



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3305

Objector: Worcestershire County Council

Admission Authority: Governing body of Malvern Wells C E Primary School

Date of decision: 7 September 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 Malvern Wells C E Primary School, Worcestershire.

I also considered the arrangements in accordance with section 88I(5) and found there were matters which did 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 the arrangements have been amended by the admission authority under paragraph 3.6 of the Code, and an amended set of arrangements was sent to me on 26 July 2017. I therefore determine that no further action is required.

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 local authority, (the objector), about the admission arrangements (the arrangements) for Malvern Wells C E Primary School (the school), a voluntary aided primary school with a Church of England religious character for four to eleven year olds for September 2018. The objection relates to a number of elements of the admission arrangements which the objector believes do not comply with the School Admission Code (the Code).**

2. The local authority for the area in which the school is located is Worcestershire County Council. The local authority is the objector. Other parties to the objection are the governing body for the school (the school) and the diocese of Worcester (the diocese) which is the designated religious authority for the school.

Jurisdiction

3. The arrangements were determined by the governing body, which is the admission authority for the school at a meeting on 16 March 2017. The objector submitted an objection to these determined arrangements on 12 May 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 12 May 2017;
 - b. the school's response to the objection and supporting documents;
 - c. the comments of the diocese on the objection;
 - d. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2017;
 - e. a map of the area identifying relevant schools;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. copies of the minutes of the meeting at which the governing body of the school determined the arrangements; and
 - h. a copy of the determined arrangements.

I have also taken account of information received during a meeting I convened on 19 July 2017 at the Diocese of Worcester offices. The headteacher of the school was present at the meeting together with the personal assistant to the Director of Education and Group Secretary of the Diocese.

The Objection

6. The original arrangements included five over-subscription criteria, a section of definitions and notes concerning other elements of the admissions process. The objection covers the following areas:

- the criterion which applies to children of the Christian faith or “*other established faith*” does not comply with paragraphs 14, 1.37 and 1.38 of the Code;
- it is not for the school to determine what constitutes active involvement in a faith which is not the designated faith of the school. This does not comply with paragraphs 1.37 and 1.38 of the Code;
- the use of the term “*religious affiliation*” is not defined in the arrangements, is not clear and therefore does not comply with paragraph 14 of the Code; and
- the statement in the arrangements concerning the admission of children from multiple births does not comply with the Code at paragraph 14.

Other Matters

7. In my letter to the school of 7 July 2017 I outlined other areas of the admission arrangements which did not comply with the Code. These were subsequently discussed at the meeting on the 19 July 2017. These matters concerned:
 - the availability of catchment area maps;
 - the definition of the published admission number (PAN);
 - the lack of a supplementary information form (SIF);
 - the coverage of deferred and part-time schooling in reception year (YR);
 - the contradictory nature of the over-subscription criteria.
8. Following the meeting the school revised the arrangements and all the non-compliant areas were rectified.

Background

9. The school is a voluntary aided primary school for 4 to 11 year olds. The school has a PAN of 15 for admission into YR. It has 103 pupils on roll and a Department of Education assessed capacity of 105.
10. The school last consulted on its arrangements in 2017 for the September 2018 arrangements. The 2018 arrangements were determined by the governing body at a meeting on 16 March 2017. It was drawn to the attention of the headteacher during the meeting on the 19 July 2017 that the Code requires that arrangements are determined before 28 February in the previous admission year and that consultation, if it takes place, is required before this date.

11. Oversubscription criteria in the original version of the arrangements had five priorities;

- 1) Looked after and previously looked after children
- 2) Children living in the catchment area by distance from the school
- 3) Siblings of children in the school
- 4) Parents or child actively involved in the work and worship at a Christian church or any other established faith within the local community
- 5) Children living outside the catchment area by distance.

The arrangements then go on to say that if there are too many applications under 2) above (catchment area) then priority will be given to siblings then according to religious affiliation then distance.

12. The amended arrangements which I received on the 26 July 2017 have covered all the elements of the objection.

13. The revised arrangements are clear and retain the five oversubscription criteria of;

- 1) Looked after and previously looked after children
- 2) Children living in the catchment area
- 3) Siblings of children in the school
- 4) Parents or the child involved in worship at a Christian Church within the school catchment area; the application must be accompanied by confirmation from the parish priest or minister solely that there has been a history of least monthly attendance for a minimum period of one year prior to the date of application.

Other elements of the criteria have been removed. Provision is made in the arrangements in the event of equidistance applicants (final tie breaker) and this involves random allocation (lottery) by an independent person.

Consideration of Case

14. The diocese responded to the objection over a month after being contacted. The response stated that it treats each of its school as unique and does not offer a one size fits all generic style of advice but offers advice on a school by school basis should it be sought. There is, of course, no requirement on a religious authority for a school to issue guidance, but, as I set out below, where it chooses not to do so this has certain consequences for the school. In this case, it was clear to me from the meeting and correspondence that the school was in need of

direction and support in drawing up the faith based oversubscription criteria within its arrangements. The Code is specific in that schools have to have regard to guidance from the relevant designated religious body. In addition, Church of England schools such as this school must consult with the diocese before undertaking any public consultation on its arrangements. The school last consulted on its admission arrangements in 2017 and the headteacher reported that the diocese had been sent the proposed arrangements as part of the consultation. At the meeting on 19 July the diocese representative was unable to report whether the diocese had responded to this consultation due to change in personnel.

