



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA/002573

Objector: A member of the public

Admission Authority: The Academy Trust of Bristol Cathedral Choir School,

Date of decision: 5 March 2014

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements determined by the Academy Trust for Bristol Cathedral Choir School, for admissions in September 2014.

I determine that in relation to the matters that have been referred to me they conform with the requirements relating to admission arrangements.

I have also considered the arrangements as a whole in accordance with section 88I(5) and I determine that these do not conform in relation to certain matters with the requirements relating to admission arrangements.

By virtue of section 88K(2) of the Act 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, but no later than 15 April

The referral

1. The admission arrangements (the arrangements) of Bristol Cathedral Choir School, (the school), for September 2014, have been brought to the attention of the Adjudicator. The school, located in the centre of Bristol, is a secondary academy for pupils aged 11 to 18 years. The referral was made in emails dated 9 and 15 January 2014 by a member of the public.

2. The referral questions whether or not four aspects of the arrangements for September 2014 breach the School Admissions Code (the Code). The referrer contends that the school has allocated more than 10 per cent of places in year 7 as music specialist places; that it has not carried out the pre-requisite consultations before changes were made to the arrangements; that there has been indirect discrimination based on socio-economic background;

and in the final aspect the referrer questions the independence of the individuals who have overseen the operation of the random allocation of places.

Jurisdiction

3. The terms of the academy agreement between the proprietor, Bristol Cathedral Choir School Academy Trust and the Secretary of State for Education, require that the admissions policy and arrangements for the school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing body on behalf of the proprietor, which is the admission authority for the school, on that basis.

4. The referral was made in two emails dated 9 and 15 January 2014. This is well after the deadline for the receipt of objections about the arrangements for 2014, that is, by 30 June 2013. I have considered the arrangements for 2014 in relation to the matters brought to my attention using my power under section 88I of the School Standards and Framework Act 1998 (the Act). I have used the same power to review the arrangements as a whole.

5. I am satisfied that it is within my jurisdiction to consider the school's arrangements.

Procedure

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

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

- the referrer's emails dated 9 and 15 January 2014;
- the school's responses to the referral and supporting documents dated 27 January 2014, and subsequent correspondence;
- the composite prospectus for parents seeking admission to secondary schools in the area served by Bristol City Council, the local authority (the LA) for September 2013;
- a response from the LA dated 29 January 2014;
- a response from the Diocese of Bristol (the diocese), dated 21 January;
- a copy of the funding agreement dated 3 March 2008;
- a copy of the Designation of Schools Having a Religious Character (Independent Schools) (England) (No.2) Order 2008;
- minutes of the meeting on 13 March 2012 at which the proprietor of the school determined the arrangements;
- the determined arrangements for admissions in September

2014;

- emails from the Education Funding Agency dated 10, 20 and 23 January 2014; and
- the school's Ofsted report of September 2010.

8. I considered the arrangements for September 2014 and sought a meeting with the school, the diocese and the LA to discuss the referral and my additional concerns about aspects of the arrangements which I considered might not be fully compliant with the Code. The diocese stated that it had no direct relationship with the school and felt it was not a party in this case and therefore was not represented at the meeting.

9. I have taken account of all information received during the meeting I convened at the school on 3 February 2014 and further information that has been submitted by the school since the meeting.

The Referral

10. The referrer says that the school is in breach of the Code in relation to four aspects of the arrangements. The first aspect relates to the referrers view that, "*The school has reserved and allocated more than ten per cent of places of year 7 places for what I consider its specialism for at least the last two school years*" The referrer cites paragraph 1.24 of the Code. The second aspect relates to whether or not the school has carried out the necessary consultation required by the Code as summarised in paragraph 15b, before making changes to its arrangements. In the third aspect, the referrer contends that there has been indirect discrimination based on socio-economic background which is unlawful. The referrer says that the need for parents to fund transport to and from the school every day means that those on low incomes are discriminated against and the school does not outline anywhere within its policies how the above aspects of the criteria are addressed. She cites paragraphs 1.8 and 1.9f of the Code. She also contends that a child on roll at the school may be in a position where the family can no longer afford the transport, the inference being that the place would be withdrawn. She cites paragraphs 2.12 and 2.13. The final aspect of the referral questions the independence of the individuals who have overseen the operation of the random allocation of places as required by paragraph 1.35 of the Code.

