

## DETERMINATION

**Case reference:** ADA/002239

**Referrer:** A Parent

**Admission Authority:** The Governing Body of The King's  
(The Cathedral) School, Peterborough

**Date of decision:** 18 July 2012

### Determination

In accordance with section 88I (5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of The King's (The Cathedral) School for admissions in September 2012 and I partially uphold the referral.

- I do not agree with the referral in the matter of the application of a tiebreaker to criterion A5. This does not contravene the School Admissions Code.
- I agree that criterion A5 of the School's admission arrangements is not sufficiently clear for parents; that the Chair of Governor's letter does not form part of the arrangements and that the letter is discriminatory in referring to the requirement for information about both parents.

Further, in accordance with section 88I I have considered the arrangements for admissions in September 2013 and I determine that these do not conform to the requirements of the legislation and the School Admission Code.

The School has already had regard to the referral and made a number of changes in order to meet the mandatory requirements of the Code, but the arrangements are not yet fully compliant with the Code.

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.

### The referral

1. The admission arrangements (the arrangements) of The King's (The Cathedral) School (the School), a Church of England Academy in Peterborough for pupils aged 7 to 18 years of age, for September 2012, have been brought to the attention of the Schools Adjudicator in a letter dated 4 April 2012. The referral is to a view that the arrangements for 2012 are

unlawful in relation to four key elements. These are that:

- i. The oversubscription criterion A5 which states 'Children of worshipping members of other Christian denominations or of other faiths. All categories will be considered equally with no priority order.' The referrer feels that a later reference to the use of a tiebreaker contradicts this statement and further, that rather than using the distance tiebreaker, the School ranks applicants within this group.
- ii. The arrangements do not explain how criterion A5 will be applied, that is, how applicants of 'other faiths' are to be ranked and the referrer questions how governors of one faith could determine and make a judgement about parental commitment within other faiths. Parents are not advised how applicants from other faiths will be ranked nor by whom.
- iii. Applicants are required to take notice of linked notes that refer them to another document, the Chair of Governor's letter, but this does not legitimately form part of the arrangements that were determined by the School.
- iv. Finally, that the Chair's letter is discriminatory in referring to both parents

### **Jurisdiction**

2. 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, that is, the governing body, which is the admission authority for the Academy school, on that basis. These arrangements were referred to the adjudicator under section 88I of the School Standards and Framework Act 1998 (the Act).

3. I am satisfied the referral has been properly made to me in accordance with section 88I of the Act and it is within my jurisdiction to consider them.

4. Having reviewed the arrangements for 2012 and concluded that there were matters that did not comply with the School Admissions Code issued in 2010 (the 2010 Code) and given that the referral has brought the arrangements of the School to the attention of the Adjudicator, I am also using my powers under section 88I of the Act to consider the arrangements as a whole and the arrangements for admissions in September 2013.

### **Procedure**

5. In considering this matter for admissions in September 2012, I have had regard to all relevant legislation and to 2010 Code and for admissions in September 2013; I have referred to the 2012 Code (the Code).

The documents I have considered in reaching my decision include:

- the referral dated 4 April 2012;
- a copy of the determined arrangements for 2012 and for 2013;

- the Admissions Booklet for Year 7 entry 2012;
- the School Prospectus 2012;
- a copy of the Co-ordinated admissions scheme for Peterborough Maintained Secondary Schools for September 2013
- a copy of 'National Society Advice to Diocesan Boards of Education Admission to Church Schools';
- the Annex B of the Funding Agreement 'Requirements for the admission of Pupils to The King's (The Cathedral) School';
- minutes of relevant meetings of the Governing Body;
- minutes of Diocesan Board meetings at which the admission arrangements for the School were considered;
- minutes of the local Admission Forum;
- the School's response to the referral, supporting documents and subsequent correspondence; and
- responses from Peterborough Diocese (the Diocese) to the referral and supporting documents.

6. I considered the arrangements and sought a meeting with the School, the Diocese and Peterborough Unitary Authority, the local authority (the LA) to discuss the referral and my additional concerns about several aspects of the arrangements which I considered were not fully compliant with the Code.

7. I have also taken account of information received during the meeting I convened on 30 May 2012 at the School and further information which has been submitted since that meeting by the School, the Diocese and the LA.

