



## **DETERMINATION**

**Case reference:** ADA 2814

**Objector:** The Fair Admissions Campaign

**Admission Authority:** The Governing Body of St Bernadette Catholic Secondary School, Bristol

**Date of decision:** 25 November 2014

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body of St Bernadette Catholic Secondary School, Bristol for September 2015.**

**I have also considered the arrangements in accordance with section 88I(5). I determine that the schools arrangements for September 2014 and September 2015 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 as quickly as possible.**

### **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 the Fair Admissions Campaign, the objector, about the admission arrangements (the arrangements) for St Bernadette Catholic Secondary School (the school), a voluntary aided school for children aged 11 to 16 for September 2014 and September 2015.
2. The objection is to the non-determination or non-publication of the school's arrangements for September 2015, and in their apparent absence, to aspects of the school's arrangements for September 2014. These complaints concern principally the clarity of the arrangements. Matters detailed by the objector include the clarity of the manner in which faith commitment is taken into account by the school, whether or not named feeder schools are employed in the arrangements and the confusing effect of the way in which the arrangements are laid out. I shall set out in full below all the objections which have been made.

## **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 its objections to these determined arrangements on 30 June 2014, and so after the last date on which objections can be made for admission arrangements for September 2014 and on the last day that they can be made for arrangement for September 2015. However, the 2014 arrangements are still effective for the purposes of any in-year admissions and for the drawing up of the school's waiting list, until at least the end of the autumn term 2014. I have therefore decided, having looked at them and come to the view that they may not conform with the requirements relating to admission arrangements, to use the power available to me under section 88I(5) of the Act to consider them. I am satisfied the objection made concerning the arrangements for September 2015 has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

4. When I looked at the admission arrangements, both those for September 2014 and those for September 2015, I was concerned that they contained matters which may constitute breaches of the School Admissions Code (the Code) and I decided to use my power under section 88I(5) of the Act to consider them further.

## **Procedure**

5. In considering this matter I have had regard to all relevant legislation and the Code.

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

- a. the objector's email of objection dated 30 June 2014;
- b. the school's response to the objection and those of the Bristol City Council, the local council (the LA) and the Clifton Catholic Diocese (the diocese) and supporting documents;
- c. the Council's composite prospectus for parents seeking admission to schools in the area in September 2015;
- d. confirmation of when consultation on the arrangements last took place;
- e. the minutes of the meetings of the governing body at which the arrangements for September 2014 and September 2015 were determined; and
- g. a copy of the determined arrangements for September 2014 and September 2015 and the supplementary information form (SIF) used by the school which has the title "religious affiliation and faith commitment form".

## **The Objection**

7. The objector made its objection in the following terms:

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- either 1.46 (admissions policy for 2015 not decided yet) or 1.47 (admissions policy for 2015 not published yet). The rest of the complaint is therefore about the 2014 policy
- 1.7/1.37 (criteria 4.1 and 4.5 – no priority given to previously looked after children)
- 14/1.37/1.8 (criteria 4.7 and the paragraph headed ‘Over-Subscription’ – don’t specify how children will be ranked, just that they will be ranked on faith commitment. The SIF asks about holy communion/first confirmation – neither of which are mentioned in the oversubscription criteria. Similarly asks ‘How long have you known the applicant?’ and ‘I offer the following comments to indicate the faith commitment of the above child’ without a precise indication of objective criteria that lead to priority being given)
- 1.9b) (paragraph headed ‘Over-Subscription’ – feeder schools are not named, just parishes)
- 2.4 (the statement ‘All Parents are asked to complete the appropriate sections of the faith form from the School with extra information where relevant.’ implies everyone must complete the SIF. SIF also has a section ‘To be completed by all applicants’. What about those not applying on the basis of faith?)
- 14/1.8 (the criteria are generally confusing in having a separate ‘Over-Subscription’ paragraph that is not integrated with the wider admissions policy)
- 1.8 (there is no effective tie-breaker to separate two applicants living equidistant from the school)
- 2.4 (asks for details of both parents/carers). ”

## **Other Matters**

8. The school has determined admission arrangements which are the same for both September 2014 and September 2015 except in one minor respect which I shall explain below. Having seen those for September 2014 on the school’s website, and having been provided by the school with a copy of the arrangements it has determined for September 2015, I have raised with the school a further matter which I consider may not conform with the requirements set out in the Code.