Other Matters

11. In discussion with the school I considered the text of the arrangements in relation to the admission of children with statements of special educational needs; the assessment of aptitude for music; the request for the full birth certificate to prove the sibling relationship; the definition of employee; the timing of banding test; the requirement for a published admission number for sixth form arrangements; admission to the sixth form on the basis of musical ability; and the availability and content of supplementary information forms (SIFs).

Background

12. Bristol Cathedral School was a direct grant school until 1975, when it became an independent school. It then converted to become an academy in September 2008 changing its name to Bristol Cathedral Choir School. The school has approximately 748 pupils on roll, a published admission number (PAN) of 120 and a sixth form capacity of 220 with 180 currently on roll. Year groups 7 to 11 are full and oversubscribed. The school has two specialisms, music and mathematics but uses only the music specialism to admit the ten per cent permitted by legislation, to the year 7 intake. The principal is the executive head teacher for the school and for Cathedral Primary School.

13. The school is designated as having a religious character and the Code says in paragraph 1.36, "As with other maintained schools, these schools are required to offer every child who applies, whether of the faith, another faith or no faith, a place at the school if there are places available. Schools designated by the Secretary of State as having a religious character (commonly known as faith schools) may use faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed." In other words, faith schools can decide whether or not to include faith based criteria within their arrangements. The school has decided to have a faith based oversubscription criterion.

Consideration of Factors

14. The referrer says that the school is in breach of the Code in relation to four aspects of the arrangements. In response to the referral the school comments that it feels that arrangements are compliant with the admissions code and that procedures are robust, transparent and conducted in good faith.

15. The first aspect relates to the referrers view that the school has reserved and allocated more than ten per cent of year 7 places for its music specialism, for at least the last two school years. The Code says in paragraph 1.24, "*Schools that have arrangements to select by aptitude **must not** allow for more than 10 per cent of the total admissions intake to be allocated on the basis of such aptitude (even if the school has more than one specialism). The specialist subjects on which a school may select by aptitude are: a) physical education or sport, or one or more sports; b) the performing arts, or any one or more of those arts;*" The school explained that after consulting on proposed changes it introduced oversubscription criterion 8c for the 2009/10 arrangements, as follows: "*Bristol Cathedral Choir School will admit up to 10% of the Year 7 intake on the basis of those who most clearly demonstrate that they have an aptitude in music, using a Musical Aptitude Test (MAT) for pitch, melody, texture and rhythm.*" Evidence was provided of the number of pupils admitted under the music specialism each year; and the total has not exceeded the permitted 10 per cent in any year since the school converted to academy status in March 2008. However, I note that the referrer uses the words, "...for what I consider to be its specialism..." and I have inferred from this that the reference is to the combined total of pupils admitted under the oversubscription criteria 8b and 8c.

16. I was advised by the school that criterion 8b is a separate faith based criterion. It states, "*Bristol Cathedral Choir School will admit up to 8 pupils of the Year 7 intake on the basis of membership of the Cathedral Choir⁴. The Probationer Chorister Supplementary Application Form is required to be submitted.*" The criterion was introduced following receipt of confirmation of the faith designation at the end of September 2008 and after subsequent consultation. Applicants must demonstrate a commitment to the faith through regular and participating membership of the choir, as certified by a religious authority, in this case, the Master of the Choir at the Cathedral. The LA confirmed that chorister places were added to the arrangements as set out in the funding agreement, as part of the process of designating the academy as a 'faith' school. It would be helpful for parents if the distinction was made evident in the arrangements and the school agreed that it would make clear that criterion 8b requires a demonstration of faith, and that children admitted under this criterion are not included in the ten per cent admitted under the music specialism. I am satisfied that the evidence provided by the school and published in the LA prospectus indicates that there has been no breach of the Code.