### **The Referral**

8. The referral is to a view that the arrangements for 2012 are unlawful in relation to following issues.

i. the oversubscription criterion A5 states that 'Children of worshipping members of other Christian denominations or of other faiths. All categories will be considered equally with no priority order.' The referrer contends that all applicants are not treated equally in that notes state that a tiebreaker will be applied and in any case applicants are actually ranked. Arrangements are not clear and this is contrary to paragraph 2.48 of the 2010 Code.

ii. Arrangements do not explain to parents how children of 'other faiths' are ranked and the referrer questions how governors of one faith could determine and make a judgement about parental commitment within other faiths which is contrary to paragraph 2.51 of the 2010 Code.

iii. Applicants are required to take notice of linked notes that refer them to the

Chair's letter but this did not form part of the consultation and therefore does not legitimately form part of the arrangements that were determined by the School and contravenes paragraph 2.54 of the 2010 Code.

iv. The Chair's letter is discriminatory in that it refers to information about both parents which is contrary to paragraph 1.82 of the 2010 Code.

9. Issues were also raised about how an admissions application had been processed but those aspects of the referral relate to the administrative procedures of the LA and have been appropriately investigated through the complaints system. A report has been provided to the referrers, who were advised that a further appeal could be made to the Local Government Ombudsman if they so wished. As the issues have been considered elsewhere they will not form part of my considerations.

### **Other Matters**

10. The referral, which contends that aspects of the 2012 arrangements are unlawful, was not received until 10 April 2012 well outside the deadline of 31 July 2011 for an objection to the 2012 arrangements. However a referral is not time limited and although places for admission to the School in September 2012 have already been allocated, it is the 2012 oversubscription criteria that will be applied when allocating places from the waiting list or when considering a later in-year application. I therefore felt that it was important to draw to the attention of the School, these and other aspects of the 2012 arrangements that might not be compliant with the 2010 Code so that arrangements could be amended for the allocation of any future places during the coming school year.

11. I then considered the 2013 arrangements and found that they were not compliant. Some aspects were common to both sets of arrangements. These related to:

- the policy statement about the admission of children with a statement of special educational needs;
- the priority given to Looked After Children of the faith and to other children in care who are not of the faith; the consistency between relevant age groups, that is between Year 3 and Year 7 and the conditionality implicit in the linked notes for Year 7;
- criteria 3 and 4 which relate to the residence of children in or outside the LA area;
- the methodology used to rank applications within criteria 3 and 4 relating to children of worshipping members of the Church of England or Methodist Church; and
- the admission of pupils with reference to musical aptitude

### **Background**

12. The School which is located in the Diocese of Peterborough was

founded by Henry VIII in 1541 as the cathedral school to educate the choristers from the cathedral. Prior to its conversion to a Church of England Academy on 1 January 2011, the School was a Voluntary Aided 11 to 18 Church of England comprehensive school. It has been a specialist science college since September 2004 and up to ten per cent of pupils are admitted with reference to ability.

13. In 2009/10 the School consulted on a prescribed alteration for the purpose of enabling cathedral choristers to be educated together but also with other children, in a small junior department with an admission number of 15. The proposal which was to change the lower age limit from 11 to 7 years of age was supported by the LA, as it alleviated the pressure caused by a shortage of primary school places in the immediate area. Sixty children were admitted into four year groups in the first year and 15 children will be admitted each year from September 2012.

14. In 2010, after a large capital project had significantly increased the amount of teaching space within the School, an application was successfully made to vary the admission number to take account of the School's enlarged capacity, and the published admission number was increased from 120 to 150. There are currently 1160 pupils on roll.

### **Consideration of Factors**

15. When the 2013 arrangements were determined, they were changed from those of 2012 to a small degree but in the main both sets of arrangements remained substantially the same. Where matters of concern feature within both sets of arrangements, I have considered each matter only once but have referred to the relevant Code in force for the relevant year. I will deal first with the four elements of the referral.

