  11. Children of former students on presentation of documentary evidence or on file
  12. Other children
11. The term “baptised Catholic” is clearly defined in the arrangements, as is “sibling”. Criterion 9 in the above list is restricted to members of staff, including casual staff, who have been employed at the school for two or more years at the time of the application and/or have been recruited to fill a vacant post for which there is a demonstrable skill shortage. It is stated that to qualify as a “former student”, a child must have attended the school for at least 12 weeks.
12. The tie-breaker is a straight-line distance measurement, with priority given to those living nearest the school. Where two or more applicants cannot be separated in this way, the arrangements state that both or all will be admitted.
13. The school draws from a wide area and is oversubscribed. In each of the last three admission rounds, there have been between about a dozen and 20 first preference applications over and above the PAN, with total applications in each of these years numbering in excess of 450 and close to 500. The number of children allocated places under oversubscription criterion 12 (or equivalent) in the above list was 17 in 2013/14, 18 in 2014/15 and 28 in 2015/16.

### **Consideration of Factors**

14. In an email dated 19 January 2015, the LA raised concerns with the school over some aspects of its arrangements for 2016, including criterion 11 which is the subject of this objection. A further email, dated 27 March 2015, acknowledged changes made by the school to ensure compliance with the revised Code of December 2014, but noted that criterion 11, regarding priority for children of former students, remained in place; an email dated 18 June 2015 alerted the school to the LA’s intention to lodge a formal objection with the Office of the Schools Adjudicator if no further response to the its concern over this criterion was received.
15. In presenting its objection, the LA acknowledges at the outset that while the Code *“does not specifically prohibit the children of former students being taken into account, this needs to be measured against whether it was Fair, Clear and Objective as the Code states admission arrangements must be.”* The first aspect of the objection is thus in relation to paragraph 14 in the Introduction to the Code, entitled *“Overall principles behind setting arrangements”*, in which the

requirement for fairness, clarity and objectivity is set out. The final paragraph of the objection returns to this statement of overall principle in stating that *“Parents must be able to look at a set of arrangements and be able to assess the likelihood of gaining a place”* or, as the Code puts it, *“should be able to understand easily how places for that school will be allocated.”*

16. The second aspect of the objection refers to paragraph 1.8 in the Code and mentions a particular group of applicants which, the LA contends, might be discriminated against by the criterion in question, that is, *“children who have arrived only very recently in the country.”* The objection broadens this point in detailing a more general concern that *“a child living on the doorstep of the school”* might have difficulty in obtaining a place *“over a child in the same circumstances but living further away with a tenuous link to the school a long time ago in the past.”* The objection continues with a variation of this statement, querying the fairness of *“a child, not of the faith, not in a feeder school, but resident in very close proximity to the school, not gaining a place because they have been disadvantaged by a child also not of the faith, also not in a feeder school, perhaps resident a substantial distance away, but gained a place because they happen to have a parent that attended the school over 25 years ago.”*
17. My first point in considering this objection is to make clear that the lack of specific reference in the Code to the children of former pupils does not mean that an oversubscription criterion concerning such applicants is necessarily either permitted or prohibited. The objection is therefore correct in identifying the issue as one concerned with overall fairness or reasonableness and, perhaps to a lesser degree, with the clarity with which applicants might be able to weigh their chances of securing a place at the school. While accepting that the requirements set out in paragraph 1.8 of the Code are relevant, namely that oversubscription criteria *“must be reasonable, clear, objective, procedurally fair and comply with all relevant legislation, including equalities legislation”*, I do not consider that criterion 11 in the school’s list *“disadvantage[s] unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs ... “*. I am not persuaded by the specific claim that this oversubscription criterion lacks objectivity or that it is discriminatory against *“children who have arrived only very recently in the country”*; an on-time application might be made, with the possibility of success, for any recently arrived child against other criteria in the arrangements and it would be only a non-Catholic child who would not qualify for such consideration. If children were so recently arrived that a late application has to be made, then other admission processes would be followed. I shall therefore consider this objection against the more general requirements of paragraphs 14 and 1.8 in the Code, that is, the fairness, reasonableness and clarity of the oversubscription criterion in question.