17. The second aspect of the referral relates to whether or not the school has carried out the necessary consultation exercises before making changes to its arrangements. The referrer says that funding agreement dated March 2008, lists the oversubscription criteria as:

- Special educational needs;
- Looked-after children;
- Siblings;
- Children with medical or social needs; and
- Random allocation (70% zone A City of Bristol / 30% Bath and North East Somerset, North Somerset, South Gloucestershire)

She notes that oversubscription criteria have changed and for 2014/15 include:

- Special educational needs;
- Looked-after and previously looked-after children;
- Probationer choristers;
- Up to 10% of the year 7 intake on the basis of music aptitude;
- Children on roll at Cathedral Primary School;
- Siblings;
- Children with medical or social needs;
- Children of serving employees; and

- Random Allocation (BS1 to BS25;BS29 to BS37; BS40 to BS49)

18. The referrer says that the school has made changes without the necessary local consultations with Bristol LA, local schools or the local population as required by paragraph 15b of the Code which says, “*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.....*” However, minutes of the governing body meeting held on 13 March 2013, record that the school consulted on the proposed admission arrangements from 19 December 2012 to 12 February 2013. The draft admissions policy and covering letter was sent to the LA, the admissions forum, the Diocese of Bristol, all admission authorities for primary and secondary schools located within the relevant area for consultation set by the LA; all other governing bodies schools located within the relevant area for consultation; and relevant admission authorities in neighbouring LA areas.

19. The referrer specifically includes mention of the changes to the catchment area and school explained that there were families who had chosen to travel some distance to the school when it was an independent school, some living as far away as 20 miles. On conversion to academy status they remained on roll. The school had analysed the changing pattern of applicant addresses as the number of application had increased, the school gradually changed the catchment area in order to serve the areas closest to the school.

20. Since the meeting, the school has provided a detailed log of the annual consultations for each year since 2008 when the original funding agreement was issued; and this also records agreements by the Education Funding Agency to proposed changes. I am satisfied that evidence conclusively indicates that the school has complied with the mandatory requirements of the Code in this regard.

21. In the third aspect, the referrer contends that there has been indirect discrimination based on socio-economic background, which is unlawful. The referrer says that the need for parents to fund transport to and from the school every day means that those on low incomes are discriminated against and the school does not outline anywhere within its policies how the above aspects of the criteria are addressed. She cites paragraphs 1.8 and 1.9f of the Code as follows:

1.8 “*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, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.*”

Paragraph 1.9f says, “*It is for admission authorities to formulate their*

*admission arrangements, but they **must not**: give priority to children according to the occupational, marital, financial or educational status of parents applying (though children of staff at the school may be prioritised in arrangements);”*

22. The school advised me that it was unaware of any instances where this had happened since it became an academy. Indeed, because the school is located in the city centre it operates a green travel policy and parents are actively discouraged from using cars to transport children to school. Families are encouraged to use the excellent public transport routes, to cycle or to walk to school.

23. The referrer also contends that a child on roll at the school may be in a position where the family can no longer afford the transport and the inference here is that a place would be withdrawn. Paragraph 2.12 of the Code says, “*Withdrawing the offer of a place – An admission authority **must not** withdraw an offer unless it has been offered in error, a parent has not responded within a reasonable period of time, or it is established that the offer was obtained through a fraudulent or intentionally misleading application. Where the parent has not responded the admission authority **must** give the parent a further opportunity to respond and explain that the offer may be withdrawn, if they do not. Where an offer is withdrawn on the basis of misleading information, the application **must** be considered afresh and a right of appeal offered if an offer is refused.*” Paragraph 2.13 says, “*A school must not withdraw a place once a child has started at the school, except where that place was fraudulently obtained. In deciding whether to withdraw the place, the length of time that a child has been at the school must be taken into account.....*”

24. The LA stated that, “*The School Admissions Code and associated legislation are based around a principle that parents can apply for any school and only where the school has insufficient places to accommodate all those whose parents apply should a place be refused. The argument (the referrer) makes could therefore be applied to every maintained school or academy..... The Local Authority meets the statutory duty to ensure there is a sufficient supply of school places and within Bristol there are sufficient secondary school places in all areas of the city. A school place is therefore available for all children within a reasonable travel distance.*”

25. This aspect of the referral relies on two scenarios rather than on actual events or occurrences. When I raised these with the school it was confirmed that such cases had never occurred. In its written response the school said, “*The decision not to include a distance criterion is fundamental to the values and distinctive character of (both) schools. (The school) is the only maintained school in the region with music as its primary specialism. It is located in the centre of the city with excellent transport links and appeals to large numbers of families. Since opening, it has attracted a diverse student population broadly representative of the city. 29.6% of students from BME groups and an increasing percentage of students in receipt of FSM, 13% this year..... Both schools are delighted to be able to provide support for families who are finding difficulty in affording the cost of transport. The Academy increases the choice for parents from within the city, providing a distinctive provision.*” The school described assistance available to families including help with transport costs to enable all pupils to participate in

Saturday morning sport. In my view the school's oversubscription criteria do not discriminate unlawfully or discriminate indirectly on the grounds of socio-economic deprivation.