16. The referrer contends that although oversubscription criterion A5 says 'Children of worshipping members of other Christian denominations or of other faiths. All categories will be considered equally with no priority order', the School does in practice, prioritise applicants. The referrer had interpreted this criterion to mean that all applicants were equal but having read the notes about the application of a tiebreaker, had then concluded that places would be allocated to applicants within this group on the basis of distance from the School and that it was this application of the tiebreaker that was contrary to the stated arrangements about equal priority. Finally the referrer makes the point that the tiebreaker is not actually used, that is, distance is not used to determine the allocation of places from applicants within this group but instead the School ranks applicants within this group.

17. The School's says that its intention was to convey to parents that all 'other faiths applicants' would be treated equally with no single 'other faith' prioritised over another. While the referrer has interpreted the note about the tiebreaker as referring only to criterion A5, it actually applies to each of the oversubscription criteria within the arrangements as a whole. The School agreed that it does rank applications in order to make decisions about the allocation of places within this criterion. The issue of ranking applications is the focus of the second element of this referral and is considered below.

18. Admission authorities must have an effective, clear and fair method of deciding between two applications that cannot otherwise be separated and the School uses a distance tiebreaker. The arrangements state: 'If at any stage a tie-breaker is required places will be allocated to the child(ren) living closer(est) to the school, as calculated using Peterborough City Councils' GIS process.' Paragraph 2.36 of the 2010 Code says that 'Distance is a clear and objective criterion and is often used as a tie breaker in over subscription criteria.....' The application of a tiebreaker to this oversubscription criterion is not therefore contrary to the stated arrangements.

19. In my view, the wording of the criterion and linked notes are sufficiently clear, however I would recommend to the School that they consider the wording of the oversubscription criterion in order to avoid the possibility that, when read in conjunction with the notes about the tiebreaker, it might be open to misinterpretation.

20. In relation to the first element, it is my view that the wording of the criterion and linked notes are clear and do not contravene the 2010 Code and I do not uphold this aspect of the referral. However, I am of the view that the School needs to clarify for parents, its final tiebreaker for the last available place, in a situation where the last two applicants cannot be separated by use of the distance tiebreaker.

21. The second element of the referral states that arrangements do not explain how applicants of 'other faiths' would be ranked, and the referrer questions how governors of one faith could determine what constitutes parental commitment in another faith, as all faiths are quite different. Parents are not advised how the School ranks applicants from other faiths, or who applies the ranking and makes the final decision and the referrer cites paragraph 2.54 of the 2010 Code which says that where a faith school gives priority for a proportion of places to those of 'other faiths', it must be clear from the published arrangements how this will work and that this is not the case.

22. I was advised by the School that within the group of children already admitted under criterion A5 of the 2012 arrangements there were applicants from a range of other faiths and churches which include Baptist, Catholic, Muslim, Free Church and Jesus Reigns Ministries UK. The School acknowledges the complexities of trying to compare such issues as commitment, when some faiths expected weekly attendance at worship and other regular involvement in the religious community whilst others expected prayer at least daily if not several times daily. The School wisely does not wish to have a points system. It prefers instead to rely on the combined experience of members of the admissions panel, to look at the fine detail of the applications and to endeavour to make a sound judgement. The School agreed that on reflection, it would be difficult for parents to take a view on the likelihood that an application would meet the criteria for admission and acknowledged that despite the best of intentions, this was contrary to paragraph 2.48 of the 2010 Code which says that parents must be able to easily understand how criteria will be satisfied.

23. The admissions system can appear very complex to some parents and

admission authorities must make every effort to ensure that all parents are able to understand the process and in particular how oversubscription criteria will be applied. In relation to 2013, paragraph 1.71 of the Code says that parents must be able to make informed decisions when applying for school places for their children. My view is that, as the arrangements are currently administered, the basis of judgements is not known to parents and the decisions made are not objective but are of their very nature, subjective. This is contrary to both Codes and I therefore uphold this aspect of the referral and note that the 2013 arrangements are also not compliant with the Code.

24. The governors have since amended the linked note relating to 'other faith' applications, so that where the relevant religious leader has confirmed that they have been an active member for at least five years will then be treated equally and admitted through random selection. This change should provide greater clarity for parents.

25. The third element of the referral also states that applicants are required to take notice of linked notes that refer them to the Chair's letter. The referrer contends that this was not made clear during the consultation and that the letter does not legitimately form part of the arrangements that were determined by the School. For 2012 it is contained in an annual booklet for Year 7 entitled, 'Admissions Booklet Year 7 Entry September (2012)'.

