

DETERMINATION

Case reference: ADA/002423

Objector: A parent

Admission Authority: The Proprietor of The Coventry Blue Coat Church of England School and Music College, Coventry

Date of decision: 20 August 2013

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 proprietor body of The Coventry Blue Coat Church of England School and Music 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 as 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 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 a parent (the objector) about the admission arrangements (the arrangements) for September 2014 for The Coventry Bluecoat Church of England School and Music College (the school), an academy school for boys and girls aged 11-18.
2. The objection is to the lack of clarity of the arrangements.

Jurisdiction

3. The terms of the academy agreement between the proprietor and the Secretary of State for Education require that the admissions 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 proprietor on 19 March 2013, but amended by it on 5 May 2013 following comments which the school had received from Coventry City Council, the local authority (the LA).

4. The objector submitted the objection to the originally determined arrangements on 3 May 2013. I have been supplied with the name and

address of the objector, but the objector has requested that these details should not be revealed to the other parties, as is allowable under Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the regulations). 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

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

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

- a. the objector's e-mail of objection dated 3 May 2013;
- b. the responses of the school, the LA and the Diocese of Coventry (the diocese) to the objection;
- c. the LA's composite prospectus for parents seeking admission to schools in the area in September 2013;
- d. a map of the area identifying relevant schools;
- e. confirmation of when consultation on the arrangements last took place;
- f. copies of the minutes of the meeting at which the governors of the school determined the arrangements; and
- g. a copy of the determined arrangements.

7. I have also taken account of information received during a meeting I convened at the school on 28 June 2013 with the parties (other than the objector).

The Objection

8. The objection is that the arrangements do not meet the requirement of the Code at paragraph 1.8 that "Oversubscription criteria **must** be reasonable, clear, objective and procedurally fair, and comply with all the relevant legislation including equalities legislation". The objector believes that the complexity of the oversubscription criteria renders them unclear for parents, and considers that they may also be unfair, but does not specify why.

Other Matters

9. At the meeting which I held on 28 June 2013, I also raised with representatives of the school, the LA and the diocese a number of other matters which it appeared to me may constitute breaches of the requirements concerning admission arrangements. These are set out and discussed in full in the relevant sections of this determination.

10. Firstly, I raised the question as to whether the changes made subsequently by the school to the arrangements which it had determined on 19 March 2013 were in respect of matters which it considered were mandatory requirements of the Code, and therefore made in accordance with paragraph 3.6 of the Code concerning permitted variations to determined arrangements.

11. Secondly, I raised the consequences for:

(i) the construction of a waiting list, and

(ii) the way priority is afforded to looked after and previously looked after children.

of the practice of designating two categories of school place (“Church” and “Open” places) within the school’s arrangements.

12. Thirdly I raised the necessity for some of the information requested on the supplementary information forms (SIFs) used by the school, and the complexity introduced by the practice of having more than one SIF.

Background

13. The school became an academy on 12 July 2011. It was formerly a voluntary school designated by order under section 69(3) of the Act as a school having the religious character of Church of England, and it is therefore to be treated under section 6 of the Academies Act 2010 as an independent school designated under section 69(3) as having that same character. That being the case, section 85(1) of the Equality Act 2010 (which prohibits discrimination on the grounds of religion or belief concerning school admissions) is disapplied by section 89(12) of and Part 2 of Schedule 11 to that Act.

14. The school’s funding agreement with the Secretary of State requires it to comply with the Code and the law relating to admissions. I have examined this agreement and have found there to be no derogation which affects these requirements. The school is therefore required to comply fully with admissions law and the Code.

15. The school responded initially to the objection by saying that the governors had moved away gradually from “subjective” towards “objective” means for assessing the level of faith commitment to distinguish between applicants for places, and that this was the reason for the present scoring system employed by the school. It also recognised that the community which it serves is multi-faith, and stated that therefore “a number of places are always allocated to those not of the Christian faith”, and that applications are also welcome from those “not able to demonstrate a commitment to a recognised faith” who were however “likely to be ranked lower than other applications”. The school believed that its admission arrangements are “fair to all applicants and as simple as can be achieved given the need for rigour to correctly rank all applications against the places available”.