18. The school's response to the objection first claims that a criterion giving priority to the children of former students is permitted by paragraph 1.11 in the Code. However, this paragraph refers only to *"siblings of former pupils"* and even if the school were to contend that a child of a former pupil is a "sibling" – which would be challenging – its own definition of "sibling" in note 2 of the arrangements does not attempt to suggest such an interpretation. The school goes on to say that *"[i]n consideration of paragraph 1.9 of the code [the criterion] is fair and acceptable."* It is true that paragraph 1.9 does not specifically prohibit such a criterion but, as I have suggested above, that omission does not mean it would necessarily be acceptable when measured against other general requirements of the Code. Moreover, paragraph 1.9b) in the Code prohibits arrangements from taking into account *"any previous schools attended, unless it is a named feeder school"*; the sole discriminator between a child who has priority against criterion 11 and all other children is that a parent previously attended the school, so the school (which is not a *"feeder school"*) cannot be taken into account. Paragraph 1.9i) also prohibits the prioritisation of children *"on the basis of their own or their parents' past or current hobbies or activities"* and I would argue that the previous attendance of a parent at the school could be classed as an *"activity"* that should not be used as the basis of an oversubscription criterion.
19. As explained above, I accept the school's statement that *"[c]riterion 11 is not contrary to Section 1.8 as it does not disadvantage unfairly either directly or indirectly 'a child on the basis of social, racial, disability, special educational needs' [sic] and there are no other related policies that discourage applicants."* I accept the school's rejection of the LA's claim that the arrangements disadvantage children newly arrived in the country. I have quoted admissions data above, and the school understandably comments that *"[s]uch children will be usually unable to gain a place because we are usually full in each year group."* As I have already made clear, I do not see any direct or indirect attempt at discrimination against children from any particular social or racial group through the criterion in question. I note also a clear statement in the arrangements that the school takes part in the LA's Fair Access protocol and that *"classes can be required to exceed the published admission number to admit pupils covered by the Protocol."*
20. The school's response continues by expressing the view that parents are well aware of the likelihood of success in making applications to the school, stating that *"as a voluntary aided school there is no surrounding catchment area. Parents living in the surrounding area mostly send their children to the local high performing academy knowing that Blessed Edward Oldcorne does not operate a catchment area policy for admissions ... As a voluntary aided school most of our criteria militates [sic] against local residents, however that is the nature of voluntary aided schools' admission policies."* There are several issues to untangle here. The *"nature of voluntary aided*

*schools' admission policies*" in general is not within the scope of this determination. While it is true that most of the criteria in the school's arrangements relate to applications that may come from further afield than its immediate locality, as might often be the case for a faith school, there are criteria which applicants living close to the school might expect to come into play and one of these, criterion 12 (*"Other children"*) is placed below the criterion that is the subject of this objection, that is, at the bottom of the list of priorities. Neither the school nor I can be privy to the reasons that local parents *"mostly send their children"* to another school; but it might be argued that applicants' decisions regarding applications are constrained to some extent by the arrangements with which they are confronted and that their choices might be different if presented with a different set of arrangements.

21. The final point in the school's response to the objection is that *"[t]he number [of pupils] that would be admitted [under criterion 11] is miniscule if any, as the vast majority of children of former students would come in under criteria 1, 2, 3, 4, 7, 8 and 9."* This is speculation on the part of the school, as the criterion has not yet been used. The criterion was presumably introduced because the admission authority believed it would satisfy a demand; if that demand is indeed present, then the LA's concern about potentially denying places to local children is understandable. If the demand is not there – as may be implicitly acknowledged in the school's comment about the likely number of places to be allocated against this criterion (*"miniscule if any"*) – then I would question the necessity of having the criterion at all, given that it introduces another layer of complexity to already lengthy arrangements, further reducing their clarity for applicants trying to understand the likelihood of their gaining a place at the school.
22. The diocese comments that a criterion giving priority to the children of former students *"is not in the Diocesan model policy. As the advisory body to Diocesan Catholic schools, it is not an oversubscription criteria [sic] that we would recommend that schools routinely use."* Nevertheless, the diocese accepts that *"[s]chools must have regard to our advice, but are free to determine their arrangements so long as they are not in breach of the Code."* The specific response to the objection is that *"[t]he oversubscription criteria [sic] being disputed is criterion 11 of 12 which does mean that the school is giving a higher priority to ten other categories of applicants ... The only applicants who could lose out as a result of this criteria [sic] ... would be those who have neither a current or previous link with the school."* That is true, but it seems to me unfortunate if, in effect, a set of arrangements were to impose the implicit conditionality of the applicant's having a current or previous connection with the school in order to obtain a place; this connection need to have been only 12 weeks' attendance at any point in the past. Living close to the school, even if not meeting any of the higher priority oversubscription criteria, might be seen as an equally valid

“link” to the school in terms of its place within the local community. The disputed criterion is indeed very low in the list but, as I have argued above, potentially takes away places from “other children” who would otherwise have been considered under criterion 12. Data quoted previously show that, for the previous three admission rounds, between about a dozen and twenty first preference applications were unsuccessful; this number would inevitably (and unpredictably) increase if admissions were made under criterion 11.