26. Paragraph 1.71 of the 2010 Code says that admission authorities must ensure that parents have access to all relevant information before they make their application. It goes on to explain that arrangements that are vague only lead to uncertainty and this may reduce the ability of parents to make an informed choice for their children and are likely to increase the chances of an objection.

27. In relation to the 2013 arrangements, paragraph 14 of the 2012 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. Parents seeking information on the School website about the 2013 arrangements are advised: 'Information relating to 2013 Entry for Years 3, 7 and 12 will be available on the website from September 2012. This will include details on the admission process, application forms and dates of our Open Evenings.' The arrangements for 2013 are published as required on the School website, but when viewed on 29 May 2012, the Chair's letter was not available to parents. The full arrangements should be placed on the website for the School as soon as they have been determined which must be by 15 April and sent to the LA no later than 1 May, each year.

28. The School has acknowledged that the Chair's letter to parents does not form part of the determined arrangements for either 2012 or 2013. For the reasons given above I therefore uphold this element of the referral.

29. The Governors have now removed all reference to the Chair's letter in the 2013 arrangements and have expanded the guidance notes so that all information is readily available to parents seeking to make an application.

30. The final element of the referral relates to the fact that the Chair's letter

is said to be discriminatory as it refers to both parents throughout. Although the Code permits schools which have been designated as having a religious character to take account of religious activities as laid out by the body or person representing the religion it also refers to the fact that if a school is undersubscribed, '...any parent that applies must be offered a place'. This clearly refers to one parent and the intention of the Code is clear on the issue that schools cannot require both parents to sign an application or expect families to provide information about both parents, without introducing an element of conditionality into arrangements, which is prohibited.

31. The 2010 Code states that admission authorities must not use supplementary application forms that ask for any personal details about parents and families and paragraph 1.82 of that Code states that 'Admission authorities must not unlawfully discriminate against children whose parents fall into certain social groups. No personal information about parents is relevant in considering an application for a place at a school and criteria which focus on parents cannot legitimately be included as oversubscription criteria. Collecting such information may suggest that it can be taken into account and therefore be misleading to parents'. For these reasons I therefore uphold this final element of the referral.

32. I have been advised that In the revised arrangements for 2013 the School has now removed all reference to 'parents' and refer instead to 'the parent' or 'a parent' throughout the arrangements.

### **Other matters**

33. There are five matters of particular concern that apply to both sets of arrangements. The first of these is that the arrangements for both Year 3 and Year 7 begin with advice to all applicants that the School will give priority to children with a Statement of Special Education Needs which names the school. In both the 2012 and 2013 arrangements the School policy includes a second sentence in bold type which adds 'Parents are strongly encouraged to visit the School by arrangement, before naming King's on the statement, so that they are confident that the School can meet their child's needs'.

34. Including information for applicants about the admission of children with statements of special educational needs is good practice in that it helps all parents to understand that some places may have been allocated before the admissions authority allocates places in the relevant age groups. However, this information does not form part of the oversubscription criteria. It is not a matter of a school 'giving priority' as all admission authorities are required by section 324 of the Education Act 1996 to admit a child with a statement of special needs that names the school. It relates to children who have undergone statutory assessment and for whom a final statement of special educational needs has been issued and which has named a school.

35. Diocesan minutes indicate that they raised concerns about this additional sentence several years ago. The School explained that it had retained the qualifying text because it had wanted to ensure that parents understood what the school could offer. However, in my view this wording refers to a process that has already been completed and such considerations



would normally form a key part of the procedures of a LA when discussions with parents were underway about naming their preferred school.

36. The LA agreed that it always welcomed such discussions but the School then explained that it had been named on statements from other neighbouring local authorities and that discussions had not always taken place as they would prefer. The School needs to remove or revise the statement so that it cannot be interpreted as discouraging parents, which I am convinced, is not its intention, and the School should consider contacting neighbouring authorities to request that there is always a dialogue with them before King's school is named in future statements of special needs.

37. In paragraph 2.8 of the 2010 Code, it states: "All governing bodies are required by section 324 of the EA 1996 to admit to the school a child with a statement of special education needs that names the school..... Schools must admit such children whether they have places or not. Admission authorities must not imply in their published admission arrangements that they have discretion over the admission of children with statements of special educational needs. This is confirmed in relation to the 2013 arrangements by paragraph 1.6 of the Code which states: 'All children whose statement of special educational needs names the school must be admitted.'

