

## DETERMINATION

**Case reference:** ADA/002565

**Referrer:** The governing body of Langley Hall Primary Academy

**Admission Authority:** The governing body of Our Lady of Peace Junior School

**Date of decision:** 29 January 2014

### **Determination**

**In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Our Lady of Peace Junior School for admissions in September 2014. I determine that they conform to the requirements of the School Admissions Code in relation to the matter brought to my attention. I determine that the arrangements do not conform to the requirements relating to admissions in the ways set out in this determination.**

**By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible but no later than 15 April.**

### **The referral**

1. The admission arrangements (the arrangements) of Our Lady of Peace Junior School (the school), a Catholic voluntary aided primary school in Slough, for pupils aged 7 - 11, for September 2014, have been brought to the attention of the Office of the Schools Adjudicator (OSA) in a letter dated 25 November 2013 from the governing body of Langley Hall Primary Academy.

### **Jurisdiction**

2. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the school's governing body, which is the admission authority for the school. The arrangements were referred to the adjudicator on 25 November 2013. The referral notes that the school's oversubscription criteria for Year 3 (Y3) which is the normal year of entry to the school include priority for children who have attended Our Lady of Peace Infant and Nursery school. I am satisfied that it is within my jurisdiction to consider the arrangements brought to my attention under section 88I of the Act. Having looked at the arrangements, I considered that there may be other matters that do not comply with legislation or the School Admissions Code

(the Code) and I have therefore also used my power under section 88I of the Act to consider the arrangements as a whole.

### **Procedure**

3. In considering the arrangements for admissions in September 2014, I have had regard to all relevant legislation and to the Code.

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

- the referral dated 25 November 2013;
- minutes of meetings of the governing body of the school dated March, September and November 2012;
- copies of the determined arrangements for 2014 as approved by the governing body;
- copies of the arrangements as varied by the governing body subsequent to my meeting with the school in December 2013;
- material on the school's website relating to admissions as in November and December 2013 and as in January 2014; and
- the composite prospectus for admission to Slough schools in 2014 produced by Slough Borough Council which is the local authority (the LA) for the area.

5. I have also taken account of other information received during a meeting I convened at the school on 13 December 2013. This was a joint meeting also involving representatives of Our Lady of Peace Infant and Nursery school, representatives of the LA and a representative of the Diocese of Northampton. Our Lady of Peace Junior School was represented by members of the school staff and a representative of the school's governing body.

### **The Referral**

6. The referral concerned the priority given in the school's oversubscription criteria to children who have attended Our Lady of Peace Infant and Nursery School.

### **Other matters**

7. At the meeting I raised other matters that did not comply with the requirements of the Act or conform to the Code. These matters were that:

- a. the school's arrangements for 2014 had not been published on its website as required by the Code;

- b. the arrangements did not accurately reflect the legal provisions governing the admission to school of children with a statement of special educational needs (SEN);
- c. the definition of looked after and previously looked after children is not accurate and the arrangements relating to the admission of these children were not clear;
- d. the arrangements include the use of an application form which is not necessary for the school to apply its oversubscription criteria and which requests information prohibited by the Code. The letter sent to prospective parents with the school's application form and the application form both erroneously state that the application form must be completed and form asks for the signatures of both parents in breach of the Code;
- e. the oversubscription criterion "Children who are out of school due to relocation" is unclear; and
- f. the tie-breaker to distinguish between applicants in any category is not clear and there is no final tie-breaker to distinguish between two or more applicants who tie for the final place available.

## **Background**

8. Our Lady of Peace Junior School shares a site with Our Lady of Peace Infant and Nursery School. As would be expected, there are close links between the two and many pupils progress from the infant school to the junior school. The schools have separate governing bodies with some overlap in membership. In 2012 and 2013 the junior school was able to offer a place to all pupils who wanted one. Figures provided by the school show that in both years the school initially had a few more first preference applicants than it actually has places; however, some parents subsequently withdrew their applications. For both years over half the Y3 intake was Catholic with significant numbers of children from other Christian denominations and from other faiths. The school has a published admission number (PAN) of 90 places and actually admitted 87 in both years.

9. The school's admission arrangements as set out in the LA's composite prospectus for 2014 are as follows:

"Following the directive from the Department of Education The School Admissions arrangements and co-ordination of arrangements (England) Regulations 2012 priority will be given to :

- All Looked after children and previous looked after children (please see definition)

- Children with a Statement of Special Educational Needs who have named the school as their choice

In the event of oversubscription priority will be given to applicants in accordance with the following criteria. In all cases the distance from the school will be a consideration (please see definition of “home address”)

1. Baptised Catholic children attending our Lady of Peace Infant and Nursery School at the time of application
2. All other Baptised Catholic children who have applied for a place at the school
3. **[There is no three in the list –it runs from 2 to 4]**
4. Children of other faith traditions attending Our Lady of Peace Infant and Nursery School
5. Children of no faith tradition attending Our Lady of Peace Infant and Nursery School
6. Children of other Christian faith traditions who have applied for a place at the school
7. Children of any other faith traditions who have applied for a place at the school
8. Children who are out of school due to re-location
9. Children who have applied for a place at Our Lady of Peace Junior School who do not meet any of the above criteria”
10. This section is then followed by information about appeals, the school’s supplementary information form (SIF), definitions and other matters.