9. The arrangements say that the school gives priority to “children who have a Christian faith commitment” and that priority is also given to “children with other faith commitments”. Since the arrangements do not define the terms “Christian faith” or “other faith”, I believed that they may be unclear for parents reading them and therefore fail to meet the requirement concerning clarity set out in the Code at paragraphs 14 and 1.8.

## **Background**

10. St Bernadette Catholic Secondary School is a non-selective school for

boys and girls from the ages of 11 to 16 in the Whitchurch area to the south of the centre of the city of Bristol. It is a voluntary aided school with the designated religious character of Roman Catholic, in the Catholic Diocese of Clifton. It received over 200 applications for its 150 available places in both September 2013 and September 2014, but in each year fewer than 150 were first preferences. In both years it was able to offer a place to all those expressing a first preference for the school.

11. The school data dashboard published by Ofsted shows that the school's GCSE results in 2013 (five GCSEs grade A\* to C including English and mathematics) placed it in the fourth quintile, or bottom 40%, of similar schools and of all schools nationally.

12. The school's admission arrangements for both September 2014 and September 2015 say that the governors will admit a new intake of 150 and that "when allocating places" the order of priority that applies is:

4.1 looked after children who have been baptised into the Catholic faith;

4.2 baptised Catholic children who live in the parishes listed or in a further named parish if the school is their nearest Catholic secondary school;

4.3 baptised Catholic children from parishes for whom there is not a designated catholic secondary school;

4.4 baptised Catholic children not living in one of the school's named parishes for whom there is no place at their designated Catholic secondary school;

4.5 looked after children not already admitted;

4.6 siblings of children at the school at the time of admission;

4.7 children who have a Christian faith commitment;

4.8 children with other faith commitments; and

4.9 any other applicants.

13. The arrangements then contain the following a paragraph:

***"Over-subscription:***

*In the event of over-subscription, families who can show that they have an active attachment to a Christian Church will have strongest claims on places. Should there be more applicants than places who clearly fall into categories 4.5 – 4.9 above, places would first be offered to children attending the Catholic Primary Schools listed above (the list of parishes). Of other children who have an equal faith commitment priority will be given to those living nearest to the School. "*

14. There then follows a statement asking all parents to complete the relevant sections of the faith form, information about applications for places other than at the normal point of entry in Year 7, details of the priority groups within which the 150 places were allocated in the previous admission round, an appropriate statement concerning the admission of children who have a statement of special educational needs which names the school, details of admission appeals and a list of footnotes. Finally, the school's SIF is included.

### Consideration of Factors

15. The objector states that the school's admission arrangements were not displayed on its website when it submitted its objection on 30 June 2014 and complains that if the school had determined its arrangements by that date, as required by paragraph 1.46 of the Code, it was failing to comply with the requirement of paragraph 1.47 of the Code which states that once determined, admission arrangements **must** be displayed on the admission authority's website. I looked at the school's website on 6 August 2014 and again on 15 August 2014. On neither occasion were the school's admission arrangements for September 2015 displayed there. The school has provided me with evidence that these arrangements were determined by the governing body on 4 February 2014, at the same time stating its belief that it had complied with the requirements concerning their publication which was that they be published in the year in which offers are made. It told me that its practice was to publish "in the summer preceding this date to avoid confusion for possible applicants". This belief and practice on the part of the school conform to the views which the diocese has also expressed to me regarding these matters. However, the wording of paragraph 1.47 could not be clearer, and the school should have displayed its admission arrangements for September 2015 on its website as soon as it had determined them. I therefore do not uphold this part of the objection with respect to determination of the arrangements and do uphold it concerning publication.

16. The school's admission arrangements for September 2014 and September 2015 are the same except in one small but important detail. The following matters which have been raised either by the objector or by myself relate to both sets of arrangements, unless this is stated.

17. Paragraph 1.7 of the Code states that:

*"...the highest priority **must** be given .....to looked after children and previously looked after children."*

This requirement is repeated in paragraph 1.37, which the objector also cites. The school has told me that while its policy is to include previously looked after children, it acknowledges that "this could be more explicitly stated". Both the diocese and the LA agree that the school's practice does not differ from that which the Code requires, but that this is not stated in its arrangements. Paragraph 1.7 is clear in requiring that the admission arrangements of all schools must state that first priority for admission is given to looked after and previously looked after children, and the school's arrangements do not do this. I therefore uphold this part of the objection.