38. Admissions policies should be framed to ensure that there can be no misunderstanding and to ensure that 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 I would advise the School to reword this aspect of their arrangements as in my view it contravenes both Codes.

39. Finally on this issue, it is likely that for many parents, their interest will only be in reading information on page 2, in relation to entry at Year 7 so it would be good practice to repeat the amended text about statemented children at the beginning of the arrangements for each relevant age group.

40. The School has since removed the qualifying sentence about the admission of children with statements of special educational needs.

41. The second concern relates to the priority given to looked after children and the first criterion which says, 'Children in Care whose parents/carers are worshipping members of the Church of England or Methodist Church'. The key issue here is the legal designation of the School as a Church of England Academy school and whether or not arrangements can give priority to looked after children of the Methodist denomination. The School is designated as a Church of England school and the funding agreement confirms that there are no derogations from the Codes and that the School is a Church of England Academy.

42. Schools which are designated by the Secretary of State as having a religious character (faith schools) are exempt from those provisions of the Equality Act 2006 which make it unlawful to discriminate against a child on the grounds of their religion or belief. If oversubscribed, they are permitted to use faith-based oversubscription criteria in order to give higher priority to children

on the basis of membership or practice of a faith. As with all oversubscription criteria, those that are faith-based must be clear, objective and fair.

43. The School Admissions (Admission Arrangements and Co ordination of Arrangements) (England) 2012, which apply to the 2013 arrangements, explain in point 9 (1) that an admission authority may give first priority in their oversubscription criteria to all relevant looked after children, whether or not they are of the same faith as that of the school in accordance with its designation, and must in any event give first priority to all relevant looked after children who are of that faith, and give higher priority to all relevant looked after children not of that faith than to all other children not of that faith.

44. The Diocese notes the issue of the School's designation in respect of looked after children, as the School has chosen to separate those 'of the faith' from 'other looked after children', but says that it had recommended to admission authorities that they prioritise all looked after children regardless of faith. The Diocese maintains that had the School followed the recommendation on this matter, there would be no issue in relation to the faith designation of the School. Diocesan guidance says that the National Society recommends that all children in public care should be given top priority regardless of faith commitment.

45. In electing to give different priority to looked after children 'of the faith' from 'other looked after children' the School has in practice been giving priority to looked after children from the Methodist denomination which according to its designation as a Church of England School it is not permitted to do and thus its arrangements for both years are non-compliant.

46. A further concern is the 2012 arrangements for Year 3 where applicants are referred to two linked notes. The first requires information to confirm that the looked after children are 'of the faith' which is appropriate, but note 3 requires evidence of parental involvement in the life of their religious community for a period of five years. As currently framed in the 2012 arrangements this oversubscription criterion and the linked note contravene paragraph 2.9 of the 2010 Code which states: 'Children in care are among the most vulnerable children in society and it is of paramount importance that a school place is found that is in the best interests of the child as quickly as possible. All admission authorities must give highest priority in their oversubscription criteria to these children ..... Admission authorities must not include statements in their published admission arrangements that imply they have discretion over the admission of children in care or attach any conditions to the admission of such children'.

47. In the 2013 arrangements the oversubscription criterion relating to looked after children for Year 3 has been updated and changed to include reference to previously looked after children as required by the regulations. This criterion is now framed in accordance with the Diocesan recommendation to give priority to all looked after children regardless of faith commitment. Note 3 has also been amended to remove the need for evidence of parental involvement and thus the conditionality present in 2012 arrangements is no longer present and the criterion is compliant with the Code.

48. However, this change to the Year 3 arrangements is not carried through to arrangements for Year 7 in 2013, and instead the School has retained the separation of looked after children 'of the faith' in its arrangements and prioritises children of the faith before 'other looked after children'. When I enquired about this inconsistency the School advised me that its rationale was linked to its desire to maintain the ethos of the school. Exploring the actual number of looked after children in each year group it is apparent that numbers are very low. I further questioned the logic of this separation in light of the fact that criterion 2 seeks to admit a total of 74 children 'of the faith'. Given the admission number of 150 and even allowing for 15 selective places and for the 15 pupils transferring from the junior department, there will always be approximately 46 places or thereabouts to be allocated and thus it is highly likely that all other looked after children (criterion 3) will in practice usually be offered a place.