26. The final aspect of the referral questions the independence of the individuals who have overseen the operation of the random allocation of places. Paragraph 1.35 of the Code says, *"The random allocation process must be supervised by someone independent of the school, and a fresh round of RA must be used each time a child is to be offered a place from the waiting list."* The school accepted that they had used persons that they knew, since they would not wish to appoint someone unknown. However, the head teacher confirmed that none of the 'independent persons' were employed by the school, or had any direct relationship with any parent or students. In addition, the process is overseen by a member of the teaching staff and the assistant principal who are both present throughout. Random allocation is operated by allocating a number to each application so that the names of individual applicants remain anonymous during this part of the process. Since 2013 the LA has provided an officer who is present during the random allocation process and who had concluded that the arrangements for the random allocation were carried out in line with the Code and in a fair and transparent manner. The LA pointed out that offers are sent to parents by Bristol City Council and therefore the list of pupils allocated a place has been open to scrutiny by Council officers each year. I am satisfied that the random allocation procedures used by the school are robust and properly organised and supervised. For these reasons I am satisfied that there is no contravention of the Code.

27. The referrer also explained to me that she had met with the LA on 5 December 2013, to raise the same concerns but she feels that the LA has not acted upon them, as required by the Code in paragraph 3.2, which says, *"Local authorities **must** refer an objection to the School Adjudicator if they are of the view or suspect that the admission arrangements that have been determined by other admission authorities are unlawful."*

28. My jurisdiction relates only to the determined arrangements of the school for 2014, and does not permit me to comment on an on-going complaint about the actions of the LA, which is subject to separate processes and procedures.

Other matters

29. Having reviewed the arrangements as a whole, I considered a range of issues which may contravene the Code. I drew attention to the text relating to the admission of pupils with statements of special educational needs into year 7. Under the heading 'Procedures where (the school) is oversubscribed' it states, *".....After the admission of pupils with statements of Special Educational Needs where (the school) has agreed to be named on the statement, the criteria will be applied in the order in which they are set out below."* The current text implies that the school has discretion to admit a child whose statement names that school but this is not the case. Parents of a child with a statement have already completed a separate statutory process which has named a school and a separate application is not therefore required. The admission of children who have a statement of special educational need

(SEN) should not be included under the heading of 'oversubscription criteria. When a statement has been issued naming a school, that school must admit the child. The Code says in paragraph 1.6, "*All children whose statement of SEN names the school **must** be admitted.*"

30. The school said it has retained the original wording from the 2008 Funding Agreement, but the Code and regulations have been revised in the interim period to provide greater clarity for parents and schools. The school acknowledged the point and agreed to amend the text of the arrangements. I noted that the text about the admission of pupils with statements of SEN into the sixth form was in the correct format.

31. The next point relates to criterion 8c, which provides for the admission of pupils with reference to aptitude in music. The school includes a music audition as part of the process of assessing aptitude and guidance for parents states that, "*...The audition will be scored by considering the difficulty of the music performed and the quality of the performance. The highest scoring 10% of applicants will be offered places....*" This aspect of the process does not constitute an assessment of aptitude but instead assesses and selects pupils by ability. This is not permitted by the Code in paragraph 1.32a which says, "*Admission authorities **must**: ensure that tests for aptitude in a particular subject are designed to test only for aptitude in the subject concerned, not for ability.*" The school agreed to remove this aspect of its assessment process for specialist music places.

32. Criterion 8e refers to the admission of children who have a sibling on roll at the school and says that the school may require proof of relationship. On the SIF, the school provides as the exemplar, "*Full birth certificates*". The Code in paragraph 2.4 says admissions authorities, "*....**must not** ask, or use supplementary information forms that ask, for any information prohibited by paragraph 1.9 above or for a) any personal details about parents and families such as maiden names,*" Paragraph 2.5 of the Code, which gives admission authorities permission to ask for proof of address also cautions "*.....Once a place has been offered, admission authorities may ask for proof of date of birth, but **must not** ask for a long birth certificate or other documents which would include information about the child's parents.....*" The school agreed to remove this particular example from the SIF.