18. Paragraphs 1.4 and 1.8 of the Code state that admission arrangements **must** be clear, and paragraph 1.37 refers to that requirement in the context of the use of any faith-based oversubscription criteria by schools which have a religious character. It says that admission authorities “**must ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.**” The school has told me that “greater clarity could be provided” concerning its use of the information provided by applicants on the school’s SIF. It has also provided me with the minutes of the meeting of its admissions committee which took place on 16 December 2013 at which applications for places in September 2014 were ranked. These show that faith commitment on the part of applicants was categorised as “weekly attendance”, “twice monthly”, “monthly” and “commitment shown”. However neither the policy set out by the school nor the supplementary “faith affiliation and faith commitment form” (the SIF), which are both part of the school’s admission arrangements, tell potential applicants for places that it is on this basis that their applications are prioritised by the school. The paragraphs of the Code referred to above make it clear that admission authorities are required to set out such matters within their published admission arrangements in order that parents can look at them and gauge the extent to which their application for a place is likely to have priority, and the school does not do this. I therefore uphold this part of the objection.

19. Paragraph 1.9b of the Code says that “....admission authorities....**must not....take into account any previous school attended, unless it is a named feeder school.**” The school has told me that the schools which are referred to in the section of its admission arrangements under the heading “over-subscription” which is set out above have the same names as the names of the parishes which it lists, a fact confirmed by the diocese, and that “this could be more clearly stated in future policies.” The requirement of the Code is clear, and the school has failed to comply with it. I therefore uphold this part of the objection.

20. Paragraph 2.4 of the Code says that, if an admission authority uses a supplementary form to process applications, such a form “**must only....** request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability.” The objector states its view that the school’s arrangements either imply or state more explicitly that all parents must complete the SIF provided by the school. It complains that there should be no such requirement placed on those who are not seeking the prioritisation of their application on the grounds of faith. I agree that this is the position which the Code sets out for such applicants, since all the information which the school would need to determine the priority of their application will be contained in their completed local authority common application form (CAF).

21. The school says that it “asks” parents to complete the SIF, but does not state that they “must”. Firstly, parents are not likely to make this distinction in the meaning of the arrangements in my view, and are more than likely to read “ask” as a polite form of the imperative. Secondly, the arrangements introduce the form with the heading “Religious Affiliation and Faith Commitment Form-Completion required” which seems to me to be unequivocally plain in its meaning. Although the school has assured me that significant numbers of

applicants for places at the school do not provide a completed SIF but nevertheless gain admission, and in spite of the view which the diocese has expressed to me that the form is helpful to parents, the position regarding the use of a SIF is clearly set out in the Code. Its completion is not required other than by those who wish their application to be given priority over others on the grounds of faith, and in order to be clear to parents the arrangements need to say this. They do not, and therefore are unclear as well as offending against the specific requirements of paragraph 2.4 of the Code. I therefore uphold this part of the objection.

22. The school has told me that the objector's view about the "placing of the 'over-subscription' section relates to the lay out of the policy ". The diocese has said that it does not fully understand the point being made by the objector, but can see that the paragraph in question "may have been intended as a tie breaker". All admission authorities are required to admit all applicants if they are not oversubscribed overall, and to set out in their arrangement the criteria that will be applied if the school is oversubscribed as stated in paragraph 15a) of the Code. Paragraphs 1.6 to 1.9 of the Code state how such oversubscription criteria must be constructed in general, and paragraphs 1.36 to 1.38 state how schools which have a religious character may employ oversubscription criteria which are based on faith. So it is clear that a school with a religious character may use faith-based oversubscription criteria only when oversubscribed and that for the school, the list of priority groups which it defines are in fact its oversubscription criteria which apply only in that situation. As set out however, these can be read as the groups of children that the school is stating are its preferred intake irrespective of issues of oversubscription. This is clearly not a permitted approach, since the Code makes it clear that parents select schools, and that, except in those limited ways in which this is permitted, schools do not select children.

23. So the objection expressed by the objector concerns much more than the lay out of the arrangements as the school believes, but has to do with the approach to admissions which underlies them. The objector is concerned that the arrangements are not clear because aspects of them which are oversubscription criteria are not described as such, and that at the same time means for deciding how priority would be given within the defined priority groups are given such a description. I agree that this is confusing but the arrangements as set out are also capable of being read in a way which misrepresents a fundamental principle that applies to the admission arrangements of all schools and are therefore in my view insufficiently clear for parents in describing what the school does. For both reasons, I uphold this part of the objection.

24. Paragraph 1.8 of the Code states that:

*"Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated."*

The school has agreed that its arrangements do not do so. I therefore uphold this part of the objection.