49. Once again note 3 requires evidence about the activities of parents of looked after children in the life of their religious in the community. As currently worded in the 2012 arrangements, there is an implication that the School has some discretion over the admission of children in care, and by seeking additional information, that it could attach conditions to the admission of such children. I must therefore conclude that this oversubscription criterion and the linked note contravene both Codes.

50. The School has since agreed to follow Diocesan guidance which recommends that all children in public care should be given first priority in the arrangements regardless of faith commitment.

51. The third concern relates to criteria 3 and 4 for entry to Year 3 that give priority to children who reside inside the LA area and then gives a lower priority to children who reside outside the LA area. It is important for admission authorities to take note of reference in the 2012 Code to the Greenwich judgement which held that '.....pupils should not be discriminated against in relation to admission to the school simply because they reside outside the local authority area in which the school is situated. Section 86(8) of the Act places an equal duty on local authorities to comply with parental preference in respect of parents living within and outside their boundary.'

52. During the meeting at the school there was an initial discussion about how the school might change those criteria that relate to 'residing in/outside the LA area which in their present form might be said to contravene the Greenwich judgment. The School agreed to consider alternatives which might include reference to diocesan or parish boundaries or where priority is determined on distance. Governors have since removed all reference to LA boundaries and have replaced it with a straight forward distance measure that is much easier for parents to understand.

53. The fourth concern relates to the methodology used to rank applications within the criteria 3 and 4 relating to children of worshipping members of the Church of England or Methodist Church. In relation to schools designated by the Secretary of State as having a religious character, paragraph 2.46 of the 2010 Code confirms that such schools, if they are

oversubscribed 'are permitted to use faith based oversubscription criteria in order to give higher priority in admissions to children who are members of, or who practise, their faith or denomination'.

54. Paragraph 2.48 of the 2010 Code it says, 'It is primarily for the relevant faith provider group or religious authority to decide how membership or practice is to be demonstrated, and accordingly, in determining faith-based oversubscription criteria, admission authorities should only use methods and definitions agreed by their faith provider group or religious authority'. It goes on to say in paragraph 2.51, 'Published admission arrangements must make clear how membership or practice is to be demonstrated in line with guidance issued by the faith provider or religious authority...'

55. For the 2013 arrangements, the Code says in paragraph 1.38, 'Admission authorities for schools designated as having a religious character must have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based oversubscription criteria ....'

56. Parents are informed in the linked notes that: '...the application form will need to be signed by the religious leader who must provide evidence in support of the application. This evidence must provide information about the parental involvement in the life of their religious community, for at least the last five years and also refer to all points in the Chair of Governor's letter to parents (which as has been explored earlier, does not form part of the arrangements). Setting that issue aside for the moment, we are left with the guidance which emphasises the need for detailed information about the involvement of both parents over a period of five years.

57. Diocesan guidance says that church criteria must be as easy to understand as possible and that each governing body must decide for itself, based on its knowledge of local circumstances and in discussion with local clergy, what is appropriate in their situation when defining religious commitment. The National Society recommends that the only criterion to be taken into account is attendance at worship.

58. Notes explain that parents need a letter from their priest or religious leader attesting to evidence of regular worship over a period of five years. It goes on to say that if this is fewer than five years, evidence must be submitted from previous parishes. The requirement to provide proof of regular worship is not an issue but the School should ensure that any caveats or conditions that accompany this proof are not too onerous for either the religious leaders or for parents.

59. The Diocese noted that in rural parishes there might not be a weekly service but the School's view was that in this case the parents would be expected to travel to a parish where services were being held. The expectation that all families in rural areas have the ability to make travel arrangements on a Sunday assumes that all families have their own transport since it would be unrealistic to rely on public transport for this purpose. The School must ensure that it is not indirectly discriminating against certain social groups.