### **Consideration of Factors**

#### Giving of priority for YR to children who attend Our Lady of Peace Infant and Nursery School

11. This referral covered a number of schools in Slough. All of the other schools concerned (the subjects of Determinations ADA2563, ADA2564, ADA2566, ADA2567 and ADA2568), are schools which admit pupils to Reception Year (YR) and have nursery provision. Our Lady of Peace Junior School does not admit pupils to YR as its first year is Y3.

12. The school does give significant priority to children who have attended

its partner school Our Lady of Peace Infant and Nursery School (the subject of Determination ADA 2570). However, Our Lady of Peace Infant and Nursery School does not give any priority in YR to children who have attended its nursery. I accordingly determine that in this regard there is no breach of the Code.

#### Publication of arrangements

13. Paragraphs 1.46 and 1.47 of the Code deal with the determination and publication of admission arrangements by admission authorities. They state that admission authorities **must** determine arrangements by 15 April (and for admission in September 2014 this means 15 April 2013) and **must** thereafter to publish the arrangements on their website. Paragraphs 1.42 to 1.45 of the Code set out the process to be followed when admission authorities wish to change their arrangements.

14. In March 2012, in response to an approach from a parent of a child at the infant school, the school's governing body decided to consider changing its oversubscription criteria to give greater priority (after looked after and previously looked after children and Catholics) to children who had attended the infant school. At its November meeting, the governing body resolved to make this and some other changes to the admission arrangements. The LA confirmed at our meeting that it carried out the consultation required by the School Admissions (Admission Arrangements and Co-Ordination of Admission Arrangements) (England) Regulations) 2012 (the regulations) and the Code on behalf of the school. The school told me that it subsequently determined the arrangements for 2014.

15. On 28 November I began my consideration of this case. As is standard practice, I looked at the school's and the LA's websites to review the admission arrangements. The arrangements for 2013 were on the school's website. The arrangements for 2014 were available from the LA's website. However, the arrangements for 2014 were not on the school's website. Instead, a page headed admissions included the following material:

#### **“ENTRY TO JUNIOR SCHOOL 2014**

The Junior School Admission arrangements will be available here towards the end of November 2013.....”

16. There was also a note stating the deadline for applications for places would be 15 January 2014 for September 2014 entry and links to a letter to parents about admission arrangements and a link to the school's application form.

17. I checked the website again on 11 December 2013 when the material outlined above remained posted. At the meeting with the school, I drew attention to the provisions of the Code concerned with publication of admission arrangements as outlined above. The school accepted that it had not met these requirements and explained that it thought that this did not

matter provided the arrangements were posted on the website before the closing date for application in January 2014.

18. The school's approach is unacceptable. In the first place, it is a mandatory requirement of a statutory Code that determined arrangements be published on the website; this is not a matter in which the school has any discretion. Secondly, the school has by its actions deprived parents and others with an interest of their lawful right to object to the arrangements. By the time the arrangements were published in the LA composite prospectus, the deadline for objections – which is 30 June – had long passed. The school has also made it harder for parents who might be considering applying to the school to assess their chances of gaining a place for their child.

19. The school accepted these points at the meeting. In early January it published the admission arrangements for September 2014 on its website. The arrangements for 2014 vary in a number of respects from those outlined above, including that they now run sequentially with no missing criterion 3 as above. It is open to admission authorities in accordance with Regulation 19 of the regulations to vary their determined arrangements in specified circumstances, one of which is in order to comply with a mandatory provision of the Code. I shall refer below as appropriate to the changes the school has made to its arrangements.

#### Children with statements of SEN

20. The arrangements and procedures for the admission of children with a statement of SEN to the school named on the statement are different from those relating to the admission of other children. Children with statements must be admitted to the school named on the statement and are not considered under the school's oversubscription criteria. Instead, the admission arrangements for all schools ought for the sake of clarity to include a statement outside the list of oversubscription criteria to the effect that all children with a statement of SEN that names the school will be admitted. The arrangements for the school as originally determined did not do this, but brigaded looked after and previously looked after children and children with statements of SEN together in – as noted above – a section which states that priority will be given to these groups.

