



DETERMINATION

Case reference: ADA3199

Objector: Two parents

Admission Authority: The Governing Body of St Thomas of Canterbury School, Sheffield.

Date of decision: 12 July 2016

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 2017 determined by the governing body of St Thomas of Canterbury School, Sheffield.

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 two parents (the objectors), about the admission arrangements (the arrangements) for St Thomas of Canterbury School, a Catholic academy school (the school) for admissions in 2017. The school is a primary school for pupils ages 4 -11 and it has a Catholic religious character. The objection is to the change in the oversubscription criteria which the objectors believe was not subject to proper consultation and disadvantages a small minority group making the arrangements unreasonable and unfair.
2. The parties to the case are the objectors, the school, the local authority (LA) for the area in which the school is located which is Sheffield City Council and the Catholic diocese of Hallam (the diocese) which is the religious authority for the school.

Jurisdiction

3. The terms of the Academy agreement between the academy trust and the Secretary of State for Education require that the admission policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing body, which is the admission authority for the school, on that basis. The objectors submitted their objection to these determined arrangements on 12 May 2016. The objectors have asked to have their identity kept from the other parties and have met the requirement of regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of their names and addresses to me. 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.

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 objectors' form of objection dated 12 May 2016;
 - b. the admission authority's response to the objection and supporting documents;
 - c. the comments of the LA on the objection and supporting documents;
 - d. the comments of the diocese;
 - e. the LA's composite prospectus for parents seeking admission to schools in the area in September 2016;
 - f. a map of the area;
 - g. confirmation of when consultation on the arrangements last took place;
 - h. copies of the minutes of the meeting of 23 November 2015 at which the governing body of the school determined the arrangements; and
 - i. a copy of the determined arrangements.

The Objection

6. The objection is to the change to the admission arrangements which gives Catholic children, wherever they live, priority for admission to the school over children who are not Catholic but who do have siblings attending the school. The objectors consider this change was made without appropriate consultation as required by the Code in paragraphs 15.b) and 1.45. Further they argue that the new arrangements disadvantage a small group of children and are unreasonable and unfair, contrary to paragraph 1.8.

Background

7. The school is a Catholic academy in the Diocese of Hallam, working in partnership in the Our Lady Seat of Wisdom Umbrella Trust. The school has a published admission number (PAN) of 30 and was oversubscribed in 2016. Following guidance from the diocese, the governing body decided to change the admission arrangements for September 2017. The changes involved reducing the degree of priority given to children who are not Catholics but have a sibling attending the school. Some changes were also made to the

degree of priority afforded to children who are members of the Orthodox churches but these are not relevant to the objection or to this determination.

8. The arrangements which had applied in 2016 included the following oversubscription criteria:

i. Catholic children who

- a. are looked after or previously looked children;
- b. are siblings of Catholic children attending the school;
- c. live and worship in the relevant feeder parishes;
- d. live or worship in relevant feeder parishes;

ii. looked after or previously looked children who are not Catholic;

iii. Children who are not Catholic but have a sibling at the school;

iv. Children who are Catholic but live or worship in other Catholic parishes and do not have a sibling at the school.

These categories are followed by categories which cover other categories of children who are not Catholic and do not have a sibling at the school.

9. The diocese had requested that the school remove the provision which gave an additional element of priority to Catholics who worshipped as compared with Catholics who did not and to make some changes to the priority given to children who are members of the Orthodox Churches. The school for its part explained in its response to the objection that it has also wished to change its arrangements to ensure that, so far as possible, no baptised Catholic was refused a place at the school.

10. Against this background, the oversubscription criteria for September 2017 were changed and, in summary, are:

i. Catholic children who

- a. are looked after or previously looked children;
- b. are siblings of Catholic children attending the school;
- c. live within the feeder parishes;
- d. live in other parishes;

ii. looked after or previously looked children who are not Catholic;

iii. children who are not Catholic but have siblings attending the school;

The categories are again followed by a number of further categories all concerned with children who are not Catholics and do not have siblings

at the school.