60. The requirement to organise a set of references when a family has moved house or parish could disadvantage parents from some social groups as it requires considerable organisation and levels of literacy to compile the evidence needed. The guidance advises parents about the frequency of attendance at worship but does not then explain how these different levels (weekly, fortnightly, monthly or major festivals) will be regarded or ranked. Family circumstances may vary considerably and constrain the attendance of either or both parents and it is not clear how these constraints will be considered. This is contrary to the 2010 Code which says that parents must be able to assess the likelihood of success in making an application.

61. The School which is oversubscribed each year maintains that it needs an additional method of prioritising applicants and it has elected to focus on information about parental involvement in the life of their religious community. As part of its assessment of applications under this criterion the School requires evidence of religious commitment and in a letter to parents states: 'It is imperative that a letter of support from your minister.....be submitted in addition to the application form. The letter should describe the involvement that you (the parents) have in the life of your religious community. Failure to provide this information will prejudice your application.' It provides examples of this involvement which include membership of a church council, choir, Sunday School, youth activities or other social events.

62. Paragraph 2.16k of the 2010 Code does not prevent the School giving priority to children by 'taking account of membership of, or participation in, religious activities for faith schools, providing this is consistent with this Code and guidance issued by the faith provider body/religious authority'. This confirms that the Code intends admission authorities that consider the inclusion of participation in church activities to frame such criteria so that they are consistent with guidance from the faith body about membership or participation in the faith.

63. The Diocese provided evidence of an ongoing dialogue over the years and it is clear that the School has consulted the Diocese annually about admission arrangements as required. The Diocese referred to minutes of meetings at which they had questioned the basis for allocating faith based places as this could be seen to discriminate against different social groups. In discussions with the School, officers had queried the requirement for a letter from the priest or religious leader and had suggested a standardised form as more objective. They had also raised the difficulties of ranking faith commitment when comparing different posts within the church, such as church wardens or treasurers.

64. I queried the number of opportunities that might exist for prospective parents given that presumably the parent body of the school had continued to be fully involved in their religious communities but both the Diocese and the School felt that there were plentiful opportunities for voluntary activity within the parishes. My concern is about the emphasis on both parents and how parents could assess which activities would secure a higher ranking and would be most likely to qualify their children for admission. Paragraph 1.37 of the Code says, 'Admission authorities must ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied....'

65. The School confirmed that the letter of request outlines in detail what the referee should include and the admissions panel considers each application and build up a rank order. In its view any system of sorting will be subjective, but this was preferable to a points system. The major focus of the admission panel is on the amount of time parents give to their religious community rather than what they actually do but this is not clear from the guidance to parents, which refers to the contribution of parents to the church community. The School confirmed that when considering applications and looking at the activities of both parents, that children of dual faith families would receive a lower priority but this fact is not evident to parents and thus contravenes the Code.

66. The Diocese states that the School has been assiduous in consulting with it over the years and describes discussions as robust. It says that it has advised the School to have a single test of faith, that is to say evidence of worship, and that if it is oversubscribed there should be a simple tiebreak such as distance rather than the current system which is not objective.

67. Parents who could not provide evidence of participation would need to provide a justification for this situation, presumably in writing which might place further barriers in the way of an application from parents who are newly arrived in the UK or where English is not the first language or when there are lower levels of parental literacy. They might be further discouraged by the statement that 'You should be aware that this letter of support from your religious leader is the only piece of evidence which will be used by Governors in determining which applicants are awarded places'.

68. The School confirmed that family circumstances are taken into account but in my view this focus on the activities of families over an extended period has the potential to disadvantage families where one or both parents are employed on shift work or are commuting long distances to their place of employment or, as an increasing number of parents do, living away from home during the working week in order to maintain employment. Single parents might be particularly disadvantaged in their ability to fully participate in activities and be discouraged from making an application to the School. Admission authorities must be careful to ensure that their arrangements do not to discourage parents as this could be construed as indirect discrimination under equalities legislation.

69. At present there is no transparency about how the admissions panel will take account of any circumstances which may have made the degree of the applicant's religious commitment less than they might have wished it to be. I have concluded for the reasons given above that at present there is no way for parents to understand how the admissions panel will take information into account and thus arrangements contravene the Code which says in paragraph 2.12 of the 2010 Code that arrangements must enable parents to be able to assess the likelihood of gaining a place at the School. This aspect of arrangements contravenes the Code.