21. The varied arrangements published on the school's website in January 2014 include a prominent statement outside the oversubscription criteria that a pupil with a statement where the school is named on the statement will be admitted. In this respect the arrangements now conform to the Code.

#### Looked after and previously looked after children

22. A school with a Catholic religious character, must as a minimum give first priority in its oversubscription criteria to Catholic looked after and previously looked after children and may give priority to all looked after and previously looked after children. As noted above, the school is inclusive by

giving first priority in its oversubscription criteria to all looked after and previously looked after children. However, this priority is not included within the numbered oversubscription criteria, but is contained in a separate section.

23. Paragraphs 14 and 1.8 of the Code emphasise the requirement that admission arrangements including oversubscription criteria **must** be clear. Paragraph 14 also states that parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated. In the case of the school, I think that a parent or carer wanting to check the oversubscription criteria might well look first at the numbered section of the arrangements. They would see that looked after and previously looked after children do not feature in this list and could conclude – erroneously – that these children do not have priority. There is, by contrast, no possibility of such a mistake in arrangements where looked after and previously looked after children are given priority one in a numbered list.

24. Turning to the definition of looked after children, the definition used by the school reads as follows:

“Children who are in the care of local authorities as defined by Section 22 of the Children Act 1989. In relation to school admissions legislation a “looked after child” is a child in public care at the time of application to a school.

25. As footnote 17 to paragraph 1.7 of the Code explains, a looked after child is actually a child who is a) in the case of a local authority or b) being provided with accommodation by a local authority. A child who provided with accommodation is not a child in public care and so the school’s definition does not cover all looked after children. I am certain that the school does in practice give priority to all looked after and previously children.

26. At the meeting, I drew the school’s attention to these matters. The school agreed to change its arrangements to bring them into conformity with the Code. The varied arrangements unfortunately retain the old incorrect definition and do not include looked after and previously looked after children within the number list of oversubscription criteria. Thus, the arrangements do not conform to the Code. The Code requires the school to amend its arrangements as quickly as possible.

#### Use of application form which is unnecessary to apply admission arrangements

27. All applications to schools in the normal admissions round, Y3 for this school, must be made on an LA’s Common Application Form (CAF). The Code recognises in paragraph 2.4 that some admission authorities may need information not included on the CAF in order to apply their oversubscription criteria and provides that in such cases a supplementary information form (SIF) may be used. The Code is clear that only information which has a direct bearing on decisions about oversubscription criteria or for the purpose of

selection by ability or aptitude (which is not relevant in the case of Our Lady of Peace) may be sought. The Code also sets out some categories of information that **must** not be sought in any case and provides that information which is prohibited from being used in oversubscription criteria by paragraph 1.9 of the Code **must** not be sought.

28. The school’s arrangements as published in the LA’s composite prospectus state that parents must complete both the CAF and the “Application Form for Our Lady of Peace Junior School” and return the latter to the school. I shall refer in this determination to this form as the SIF.

29. At the meeting with the school I asked for and was given a copy of the SIF. It is in two parts; the first of which is to be completed by the parents or carers and the second of which is to be passed to the relevant priest or minister of religion.

30. The first part of the form asks for a significant amount of information which is not necessary for the school to apply its oversubscription criteria and some of which is also prohibited by the Code, as set out below:

|  |   |
|--|---|
| Date of First Communion                        | Not necessary to apply oversubscription criteria  |
| Position of Child in Family                    | Not necessary to apply oversubscription criteria; breaches 2.4 a of the Code as this is personal information about the family   |
| Occupation of parents                          | Not necessary to apply oversubscription criteria; breaches 2.4 of the Code as this is personal information about the family; 1.9f of the Code prohibits giving priority on the basis of parental occupation |
| Medical conditions of child                    | Not necessary to apply oversubscription criteria; breaches 2.4c of the Code   |
| Ethnic Group and First language of child       | Not necessary to apply oversubscription criteria, breaches 2.4 of Code  |
| Whether child is entitled to Free School Meals | Not necessary to apply oversubscription criteria; 1.9f of the Code prohibits giving priority according to the financial status of parents   |
| How the child will travel to school            | Not necessary to apply oversubscription criteria  |
| Does the child have a statement of SEN?        | Not necessary to apply oversubscription criteria; breaches 2.4c of the Code   |

31. The second part of the form also asks for information which is not necessary to apply the oversubscription criteria. In particular, it asks whether the priest or minister of religion knows the child and whether the child attends a religious service regularly. While many schools with a religious character will ask about frequency of attendance at services as their oversubscription criteria give priority to those who do attend – say – weekly services, the



criteria for this school do not; the only religious aspect of the arrangements is whether a child has been baptised or had an equivalent service of dedication. In addition, the form asks the priest or minister of religion to make any further comments they wish.