Consideration of Factors

a. The school's arrangements

16. The LA did not comment directly on the objection, but provided me with a copy of the comments which it had made to the school during the consultation on the draft arrangements which was carried out by the school between 7 December 2012 and 19 March 2013, the date on which the arrangements were determined. It also sent me a copy of a letter dated 1 May 2013 which it had sent to the school concerning the determined arrangements. It was as a result of these comments that the school made further changes to its determined arrangements. These were:

(i) the removal from the supplementary information form of questions designed to ascertain whether the child for whom a place was being sought was the subject of a statement of special educational needs, part of a British forces family or part of a family in Crown Service;

(ii) the removal from the description for "stage 2" of the oversubscription criteria, which gives priority to siblings, of the word "older";

(iii) the removal from the description of the process concerned with the school's waiting list of a phrase which required those wishing to go on the waiting list to submit a completed support form.

17. Paragraph 3.6 of the Code sets out the very limited circumstances in which it is permissible for an admission authority to vary its arrangements once they have been determined. Although the school has not provided me with any direct observations on this point, the LA has helpfully set out the reasons why it believes that the school's decision to make the listed changes at its prompting was within the terms of paragraph 3.6, since each of the changes was required to meet either a mandatory requirement of the Code, or to correct a misprint. Both are allowed under paragraph 3.6. The school determined its arrangements as required by 15 April 2013 and then made changes that I am satisfied were permitted by the Code. The arrangements as determined are substantially the same as those about which the objection was made and therefore I am making my determination on the arrangements as agreed by the school on 5 May 2013.

18. Before considering those matters within the arrangements which bear directly on the objection, I believe it will be helpful if I set out the school's arrangements and consider some consequences of them which I have raised with the school.

19. The school has a published admission number of 240. It designates 203 of these as "Church Places" for those demonstrating a commitment to the Church of England or other Christian denominations. The remaining 37 places are called "Open Places" and are for those demonstrating a commitment to other faiths or who are of no faith. The arrangements state that oversubscription criteria are used if either category of place receives more than this number of applications and set out five "stages" for the consideration

of applications. After the priority given firstly to looked after and previously looked after children and secondly to siblings, the third “stage” considers the faith commitment of the parent and child, and gives highest priority to those “with the highest level of commitment to the worshipping life of their faith community”. Information provided by all applicants on a SIF (and separately by a religious minister on the school’s support form) is used to rank their application by awarding points for the frequency of attendance of both the child and a parent at worship or an equivalent activity, and additional points are given according to the denomination of the worship. The fourth and fifth stages explain how, firstly, distance from the home to the school and, secondly, a random allocation procedure are used as tie-breakers within each of the two categories.

20. The Code at paragraph 1.2 requires an admission authority to set a published admission number (PAN) for each relevant age group. Priority in the allocation of these places, if there are more than this number of applications, must be regulated using defined oversubscription criteria (paragraph 1.6) and the nature of permitted oversubscription criteria is set out at length in the Code (paragraphs 1.7 to 1.41).

21. I have considered whether, in defining two separate groups of places, the school is failing to meet this requirement. The number of places in the two groups, when added together, equals the overall PAN. No third type of place exists. If either of the two types of place is oversubscribed, the “stages” used by the school are applied in parallel to give priority to applications, and the consequence is that two separate waiting lists are necessarily drawn up. In other words, the arrangements act in relation to each group of places as if that group had its own PAN. The Code requires places to be allocated by the sequential application of oversubscription criteria to a single group of places. The school is operating its arrangements as if it had two PANs, which is not a permitted approach.

22. In addition to the process of allocating places during the normal admission round, the definition of two types of place in the way that the school does this also affects the subsequent handling of applications. Paragraph 2.14 of the Code states that “each admission authority **must** maintain a clear, fair and objective waiting list.....stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria.” The school’s arrangements openly and explicitly establish two waiting lists - one for each category of place. The school has not been able to say how it could create a single waiting list using its existing admission arrangements. It states that the practice of having two waiting lists “is a direct result of having two categories of places”.