11. The governing body met on 23 November 2015 to consider the proposed admission arrangements. The minutes of that meeting show that the policy was agreed and that: *“it was pointed out that as changes had been made to the policy it would be necessary to consult with all interested parties, including the Diocese, the LA and parents. The deadline for the end of the consultation period was 31 January 2016.”* No further minutes were presented as determination after the consultation period.

Consideration of Case

Consultation

12. The Code is clear that a change in arrangements must be subject to consultation and sets out those who must be consulted as shown in the paragraphs below:

*“15.b) Admission authorities **must** set (‘determine’) admission arrangements annually. Where changes are proposed to admission arrangements, the admission authority **must** first publicly consult on those arrangements.”*

*“1.45 For the duration of the consultation period, the admission authority **must** publish a copy of their full proposed admission arrangements (including the proposed PAN) on their website together with details of the person within the admission authority to whom comments may be sent and the areas on which comments are not sought. Admission authorities **must** also send upon request a copy of the proposed admission arrangements to any of the persons or bodies listed above inviting comment. Failure to consult effectively may be grounds for subsequent complaints and appeals.”*

*“1.44 Admission authorities **must** consult with:*

a) parents of children between the ages of two and eighteen...”

13. The objector argues that parents were not properly consulted. On 11 December 2015 parents were emailed via parent mail with a message which included the following: *“We are proposing changes to our admissions policy, if you wish to have sight of these changes please contact enquiries@st-tc.co.uk”*. The objectors made contact and were sent a copy of the policy. The objectors say that they asked how this policy differed from the arrangements which had been determined for 2016 and say they were sent a one line response as follows: *“The admissions policy for 2015/16 (sic) is on our website at www.st-tc.co.uk.”* The objectors say they asked further questions at a parents evening and were told the changes *“involved a minor changing of wording”*.

14. The school’s response is that it undertook consultation with the diocese, other schools and with parents and has submitted evidence of consultation with the diocese and with other schools. Of the consultation with parents, it has submitted a copy of the email described by the objectors and comments: *“In response to the parental consultation and after several*

requests for the 2017/18 admissions policy no queries from parents were received.”

15. The school is of the view that the email sent to parents: *“made it clear that there were possible changes to the admissions process and therefore parents were given the information by which to access full copies of the proposed admission changes upon request”*. The admission arrangements were not put on the school’s website or published more widely. The school says they will do so in future and *“we can also take further steps when next consulting on proposed admissions changes to make the procedure for consultation even clearer”*. The Code requires that the details are provided as to whom comments should be sent. The school’s response is that *“the email made it clear that full copies of the proposed admissions policy could be accessed from the school office.”* I observe that who can be contacted to obtain a copy of a particular document is not the same as who can be contacted with comments about the proposals in that document.

16. The school undertook some consultation with other schools and the diocese. The emails to other parties in December 2015 include the words: *“please find attached our proposed admissions policy for 2017/18 which is open to consultation”* and a reference to putting the policy on the website *“when it is up and running”* but this did not happen. The policy was put to parents as an invitation to see the document, not an invitation to comment, nor to whom. Furthermore, there is no evidence that it offered an explanation or details of the changes; the Code says that consultation **must** include *“details of the person within the admission authority to whom comments may be sent and the areas on which comments are not sought.”*

17. The minutes of the governing body meeting sent as evidence of having lawfully determined the arrangements pre-date the consultation; I acknowledge the response of the Principal that the governing body must agree the arrangements which are to be subject of consultation, I note the school’s response made no reference to the need for any further meeting to consider the results of the consultation.

18. In my view, the consultation did not meet the requirements of the Code. The proposed arrangements were not published as required by the Code and nor were the details of the person to whom comments could be sent as is also required. There is little if any indication that proper consideration was planned to be given to any comments received. While parents who sent for the proposed admission arrangements could compare them with those on the school’s website this is not as easy a task as it would be for many schools as the list of criteria is lengthy. The governing body planned no further meeting after the consultation period. I uphold this part of the objection.