32. The form goes far beyond what is necessary to apply the oversubscription criteria and hence beyond what is allowed. The CAF asks for the child's religion and all that is required to know whether a child has been baptised or had an equivalent service of dedication is the baptism certificate or confirmation from a religious leader of an equivalent service of dedication. Inviting the priest or minister of religion to make any further comments is unacceptable. If any such comments were taken into account in deciding who should be offered a place, this would involve the school allocating places not on the basis of the oversubscription criteria (which is a breach of paragraph 2.7 of the Code). If they are not, then the question serves no purpose, but wastes the time of the person completing the form. The form also states that it must be signed by both parents when both have parental responsibility. Paragraph 2.4 e of the Code specifically prohibits asking both parents to sign a SIF

33. Finally, the letter sent to parents with the SIF and the arrangements themselves state that the SIF must be completed. This is not true. It is the case that an admission authority may be unable to apply all of its oversubscription criteria without information provided on a SIF and that failure to complete a SIF may therefore reduce a child's chance of gaining a place at a school. That said, where a school has enough places to offer one to every child who would like one, paragraphs 15d and 2.8 of the Code require that they do so. In such cases, schools that use SIFs must offer places to all who have applied, whether or not the SIF has been completed.

34. The forms breached the Code in the ways set out above. However, the school has moved swiftly to remedy this situation. The varied admission arrangements provided to me are clear that no SIF is required; all that is required is a baptism or dedication certificate or written confirmation from a faith leader that a child is a member of the faith concerned.

#### Criterion relating to children out of school due to relocation

35. When I reviewed the school's arrangements, I was unclear as to the meaning of this criterion. I could not see how it could relate to children seeking a place during the normal admissions round. The closing date for applications to Slough Primary schools for September 2014 is as noted above 15 January 2014. A child who was out of school so far ahead of the due date for admission would fall to be considered under Slough's Fair Access Protocol as paragraph 3.15 of the Code requires that any child who has been out of education for more than two months **must** be included in the relevant Fair Access Protocol. For in-year admissions and other admissions outside the normal admission round, the school's arrangements already state that the normal oversubscription criteria would apply.

36. At the meeting, the school said that it did not think that this criterion had ever been used and was unable to explain how it would be used. I consider that it is unclear and hence does not conform to paragraph 14 or 1.8 of the Code. The school agreed that it would remove the criterion from its arrangements; however, it is included in the varied arrangements as published on the school's website in January 2014. The Code requires the school to amend its arrangements as quickly as possible.

#### Lack of tie-break

37. Paragraph 1.8 of the Code explains that admission arrangements **must** include an effective, clear and fair tie-breaker. The arrangements as I first saw them in November 2013 did not include a tie-breaker. Instead, they included as noted above a statement that

“In all cases the distance from the school will be a consideration (please see definition of “home address”)....

Home address – Is the address at which the child resides for most of the week. Distances are measured from the main entrance of the child's home to the main entrance of the school.”

38. This statement is too vague to meet the requirement of paragraph 1.8. In the first place there is no explanation of how distances are to be measured, for example, as the crow flies or by road. Second, it is possible to interpret the statement as meaning that within any criterion priority will be given to those who live closest to the school, but it would also be possible to interpret in other ways, including that it would be one factor taken into account. In addition, the arrangements lacked any final tie-breaker to differentiate between two children who qualified equally for the final available place.

39. The school's varied arrangements are significantly different. It is now clear that should the PAN be reached in any criterion, priority will be given on the basis of distance from the school and there is a clear definition of how distance will be measured by using the Slough Geographical Information System. In addition, there is a final tie-breaker to differentiate between two children who tie for the final place and this will be random allocation.

#### **Conclusion**

40. With regard to the matter concerning priority for admission for having attending a nursery that brought the arrangements to my attention I have concluded that the arrangements of the school do not contravene the Code.

41. With regard to the other matters I have concluded that the arrangements do not conform to the Code in the ways set out in this determination. The school has varied its arrangements as provided for in Regulation 19 of the regulations and paragraph 3.6 of the Code and has in a

number of significant respects made its arrangements compliant with the Code. However, the arrangements remain in breach of the Code in relation to the admission of looked after and previously looked after children and the clarity of the arrangements in relation to children who are out of school. The Code requires the school to amend its arrangements as quickly as possible.

### **Determination**

42. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Our Lady of Peace Junior School for admissions in September 2014. I determine that they conform to the requirements of the School Admissions Code in relation to the matter brought to my attention. I determine that the arrangements do not conform to the requirements relating to admissions in the ways set out in this determination.

43. 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 but no later than 15 April.

Dated: 29 January 2014

Signed:

Schools Adjudicator: Ms Shan Scott