15. I have considered all elements of the objection and I agree that the arrangements as previously issued were non-compliant with the Code in all respects of the objection except one as set out under the heading 'objection'. I give further details in the paragraphs below. Where I have upheld the objection this is because the arrangements at the time the objection was made did not conform with the requirements relating to admission and the Act required that I make a determination on these matters. As I make clear, where the school has made changes to its arrangements so that they conform with the requirements relating to admissions it need make no further change.
16. The objection refers to oversubscription criteria number 4 above. which states: *"Parents or the child are actively involved in the work and worship at a Christian church or any other established faith within the community. A letter from the parish priest, minister or faith leader should accompany the application. This must include written confirmation of a history of at least monthly participation for a minimum period of one year prior to the date of application."* The objector says that there is no definition of the terms *"work and worship of a community"* or *"established religious faith"*. The objection also records that the arrangements state *"work and worship"* as though each element must be fulfilled. The objector says that these parts of the admission arrangements do not comply with paragraphs 14, 1.37 and 1.38 of the Code.
17. Paragraph 14 of the Code states that *"In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."* Paragraph 1.37 states that *"Admission authorities **must** ensure that parents can easily understand how any faith –based criteria will be reasonable satisfied."* Paragraph 1.38 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 to the extent that the guidance complies with the mandatory provisions and guidelines of the Code. They **must** also consult with the body or person representing the religion or religious denomination when deciding how membership or practise of the faith is*

to be demonstrated. Church of England schools must, as required by the Diocesan Boards of Education Measure 1991, consult with their diocese about proposed admission arrangements before any public consultation.”

18. The terms “*work and worship*”, “*within the local community*” and “*established religious faith*” are not defined and hence not clear and therefore are not compliant with paragraph 14 of the Code. The term work and worship – even undefined as it is – indicates taking part in some activity in addition to worship or it would not say work and worship (my underlining for emphasis). Paragraph 1.19i of the Code provides that schools may not take account of any activities undertaken by children with the exception of “*religious activities, as laid out by the body or person representing the religion or religious denomination.*” The judgement in a judicial review (*on the application of the Governing Body of the London Oratory School v The Schools Adjudicator (and others)*) (17th April 2015) made clear that laid out meant laid out in guidance on school admissions. In this case, there is no diocesan guidance on these matters so the school cannot take account of religious activities which might fall within “work” even if this term were defined, which it is not. It would be difficult for parents reading this criterion to understand how the requirements could be satisfied and therefore it does not comply with paragraph 14 of the Code. In the amended version of the arrangements these words have been removed.
19. The objector refers to the use of the term “*religious affiliation*” which appears in the notes attached to the oversubscription criteria. This term is not defined in the arrangements and therefore parents would find it difficult to understand what was meant by the term. It did not therefore comply with paragraph 14 of the Code. In the amended arrangements the additional notes, including reference to “*religious affiliation*” have been removed.
20. The objector quotes part of the admission arrangements which relate to the admission of children from multiple births. The arrangements state: “*In the event of a multiple birth application the parent will decide which child receives the place.*” The objector suggests that it is unfair to ask a parent to make a decision of this nature and is therefore contrary to paragraph 14 of the Code. I agree that the original suggestion of parents deciding which child should be allocated a place at the school is unfair to parents. The original version was therefore not compliant with the Code at paragraph 14. The amended arrangements make provision for the admission of all children from a multiple birth even if, by such an admission, the limit on infant class size is exceeded. I note that this is allowed by paragraph 2.15 of the Code which requires that infant classes contain no more than thirty children with a single school teacher except (2.15g) “*children whose twin or sibling from a multiple birth is admitted*”.
21. I uphold the elements of the objection explained in paragraphs 16 to 20 above.

22. The objection states that it is not for the school to determine what constitutes active involvement in a faith which is not the designated faith of the school and says that these parts of the admission arrangements do not comply with paragraphs 1.37 and 1.38 of the Code. The objector suggests that it is the faith body which should make these decisions. This is not the case. The Code is clear that schools with a religious character may use faith-based oversubscription criteria (paragraph 1.36 of the Code) and that the admission authority for the school (in this case the governing body) must set out the criteria against which places will be allocated (paragraph 1.6 of the Code). The admission authority must have regard to diocesan guidance and must consult with the diocese but the setting of oversubscription criteria remains a function of the admission authority. I therefore do not uphold this element of the objection.
23. Throughout the process of this determination the school has been keen to rectify mistakes and any non-conformity with the Code. At the meeting on 19 July 2017 the headteacher understood the explanation of the areas of non-conformity with the Code and the revised arrangements which I received a few days later had taken all these points into account. At the meeting, each of the objector's points, and those other matters which had been identified and shared with the school before the meeting were discussed and explained. The new arrangements comply with the Code in respect of all the objector's points and all the points I raised. For this, and for the speed with which the amendments were made, the school is to be commended.

Summary of Findings

24. The objection listed a number of parts of the arrangements which did not conform to the Code and I agree with all but one of them and uphold these elements of the objection. I did not uphold one element of the objection which suggested that it was not for the school to determine what constitutes active involvement in a faith. This is not the case as it is the responsibility of the admission authority to determine all the arrangements. In addition, I identified a number of further respects in which the arrangements did not conform with the Code and these were shared with the school.
25. After a meeting with the parties a revised set of arrangements were produced which corrected all the objector's points and all the adjudicator's points of non-compliance.

Determination

26. 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 Malvern Wells C E Primary School, Worcestershire.
27. I also considered the arrangements in accordance with section 88I(5) and found there were matters which did not conform with the

requirements relating to admission arrangements in the ways set out in this determination.

28. 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 the arrangements have been amended by the admission authority under paragraph 3.6 of the Code, and an amended set of arrangements was sent to me on 26 July 2017. I therefore determine that no further action is required.

Dated: 7 September 2017

Signed:

Schools Adjudicator: Ann Talboys