

DETERMINATION

Case references: ADA/002237

Admission Authority: The governing body of Hampden Gurney Church of England Primary School, Westminster

Date of decision: 7 February 2012

Determination

In accordance with section 88I (5) of the School Standards and Framework Act 1998, I have considered the admissions arrangements determined by the governing body of Hampden Gurney Church of England Primary School, Westminster for admissions in September 2012. I find the concern that gave rise to my consideration to be justified, in that the admission arrangements were altered by the governing body during January 2012 without proper basis or authority. The governors must revert to the originally determined arrangements. I have found the arrangements not to be compliant with the requirements of the legislation and the School Admissions Code 2010 in the ways set out in paragraph 11 of this adjudication.

The referral

1. The admission arrangements (the Arrangements) of Hampden Gurney Church of England Primary School, Westminster (the School), a voluntary aided school, for September 2012, have been brought to the attention of the Schools Adjudicator by two local parents on 25 January 2011. Although their intention was to refer an objection to the Adjudicator, the final date for the receipt of such objections had passed. However, the issues that had been raised warranted investigation under the provision described in the following paragraph.

Jurisdiction

2. The 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. Under section 88I(5) of the Act, an adjudicator has the power to consider admission arrangements that come to his attention by any means, other than by way of referral by the Secretary of State. I am satisfied that I have the power to consider these arrangements.

Procedure

3. In considering this matter I have had regard to all relevant legislation, guidance and to the School Admissions Code 2010 (the 2010 Code), which I am satisfied is applicable to the Arrangements, even though a new Code (the 2012 Code) came into force on 1 February 2012.

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

the Arrangements for September 2012, as downloaded from the School's website on 26 January 2012 in their summary and full versions, with the School's own application form (SAF) and supplementary information form (SIF);

the Arrangements for 2012, as downloaded from the website of the City of Westminster (the Council) on 26 January 2012 in their current version and in the version within the Council's primary schools admissions brochure, with the SAF and the SIF;

the objection form in an email from the complainants of 25 January 2012;

an email from the London Diocesan Board for Schools (the Diocese) of 26 January 2012; and

an email from the Council of 3 February 2012.

5. I held a meeting with representatives of the School, the Diocese and the Council at the School on 31 January 2012, and have taken account of information received and views expressed during that meeting.

Key Issue

6. The complainants have alleged that the School: made changes to the Arrangements (contrary to paragraph 4.23 of the 2010 Code) a few days before 15 January 2012, which was the final date for applications to be received by the Council for primary school places in September 2012; wrote to certain parents on 11 January 2012 to inform them of these changes; and made the changes on the School's website. The complainants informed me that the changes related to new tiebreaker rules, such that children's church attendance would now take priority within those rules over siblings and distance to the School. They believed that the new tiebreaker arrangement that favoured children who had attended church for the longest times would be unfair to younger children due to start school in September 2012.

Consideration of Factors

7. Paragraph 4.23 of the 2010 Code proscribes changes to determined admission arrangements, except in the circumstances described in subsequent paragraphs, none of which applies in this case. I discussed with representatives of the School, the Diocese and the Council at the meeting I held the matters of concern raised with me and have considered the content of that discussion and the responses that were made. It is clear to me that the School acknowledges that the changes were made and now realises that they should not have made them. The problem has been compounded in that the Council did not query the changes when they were sent to them, but inserted them on its website during January 2012. By common consent, the School did not consult the Diocese about the changes, with the result that the Diocese was not in a position to comment.

8. The changes were made to the Arrangements around 11 January 2012, just four days before the closing date for parents' primary schools preferences to be received by the Council. It is therefore possible that some parents set their preferences (including preferences for other schools) on the basis of the unchanged Arrangements and some on the basis of the changed Arrangements. It is possible that this might extend to parents beyond the immediate area of the School and beyond Westminster. Although it is not within my jurisdiction to direct a solution, I discussed with those present at the meeting I held some options that would go some way to correcting the immediate problem during forthcoming days, and was assured that the School and the Council would continue to plan an immediate course of action to rectify matters as far as is possible. Since the meeting, it has come to my notice that, in the Council's admissions brochure, not only do the Arrangements appear in the unchanged form with respect to the tiebreaker, but also the word 'baptised' does not qualify all of the oversubscription criteria that is qualifies in all other versions of the Arrangements. Whatever the origin of this additional discrepancy, the School and the Council should use the opportunity of rectifying the wider problem as a means of clarifying this issue as well.