23. I agree with this statement, but the school has invited me to accept its view that the concept of categories of place is “not disallowed by the Code”, and that the wording of the Code “addresses the normal situation of a single category, but that the same can be read as allowing more than one ‘stream’ within the defined waiting list”. It says that if there were a single waiting list, this “would disadvantage those seeking open places as they would be less likely to reach the top of a common waiting list due to their lower maximum possible scores”. This last reference is to the points score for religious

commitment, which permits a maximum score of eight points for those of “other faiths” (and zero for those of no faith) compared to a maximum score of 11 points for Church of England families. I shall return to this issue below. However, I do not accept the school’s reading of paragraph 2.14 of the Code, which is clear in my view in requiring there to be a single waiting list. The fact that the school’s arrangements inevitably lead to the need for two waiting lists confirms my view that it is not merely operating “two streams” within one PAN but is in effect applying two PANs.

24. I also raised with the school the fact that since its arrangements define two categories of place, and then state that oversubscription criteria are applied “within each category”, looked after and previously looked after children who are members of the Church of England and of other Christian denominations are together given first priority for admission. Regulation 9 of the regulations however requires that if priority is given to looked after and previously looked after children on religious grounds, this must be afforded to those children who are of the faith for which the school is designated (in this case, the Church of England). The school has responded by indicating that it would wish to amend the policy so that all looked after and previously looked after children are given priority, which is a permitted approach, and I am grateful to the school for signalling this intention.

25. However, the school also thinks that a SIF should be completed for each such child “so that it can be determined which category of place should be allocated”. What the school means is that it should know the religious affiliation (or lack of it) of each looked after or previously looked after child that is admitted, so that it knows whether a “Church” or an “Open” place has been taken up. The Code is quite clear on this matter. First priority **must** be given to looked after and previously looked after children, and the oversubscription criteria **must** then be applied to all other applicants in the order set out in the arrangements (paragraph 1.7). If a faith school chooses to admit as a priority looked after and previously looked after children without giving priority to those of its faith, then their religious affiliation has no bearing on their admission and my view is that this information must not be sought by using a SIF (Code, paragraph 2.4).

b. The clarity and fairness of the arrangements

26. The objector complains that the arrangements are unclear, and possibly unfair. The designation by the school of two categories of place on the basis of religious affiliation, and the use of points scoring systems using religious attendance as a means to afford priority between applicants within each category, seem to me to be responsible for complexity and, as a result, lack of clarity in the arrangements. They constitute the means by which the school gives priority to applicants on the grounds of faith, and the school requires applicants to give information on two additional forms, a SIF and a minister/official’s support form, as well as on the common application form (CAF) provided to the LA , again adding complexity.

27. I asked the diocese if it would provide me with any guidance which, as the body representing the religion or religious denomination for the school, it had given to the school concerning the construction of faith-based

oversubscription criteria, since any such advice would have had to be taken into account by the admission authority, and may therefore have given rise to the nature of the arrangements determined by the school. Its reply was that no specific guidance had been given, and this was confirmed by the school. In other words, none of the features described above is present in the arrangements as a result of advice given to the school by the diocese, and I have therefore considered them with this in mind.

28. Since the school's arrangements state that if either of the categories of place is oversubscribed, oversubscription criteria will be used to decide the allocation of places to it, I asked the school to respond to my view that the arrangements do not say how applications are dealt with if it is not oversubscribed overall, and that they are therefore unclear. The school has told me that it agrees that the arrangements should make it clear that if fewer applications are received than the total number of places, all the applicants will be admitted. As I have already stated, my view is that the designation of two categories of place does not allow the arrangements to conform to specific requirements within the Code. The ending of this approach will allow the school also to make a single clear statement concerning the circumstances in which oversubscription criteria would be applied, and when they would not.