25. The objector also says that paragraph 2.4 of the Code is breached

because the school's SIF asks for details of both parents/carers. In addition to the requirement set out above concerning the relevance of information requested in any SIF, paragraph 2.4 also prohibits such a form from asking for any personal details about parents and families and forbids any requirement that both parents should be signatories. The 2014 SIF contains the following request "Parents/Carers Full Names". That for 2015 has been amended to read "Parent's/Carer's Full Names". The school has responded to the objection by saying that the position of the apostrophe (which appears in the 2015 arrangements, but not those for 2014) shows that what is required is one name, not two. Since it is not necessary to know the names of two parents to apply the school's oversubscription criteria, and since this information reveals family details such as the marital status of the child's parents, it may not be requested. The 2014 SIF clearly does not comply with the Code. The SIF for September 2015 still ask for "names", when the phrase "parent's full name" would be the normal way of asking for the full name of only one person. It would be helpful if the school were to remove this potential source of ambiguity which in my view means that the SIF is unclear in what it asks for and that paragraphs 14 and 1.8 of the Code are breached.

26. The school commented on my concern regarding the absence from the arrangements of any definition of the terms "Christian faith" and "other faith" by saying that there is a general understanding in society distinguishing between a Christian and a non-Christian faith. The school's admission arrangements give a higher priority to those of a Christian denomination (other than Catholic) than to those who are of another faith, who in turn have a higher priority than "other" applicants. If the arrangements are to be clear enough for parents to understand how their application would be given priority by the school, it is essential that there is no doubt for any parent which of these groups they would be part of. It is not the case in my view that there is a universally agreed definition of what counts as a Christian faith, and so this must be defined by the school. Neither is there a commonly held view of what counts as a religion and this too must be defined. Since the arrangements provide neither of the required definitions they are in my view unclear, and so breach paragraphs 14 and 1.8 of the Code.

27. Finally, I have asked the school to provide me with evidence of the last time it carried out a consultation concerning the contents of its admission arrangements in order to meet the terms of the Code in paragraphs 1.42 to 1.45. These paragraphs place a requirement on all admission authorities to consult specified persons and bodies when proposing to make changes to their arrangements, or to do so every seven years even if no changes have been made during that period. The school has told me that it has consulted in the past and has provided me with very partial evidence that the Code's requirements were met in a consultation which the school carried out prior to determining its admission arrangements for September 2012. These indicated that there had been a consultation at the appropriate time, and that it appeared that the LA, the diocese and local schools had been consulted, and possibly neighbouring authorities. However, the school has not been able to show me any evidence that parents of children between the ages of two and 18 were consulted at that time. I am therefore of the view that it is in breach of paragraph 1.44a of the Code, where this requirement is set out.



## **Conclusion**

28. I have set out above the reasons which have led me to conclude that the school's admission arrangements for September 2015 were determined on time by the school and my reasons for coming to the view that the determined arrangements for both September 2014 and 2015 do not meet the requirements set out in the Code:

(i) in paragraphs 1.7 and 1.37 by failing to include a statement concerning the priority which it gives to previously looked after children;

(ii) in paragraphs 1.4 and 1.8 and 1.37 concerning the clarity of the way in which the school takes faith commitment account;

(iii) in paragraph 1.9b by failing to name schools attendance at which is used to give priority to applications;

(iv) in paragraph 2.4 by requiring all applicants to complete the school's SIF; and

(v) in paragraph 1.4 and 1.8 concerning the lack of clarity which results from the absence of a final tie-breaker and from the absence of definitions for the terms "Christian faith and "other faith".

29. I have also come to the view for the reasons given that;

(i) the arrangements for September 2014 are breach of paragraph 2.4 of the Code by asking for details of both parents to be given on the SIF, and

(ii) the arrangements for September 2015 are in breach of paragraphs 1.4 and 1.8 by virtue of the lack of clarity concerning the request for names of parents on the SIF.

30. I have also explained why I have concluded that the school has not met the requirements:

(i) in paragraph 1.47 concerning the publication of its 2015 admission arrangements following their determination, and

(ii) in paragraph 1.44a concerning consultation on its arrangements.

## **Determination**

31. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body of St Bernadette Catholic Secondary School, Bristol for September 2015.

32. I have also considered the arrangements in accordance with section 88I(5). I determine that the schools arrangements for September 2014 and

September 2015 do not conform with the requirements relating to admission arrangements.

33. 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 as quickly as possible.

Dated: 25 November 2014

Signed:

Schools Adjudicator: Dr Bryan Slater