33. Criterion 8g, which refers to the children of employees, needs further clarification, so that parents and others know whether this refers to all staff, or only to some and whether it relates to full- and part-time staff or not.

34. The arrangements state that a banding test will be taken by all year 7 applicants and that banding will be applied to ensure a comprehensive intake to ensure that places will be allocated as far as possible such that an equal number are placed in each band. The Code states in paragraph 1.25, "*Pupil ability banding is a permitted form of selection used by some admission authorities to ensure that the intake for a school includes a proportionate spread of children of different abilities.....*" Paragraph 1.32 adds, "*Admission authorities **must**:c) take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on **31 October** so as to allow parents time to make an informed choice of school – while making clear that this does not equate to a guarantee of a*

selective place.” The school must consider how to achieve compliance with the Code.

35. The sixth form arrangements include an admission number of 110. The total capacity of the sixth form is 220, with 110 in each year group. The arrangements state that the school will accept external students up to its admission number minus the number of the school’s own students who meet the minimum academic entry requirements. The Code requires schools to publish an admission number for each relevant year group, by which it means for each year group where new pupils are admitted into the school.

Paragraph 1.3 states, “*Published **admission Number (PAN)** – As part of determining their admission arrangements, all admission authorities **must** set an admission number for each relevant age group.*” The school must therefore set a PAN for year 12, so that parents of children attending other schools are able to look at the arrangements and assess the likelihood of gaining admission.

36. The arrangements for the sixth form includes the oversubscription criterion 18b, which states, “ *Up to 50% on the basis of ability in Music, the criteria for selection on this basis will be according to the following order of priority:*

- *Applicants with grade 8 in a musical instrument*
- *Applicants with grade 7 in a musical instrument*
- *Applicants with grade 6 in a musical instrument*
- *Applicants with grade 5 in a musical instrument*
- *In the event of a tie an applicant with the highest numerical grading will be given priority.”*

37. I enquired whether this criterion applied to all internal students transferring into the sixth form since the Code requires schools to set the same minimum academic requirements for both internal and external pupils. The Code says in paragraph 2.6, “.....*Admission authorities can however, set academic entry criteria for their sixth forms, which **must** be the same for both external and internal places.....*” The school said that it had never actually applied this criterion and would remove it.

38. The school requires parents to complete additional SIFs but I could not find a complete set of these with the school’s arrangements on the website. All information required by applicants should be provided in one place. Additionally, the year 7 SIF and the SIF for music aptitude both require information about both parents, but this is not permitted and must be changed. Paragraph 1.9f says, “*It is for admission authorities to formulate their admission arrangements but they must not: give priority to children according to the occupational, marital, financial or educational status of parents applying...*” Finally, SIFs must only request information related to oversubscription criteria and therefore the section on the specialist music application form that asks for details as to why applicants are interested in a music place must be removed.

Conclusion

39. For the reasons detailed above I have concluded that with regard to the four aspects of the referral, the arrangements of the school comply with legislation and the Code.

40. However, in addition I have considered the 2014 arrangements with the school and have concluded that several aspects of the arrangements detailed above, do not comply with the Code. With regard to other issues of non-compliance the Code requires the admission authority to revise its admission arrangements as quickly as possible.

41. In this case, the school has readily accepted that some aspects of its arrangements do not meet the requirements of the Code. Once admission arrangements have been determined for a particular academic year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements. The Code gives permission in paragraph 3.6 of the Code to make revisions that are necessary to give effect to mandatory requirements of the Code.

Determination

42. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements determined by the governing body of Bristol Cathedral Choir School for admissions in September 2014.

43. I determine that in relation to the matters that have been referred to me they do conform with the requirements relating to admission arrangements.

44. I have also considered the arrangements as a whole in accordance with section 88I(5) and I determine that these do not conform in relation to certain matters with the requirements relating to admission arrangements.

45. By virtue of section 88K(2) of the Act 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: 5 March 2014

Signed:

Schools Adjudicator: Mrs Carol Parsons