29. In the arrangements, the third "stage" in the consideration of applications to each category of place is the allocation of a points score using the level of attendance for public acts of worship, or equivalent activities, over the previous 12 months for both the child and the parent or guardian who attends most regularly. Each can score between zero and four points for attendance, and to this score three points are added for those of the Church of England, two for other Christians, one for Roman Catholics and zero points are scored for those of other faiths or of no faith. The most regularly attending Church of England family can therefore score a maximum of 11 points (two scores of four for attendance plus three denominational points), that of another faith up to eight points and a family of no declared faith (and therefore unable to evidence any religious attendance) could only score zero points. So a points range of 12 points (from zero to 11) is used to discriminate between applications for the 203 "Church" places and that used to discriminate between applications for the 37 "Open" places has a range of nine points (zero to eight). I pointed out at the meeting on 28 June 2013 that I could see no obvious reason for the discrepancy between the fineness of the two "scales", or that there was any reason for them to appear to be related to each other since in practice they are applied in parallel to distinct groups of places, and that remains my view.

30. Paragraph 14 of the Code says that "parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated". The effect of the system of points for faith commitment given to applicants to the school must in my view be unclear for parents, since they have no means of knowing how many points are likely to result in their application being successful, since this is not stated. If the school continues to use a system of awarding points it should provide over time information which will allow potential applicants to judge whether any application for a place would have a realistic chance of success. Parents not seeking priority on the

grounds of their faith should not be asked to complete a supplementary information form at all, since all the information relevant to their application will be available through the CAF, a point to which I shall return.

31. I asked the school whether it was clear what the phrase “who can demonstrate a strong commitment” in the description of those to whom “Open” places would be allocated meant, since it is not defined. The school has agreed that this is not clear, and has suggested that the phrase be removed. I also raised with the school my concern that it is not clear from the arrangements which “other faiths” are included or how the term “of no faith” would be defined. The school suggests that “other faiths” be defined as “all faiths other than those branches of the Christian faith applicable to Church places”, and that the arrangements should make it clear that “for those who declare their child or themselves to be of no recognised faith, no supporting information from their minister is required”.

32. My view is that arrangements that give priority to a group (or groups) of children can only achieve the clarity and fairness required of them by the Code if all such groups are defined sufficiently well that parents can know whether or not they belong to the group, and are able to evidence that fact.

33. To say that the faiths that are “other faiths” are all those except a small number of named ones is not to give them definition. What constitutes a faith for one person may not do so for another, so there is no certainty about what is included in this definition, and it is as a result unclear. A definition of what is meant by “of no faith” is also not given by the school, which relies on self-declaration alone. No evidence can be provided to support any claim to membership of this group. In theory declaring oneself as of no faith could confer an advantage in securing a place at the school. For example a poorly attending parent eligible for a “Church” place but living close to the school may have more chance of being successful within a smaller group of “of no faith” applicants, albeit for a smaller number of places. I do not consider the school’s suggested approach to defining the faiths relevant to “Open” places either clear or fair. and therefore it is not compliant with the Code.

34. The priority given under the arrangements to siblings is conditional on the “faith commitment of the parent having been maintained” since the first sibling was admitted. I asked the school to consider my view that since this phrase was itself unclear, and since it was difficult to understand how it could apply to those of “no faith”, the arrangements themselves concerning siblings were also unclear. By setting a different faith threshold for two different families whose applications are being considered at the same (those with an older sibling at the school than for those without) the arrangements also appear to be unfair. The school has suggested that the phrase be removed completely, and I believe this change would improve the arrangements.

35. I further suggested to the school that the use of separate forms which require parents and religious ministers to provide their own assessment of the family’s religious commitment is, firstly, a cause for lack of clarity within the arrangements. No indication is provided to parents as to how any discrepancy between these assessments is treated in the school’s application of its oversubscription criteria, and so (again) they cannot make their own

assessment of their chances of success. The school's response has been to suggest that the arrangements should contain a statement setting out the school's practice that if the two forms are not in agreement, then the minister's assessment is the one used unless the disagreement exceeds two points in the scoring system used, in which case the minister is contacted by the school "to seek clarification and confirmation before reconsidering the application". This suggestion may provide clarity, but it would add further layer of complexity to what parents have to read to understand the arrangements.