Disadvantage

19. The objectors argue in the second part of the objection that families who are not Catholic with children already in the school are disadvantaged. They argue that this is contrary to paragraph 1.8 of the Code which states:

“Oversubscription criteria must be reasonable, clear, objective,

procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities must ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs.”

20. The objectors list various disadvantages for parents who have children at a school and find that the younger sibling will not get a place. They cite the fact that the family will already be involved in the life of the school; the difficulties of combining work commitments with childcare if children are at two schools; the logistical difficulties of collecting and delivering children with at the same time in different locations; the younger sibling feeling rejected and that the older sibling will be unhappy that the younger sibling is at a different school. They further make the point that they might not have chosen the school for an older child if it was unlikely that younger children would not be admitted. The objectors argue that, *“Non-Catholic siblings form a very small group (-1% (1 child) of all applications for 2016/17..and the impact on this group of children not being successful in admission to the school is significant and disproportionate compared to additional Catholic children being taken from outside the parish (23%(19 children) [sic].”*

21. The school does not directly address this matter. It has, however, pointed out that for admission in 2016 it reached and exceeded its PAN at criterion 1d which, as outlined above, was Catholic children who live or worship in relevant feeder parishes. This priority came above non-Catholic siblings and a non-Catholic sibling would not, therefore, have gained a place that year under the former arrangements.

22. The Code makes clear at paragraph 1.8 that admission authorities must comply with equalities legislation. The Equality Act 2010 in relation to admission to schools prohibits discrimination on a number of grounds, namely: disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex or sexual orientation. However, for schools designated with a religious character such as this school, the requirement not to discriminate on the basis of religion in relation to admissions is disapplied. As the Code makes clear at paragraph 1.36, schools with a religious character: *“may use faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed”*. By giving priority to Catholic children ahead of children who are not Catholic but who have a sibling already attending the school, its admission authority is not in breach of the relevant equalities legislation.

23. I have also considered the school’s arrangements against the wider requirement in paragraph 1.8 not to discriminate against a child from a particular racial or social group. Of course, the group of concern to the objector are the non-Catholic siblings of children already attending the school. I do not consider that such children form a social or racial group for the purposes of the Code. I do not therefore find that the school is in breach of the Code in relation to the requirement not to discriminate against a social or racial group. I have also tested the oversubscription criteria against the key principles of fairness and reasonableness. The Code and legislation make

specific provision for schools with a religious character to give priority on the basis of faith. The school has determined new arrangements following guidance from the diocese which is its religious authority. It is understandable that parents who have secured a place for one child at a particular primary school would very much wish subsequent children to be able to attend the same school, for all the reasons set out by the objector in this case. This school has a priority of seeking to ensure that no baptised Catholic is denied a place if possible. This means that other – non-Catholic – children will have lower priority. It is always the case that when a school is oversubscribed, some who would like a place will be disappointed. Both the LA in its comments and the diocese in its made clear that they are content with the school's arrangements. Against this background, the school's arrangements in giving a higher priority to all Catholics than to children who are not Catholics but have a sibling at the school are not unreasonable or unfair. I do not uphold this part of the objection.

Summary of Findings

24. I find that the consultation undertaken by the school was not as thorough as required by the Code. The consultation was not published and parents were not consulted in line with the Code's requirements. However, the changes that the school made, to give Catholic children a higher priority than non-Catholic siblings of existing pupils is permitted and does not breach paragraph 1.8. I therefore partially uphold the objection in relation to the consultation but the school is not required to amend its arrangements.

Determination

25. 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 2017 determined by the governing body of St Thomas of Canterbury School, Sheffield.

Dated: 12 July 2016

Signed:

Schools Adjudicator: Miss Jill Pullen