23. The diocese’s response continues by stating that *“I can understand the local authority’s concerns given the potential effect that it could have on local non-Catholic children being able to secure a place at the school ... I also acknowledge that it would be difficult for the parent of a child who would fall into oversubscription criterion 12 to be able to judge the likelihood of their child being able to gain a place.”* The diocese maintains, however, that *“this is no different to any other applicant as the number of applicants in each criteria [sic] cannot be predicted in any given year.”* However, in relation to criterion 11, the LA objection rightly points out that *“the pool of potential applicants is ... huge”* and much less susceptible to realistic prediction than, say, the numbers of children in feeder schools who might be applying for places in any year. Although the school questioned the LA’s assumption about the size of *“the pool”*, it is obvious to me that it is indeed potentially huge, as the criterion encompasses any former pupil of the school who may have attended at any time for a minimum period of only 12 weeks. There is no way of quantifying what the effect of this criterion might be on the admission of “other children”.
24. In considering the fairness, reasonableness and clarity of the disputed criterion I repeat that the school has not defended its inclusion in relation to these general principles set out in the Code; it has claimed that the criterion is compliant with the Code at paragraphs 1.9 and 1.11, against which I have argued above, and has played down its potential impact on the allocation of places which, I have suggested, cannot be known. If criterion 11 were to have the *“miniscule”* effect claimed by the school, I would question the purpose of its inclusion in the arrangements. Each additional criterion imposes another layer of complexity and an additional barrier to *“understand[ing] easily how places for that school will be allocated”* (Code, paragraph 14).
25. I determine, therefore, that the school’s oversubscription criterion 11, giving priority to children of former students, does not comply with the Code in terms of the general requirements of fairness, clarity and reasonableness set out in paragraphs 14 and 1.8 and with the specific prohibition in paragraph 1.9i).
26. I turn now to the other matter mentioned above. When the objection was first brought to my attention I noted that the “Waiting List” section in the school’s arrangements was as follows: *“Children on the waiting*



*list will be ranked in order by reference to the above criteria. Waiting lists for admissions will remain open until 31<sup>st</sup> December 2016 and then will be discarded unless parents request to remain on the waiting list after this time.”* That statement is helpful in so far as it goes but it does not comply with paragraph 2.14 in the Code, which requires arrangements to state also *“that each added child will require the list to be ranked again in line with the published oversubscription criteria.”* When brought to the school’s attention, there was immediate agreement to meet the Code’s requirement in this respect, and a full and accurate explanation of the operation of waiting lists was drafted and sent to me. At the time of completing this determination, however, no admission arrangements (either for the current offer year or those proposed for the next admissions round) were published on the school’s website as required by paragraph 1.47 in the Code and so I have been unable to verify that this amendment has been introduced to the proposed arrangements for 2016.

## **Conclusion**

27. The objection draws attention to what the LA believes is an unfair oversubscription criterion in the school’s arrangements, giving priority to the children of former students. While accepting that the Code makes no specific mention of such a criterion, I have found that it is unfair. It makes it more difficult than it need be for parents to judge the likelihood of success in applying for places for their children at the school and so affects the clarity, and ease of understanding, of the arrangements. Furthermore, the criterion may be seen to contravene paragraphs 1.9b and 1.9i) of the Code, in that it takes account of a school that cannot be a feeder school and parent’s past activities. I do not believe that the school has attempted, either directly or indirectly, to discriminate against any specific social or racial group through including this criterion, but it has not suggested why the criterion is necessary and, moreover, has underplayed its potential impact on the allocation of places to applicants who may live close to the school but do not meet oversubscription criteria given higher priority in the arrangements. I therefore uphold the objection to criterion 11.
28. In considering the arrangements as a whole, I found that the section concerning waiting lists did not meet in full the requirements of paragraph 2.14 in the Code. An appropriate amendment was drafted by the school but arrangements are not currently published on the school’s website as required by paragraph 1.47 in the Code.
29. It is for these reasons that I conclude that the arrangements are not compliant with the Code and must be revised within two months of this decision.

## **Determination**

30. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of the Blessed Edward Oldcorne Catholic College.
31. I have also considered the arrangements in accordance with section 88I(5). I determine that they do not conform with the requirements relating to admission arrangements.
32. 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 this decision.

Dated: 25 August 2015

Signed:

Schools Adjudicator: Andrew Bennett