36. I also asked the school to respond to my concern that the use of two forms in itself makes for unnecessary complexity. It has expressed the view that the present approach of having two assessments allows for an independent and "full and frank disclosure" (by the religious minister) in all cases. Although I have considered this point carefully, I take the view that the use of two different supplementary forms and two assessments of religious attendance are contributory factors to the complexity involved in the arrangements. I believe that the admission authority should take any reasonable steps which it can to reduce the complexity, and thereby improve the clarity, of its admission arrangements. If it continues to use two forms, it must make absolutely clear within the arrangements how they are used, and should do so as simply as possible.

36. Finally, I asked the school to consider that the statement contained within the arrangements that "false" information would result in the offer of a place being withdrawn might be unfair, since information which was inaccurate could nevertheless be honestly provided. The school has suggested that the wording used in the Code concerning "fraudulent or intentionally misleading" information be used instead, which is again helpful in my view.

c. Information requested on supplementary information forms

37. Paragraph 2.4 of the Code states that information which has already been provided through the CAF, or which does not have a direct bearing on the application of oversubscription criteria should not be sought on a SIF, along with other proscribed information listed there. The school has responded to my view that its own SIF does not meet this standard by arguing that it needs to be allowed a level of duplication to allow for "rigorous error checking between all the parties involved". The Code however, does not allow this, and I am of the view that the following information must not be requested on any SIF used by the school, since it is already available through the LA's CAF:

(i) references to the current school attended, and

(ii) information about siblings.

Paragraph 2.4e specifically prohibits asking both parents to sign the supplementary information form.

38. In summary, the school has accepted my view that the circumstances in which the stated oversubscription criteria are to be applied are not clear in its arrangements, and that it must clarify the priority given to looked after and previously looked after children, and how priority is given to siblings. The

school has agreed that it is unclear for those “of no faith” what the phrase “demonstrate a strong commitment” would mean. It is also currently unclear to parents how different assessments of religious commitment provided to the school are used by it to determine the outcome of applications for school places, and I am of the view that this practice adds unnecessary complexity. I therefore conclude that, as asserted by the objector, the arrangements are unclear.

39. There are also elements of unfairness associated with the arrangements – in the way that they say incorrect information could affect applicants, and over aspects of the treatment of some applications with a sibling connection. I therefore conclude that the arrangements are unfair.

40. I therefore uphold the objection on the grounds that the arrangements do not meet the requirement of the Code to be clear and fair.

41. As formulated, the arrangements define two groups of places, and set what are, in effect, two admission numbers. This is not in accord with the requirements set out in the legislation and the Code, and the school cannot continue this practice. This approach also makes it impossible to construct a single clear waiting list, which is a requirement of the Code.

42. The definition of any faith groups to whom priority is given needs to be clearer than that currently employed. It is permissible in my view within the requirements of the Code for an admission authority to give priority for admission to a stated number of the available places on a defined basis which is set out in its oversubscription criteria. It may then go on to afford priority on a different basis to another group or groups of places, provided in each case the oversubscription criteria meet the requirements of the Code concerning clarity as to which children would be afforded priority, and on what basis. If it does this, however, an admission authority must also then state that any remaining places will be allocated to any unsatisfied applicants including any unsuccessful applicants from oversubscribed priority groupings. That is to say, the final priority should be the allocation of remaining places without reference to the criteria giving preference to previous priority groups, since the school may be oversubscribed overall, but the priority groupings may or may not be. This is the general approach which other schools have found enables them to allocate places to different groups of applicants but to do so within a single PAN.

Conclusion

43. I have set out above the reasons why I have come to the view that the school’s arrangement are insufficiently clear, and in some respects unfair, and why I therefore uphold the objection to them which has been made on these grounds.

44. I have also set out my reasoning concerning further aspects of the arrangements which I consider constitute breaches of the requirements regarding admission arrangements.

45. I am content that changes to the arrangements made by the school after they had been determined in March 2013 were changes permitted by the Code.

46. However, the school should now take steps to make further changes to its admission arrangements which will ensure that they comply fully with the requirements relating to admission arrangements which are set out in the Code.

Determination

47. 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 Coventry Blue Coat Church of England School and Music College.

48. 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 as set out in this determination.

49. 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: 20 August 2013

Signed:

Schools Adjudicator: Dr Bryan Slater