9. The School agreed with the complaint that introducing a tiebreaker based on the length of time children had attended church would, as suggested by the complainants, unfairly disfavour younger children for whom places were being sought at the School. It might also unfairly disfavour children in other particular circumstances, such a long-term illness. The School, however, resisted my observation that it would be very difficult for the clergy to vouch for children's attendance record, on the basis that the Diocese has introduced a system of recording weekly attendance at church. However, it will be important that due allowance is made for the situation of families moving from areas where such a system does not exist.

Other Matters

10. In reviewing the Arrangements, I have noticed breaches of the 2010 Code. For the governors now to make any changes to the 2012 Arrangements as originally determined would, even if allowed by paragraphs 4.24 – 4.27 of the 2010 Code, be likely to compound the uncertainty that parents already face as a result of the irregular changes that now need to be corrected. However, in all respects, the breaches of the 2010 Code also constitute breaches of the 2012 Code, which applies to admission arrangements for 2013. It is therefore essential that the governors bear all these matters in mind when determining their 2013 arrangements before 15 April 2012.

11. The breaches that I have detected are as follows. Unless otherwise stated, the breaches are of paragraphs 1.71 of the 2010 Code and 1.8 of the 2012 Code, which require, among other things, clarity, fairness and objectivity. Recommendations for change refer to the admission arrangements that the governors will determine for 2013.

a. The School has acknowledged that the inclusion of a summary form of the Arrangements on its website could prove confusing, as indeed is at present the case, in view of important omissions of detail. Only one version of the Arrangements should in future be provided. The following observations apply to either version or both versions of the present Arrangements.

b. The School's requirement for the production of a full birth certificate contravenes paragraph 1.81 of the 2010 Code and 1.9f and 2.5 of the 2012 Code. In any case, the School should not ask for documentation that implies a duplication of the Council's responsibility as co-ordinator of the admissions process.

c. It cannot be a requirement for all parents to produce any documentation other than the Common Application Form (CAF); the Arrangements should not do other than advise the completion of the SIF and the production of baptism certificates in relation to specific oversubscription criteria.

d. There is no need for a 'Hampden Gurney Application Form', which duplicates some of the CAF contents and the Council's co-ordinating role.

e. The reference to completing the SIF 'at your place of worship' is uncertain of meaning.

f. Many paragraph cross-references are incorrect, and the link to the Council's CAF is in fact to the previous year's CAF.

g. In view of the use of the SIF, there is no need for a letter of support from the clergy, which could lead to the exercise of discretion by the clergy or the governors, or a suspicion of such exercise of discretion.

h. The present tiebreaker is confused, relating to siblings, distance and (by the irregular change) to church attendance. Sibling provision should be made within the oversubscription criteria, either with a particular priority for all siblings, or as subdivisions within particular criteria. Certainly, the present sibling provision is incorrect, in that it purports to include looked after children.

i. There is great confusion as to whether church attendance or church activity involvement is the basis of some criteria, and whether it is parents', children's or family involvement that is intended. The governors should consider carefully whether any of these is or all are fair to families who, for genuine domestic or employment reasons, cannot fulfil particular expectations. They should consider also how such matters can be objectively quantified so as to avoid the improper exercise of discretion.

j. A definition of the parish areas must be provided, or the means of accessing street maps or other definitions must be stated.

k. The criterion that begins 'All other children' becomes nonsensical with the following reference to social and medical need. The governors may wish to consider removing the reference to social and medical need, or else creating a separate criterion at a suitable position among the oversubscription criteria.

l. It would be helpful to parents if the note about children with statements of special educational needs made clear that children with statements that name the School will be automatically admitted.

m. The SIF should relate to children who 'attend *or have attended* more than one place of worship'.