70. The School has amended the notes to explain to parents that the only consideration will be the amount of time committed. This is easier for parents to understand, however I remain seriously concerned that arrangements are

insufficiently transparent. I strongly recommend that governors continue to address these criteria in consultation with the Diocese to ensure that there is no subjectivity and that parents are left in no doubt whatsoever about how variable frequency of worship affects their application, how varying time commitment to the religious community is viewed and how the admission panel takes into consideration situations within family circumstances that may make either of these less than parents might wish.

71. My fifth concern relates to the wording of the criterion B2. The School admits up to ten per cent of its pupils with reference to selection by ability, which it is entitled to do in accordance with requirement in section 100 of the Act, as these partially selective arrangements have been in place since the school year 1997/98.

72. The School noted that at some point in the intervening years the wording in relation to music has changed from 'ability' to 'aptitude'. In order to admit children with reference to aptitude the school needs to meet the requirement of section 102 of the Act to have a specialism in music but this is not the case and the School actually has a specialism in science. In relation to the admission of children with reference to musical aptitude I therefore concluded that the arrangements are not compliant with the legislation.

73. However, it became clear in discussion that the School actually admits pupils with reference to music ability and having considered information about the music auditions I was able to confirm this. The School agreed to amend the wording to reflect its practice.

74. Finally there were matters where minor amendments to the text would provide greater clarity for parents in relation to the definition of siblings and to the legality of the reference in one of the definitions that 'parents are married.' The Code is clear in paragraph 1.9 that admission authorities must not ask for any personal details about parents and families, such as .....marital status.' Section 576 of the Education Act 1996 defines 'parent' to include: 'All natural parents, whether they are married or not; and any person who, although not a natural parent, has parental responsibility for a child or young person; and any person who, although not a natural parent, has care of a child or young person.'

75. The Governing body will want to abide by Code 1.9 and 2.4 and therefore any supplementary information forms should ask for one signature, one name and for the reference to refer to one parent. Such a change would contribute to arrangements becoming compliant with the Code and therefore remove the likelihood of future objections on the grounds of both the Code and Equalities legislation on this point.

76. In limited circumstances it is possible for admission authorities to revise arrangements if they become aware that any aspect contravenes the 2012 Code paragraph 3.6 which says that, ' 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.'

77. The LA has advised me that it will publish the information booklet for parents in early August 2012 and is aware that the School wishes to make amendments in order that arrangements for 2013 are compliant with the Code.

78. The School has worked swiftly to address the issues raised in the referral and in our consideration of the 2013 arrangements. The amendments suggested by the School are in my judgement, sensible modifications that make the arrangements much clearer and fairer. The newly drafted documents respond directly to all aspects of the referral. However, there is further work that needs to be done by the governing body before the 2013 arrangements are published in order to ensure total compliance with the Code as referred to in preceding paragraphs.

### **Conclusions**

79. With regard to the four elements of the referral I have concluded that the arrangements do not comply fully with legislation and the Code. Mandatory requirements were not fully met and the process for applying for a place at the School lacked clarity. I have therefore determined for the reasons given above that I should partially agree with the referral in relation to the second, third and fourth elements.

80. In addition to the elements of the referral, I have considered with the School, arrangements for 2013 and have concluded that several aspects of the arrangements do not comply with the Code. The School has accepted that some aspects of its arrangements do not meet the requirements of the Code. It has constructively suggested amendments for inclusion in the revised arrangements.

### **Determination**

81. In accordance with section 88I (5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of The King's (The Cathedral) School for admissions in September 2012 and I partially uphold the referral.

- I do not agree with the referral in the matter of the application of a tiebreaker to criterion A5. This does not contravene the School Admissions Code.
- I agree that criterion A5 of the School's admission arrangements is not sufficiently clear for parents; that the Chair of Governor's letter does not form part of the arrangements and that the letter is discriminatory in referring to the requirement for information about both parents.

Further, in accordance with section 88I I have considered the arrangements for admissions in September 2013 and I determine that these do not conform to the requirements of the legislation and the School Admission Code.

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.

The School has already had regard to the referral and made a number of changes in order to meet the mandatory requirements of the Code, but the arrangements are not yet fully compliant with the Code.

Dated: 18 July 2012

Signed:

Schools Adjudicator: Mrs Carol Parsons