n. The expectation that the SIF should relate to both parents is unfairly discriminatory of families with one parent and families with only one parent attending church, and offends against paragraphs 1.72 of the 2010 Code and 1.8 and 1.9 of the 2012 Code. The use of 'He/She/They', the omission of this in relation to the electoral roll and the use of 'the family' are uncertain of intention and confusing.

o. It is unclear the purpose to which the responses to 2. and 3. of the SIF will be put, and they should be removed unless the oversubscription criteria explicitly refer to the matters in question.

p. It is unclear how the separate questions on the SIF about parents and children relate to one another or how they will be used. They too should be removed unless the oversubscription criteria explicitly refer to the matters in question.

q. 'Churches Together in Britain and Ireland' must be defined or information provided as to how a definition can be obtained. 'The Evangelical Alliance' appears on the SIF but not in the oversubscription criteria, and the anomaly must be resolved.

r. The reference to '30 rising five (5 years old)' is inaccurate and nonsensical. The governors are correct, however, in stating their admissions number.

s. Parents' right to defer entry is not stated, as required by paragraph 2.69 of the 2010 Code and paragraph 2.16 of the 2012 Code.

t. Paragraph 10 of the full Arrangements about siblings and other criteria is unclear and misleading, and probably incorrect.

u. The contents of paragraph 12 of the full Arrangements about children's participation in worship and religious education could be understood as limiting parents' entitlement to apply for places at the School or as purporting to override parents' entitlement to withdraw their children from these activities. As a contribution to a statement of the School's ethos, it could appear as part of a general preamble to the Arrangements, without being part of the Arrangements themselves.

v. Allowing just seven days for admission appeals to be lodged purports to limit parents' entitlement. Paragraph 2.1 of the 2012 School Admissions Appeals Code (which came into force on 1 February 2012 and applies to appeals for admissions in 2012) requires at least 20 school days to be allowed. However, the governors should also note that this does not prevent parents making later appeals, even though their chances of success may be reduced by not being included in the initial round of appeals.

w. The governors will need to be mindful of the new requirement for enlargement of the looked after children criterion demanded by the 2012 Code.

12. Since the discussion at the meeting about the governors seeking proof of address, I have realised that the governors are justified in requesting such evidence, in view of their need to apply the oversubscription criteria that relate to parishes, as allowed by paragraphs 1.80 of the 2010 Code and 2.5 of the 2012 Code.

Conclusions

13. I am satisfied, on the basis of the evidence available to me, that the concerns expressed to me about late changes to the Arrangements are justified.

14. The governors, with the support of the Diocese, and the Council should immediately take appropriate remedial action, which will include reverting to the Arrangements as originally determined for admissions in 2012. The remedial action will take into account the position of those parents who stated their preferences on the basis of the irregularly revised arrangements. Indeed, the Council wrote on 3 February, following the meeting I held, to inform me that the School would be reverting to its originally determined Arrangements, and that the Council was writing that day to all applicants for 2012 places at the School to provide copies of the correct Arrangements and an opportunity to withdraw their applications or amend their statements of preferences.

15. I have outlined above the ways in which the Arrangements are in breach of the 2010 Code. It would be imprudent to make changes to the Arrangements at this stage, apart from the remedial action referred to above. In any case, the governors should be mindful of the need for objectivity and the avoidance of exercising discretion as they implement the Arrangements for 2012 admissions. The governors should also enlist the support of the Diocese and the Council in ensuring that the requirements of the 2012 Code are met in determining admission arrangements for 2013.

Determination

16. In accordance with section 88I (5) of the School Standards and Framework Act 1998, I have considered the admissions arrangements determined by the governing body of Hampden Gurney Church of England Primary School, Westminster for admissions in September 2012. I find the concern that gave rise to my consideration to be justified, in that the admission arrangements were altered by the governing body during January 2012 without proper basis or authority. The governors must revert to the originally determined arrangements. I have found the arrangements not to be compliant with the requirements of the legislation and the School Admissions Code 2010 in the ways set out in paragraph 11 of this adjudication.

Dated: 7 February 2012

Signed:
Canon Richard Lindley
Schools Adjudicator.