



## **DETERMINATION**

<b>Case reference:</b>	<b>ADA2595</b>
<b>Objector:</b>	<b>The Fair Admissions Campaign</b>
<b>Admission Authority:</b>	<b>The governing body of Archbishop Tenison's School, Croydon</b>
<b>Date of decision:</b>	<b>5 September 2014</b>

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body of Archbishop Tenison's School, Croydon, for admissions in September 2015.**

**I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements 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.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by the Fair Admissions Campaign, (the objector), about the admission arrangements (the arrangements) for Archbishop Tenison's School (the school), a voluntary aided (VA) Church of England school for pupils aged 11 – 18 in the London Borough of Croydon, for September 2015. The objection is to the priority in the school's oversubscription criteria given to children from Christian families; the fact that at 30 April 2014 the school had either not determined or not published its arrangements for September 2015; that the arrangements were not clear, and that the oversubscription criteria for admission at Year 7 (Y7) and Year 12 (Y12) breached the School Admissions Code (the Code) in a number of ways.

### **Jurisdiction**

2. These arrangements were determined under section 88C of the Act by the school's governing body, which is the admission authority for the

school. The objector submitted the objection to these determined arrangements on 17 April 2014. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my powers under section 88I of the Act to consider the arrangements as a whole.

### **Procedure**

3. In considering this matter I have had regard to all relevant legislation and the Code.
4. The documents I have considered in reaching my decision include:
  - a. the objector's form of objection dated 17 April 2014 and further letters, emails and material dated 30 April 2014; 9 May 2014; 12 and 27 June 2014; and 10 and 25 July 2014;
  - b. the school's emails and letters and the attachments to these dated 6, 7 and 22 May 2014; 4 and 18 June 2014; and 7, 18 and 21 July (two letters) in response to the objection and to points raised by me;
  - c. the letters of 6 May 2014; 4 and 19 June 2014 and 16 July 2014 from the Assistant Director of Education of the Diocese of Southwark (the diocese) which is the faith body for the school setting out its response to the objection, together with the advice provided by the diocese to schools on admissions;
  - d. the emails of 1 and 8 May 2014; 16 July 2014 and 8 August 2014 from the London Borough of Croydon which is the local authority (LA) for the area commenting on the objection and responding to my requests for information;
  - e. the Department for Education (DfE) publication "The Equality Act 2010 and Schools";
  - f. guidance published by the Equality and Human Rights Commission (EHRC) for schools;
  - g. confirmation of when consultation on the arrangements last took place;
  - h. copies of the minutes of the meeting of the governing body at which the arrangements were determined; and
  - i. copies of the determined arrangements as they appeared on the school's website in May 2014 and in July 2014.
5. I have also taken account of information received during a meeting I convened on 15 July 2014 at the school which was attended by representatives of the school (including a member of the admissions committee and the headteacher), LA, diocese and objector.

## The Objection

6. The objection concerns a number of aspects of the school's admission arrangements which I have divided into two groups. The first group relates to duties under the Equality Act 2010 (the Equality Act) and the provisions of paragraph 1.8 of the Code. The initial objection was to the overall extent to which priority in the oversubscription criteria given to children from Christian families presents difficulty for children from local South Asian families who may wish to secure places at the school. The phrase used by the objector was actually "preference is given to children" but I have referred to priority in the oversubscription criteria as that is the term used in the Code and as it is a more accurate description of how admission arrangements operate. The initial objection argued that the school's arrangements breached paragraph 1.8 of the Code which requires that "*admission authorities **must** ensure that their arrangements will not disadvantage unfairly, directly or indirectly, a child from a particular social or racial group*". The objector's further submission of 9 May 2014 argued that the school's arrangements resulted in indirect discrimination on the grounds of race and thus breached section 19 of the Equality Act. The objector also argues that the school is in breach of the requirements of the public sector equality duty (PSED) in section 149 of the Equality Act which requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
7. The second group relates to other aspects of the arrangements. For admissions to Y7, the objector's email of 30 April stated that the school's website referred to the admission arrangements for 2015 as draft arrangements and argued that this meant that the school had either not determined or not published its arrangements for September 2015 and was thus in breach of paragraph 1.46 or 1.47 of the Code. The objector also considered that the arrangements were unclear and subjective in their descriptions of the required duration and degree of involvement in church activities necessary to gain priority under the faith-based criteria. The objector also queried the requirement for applications to be made either for a foundation or an open place and stated that there was no final tie breaker to distinguish between two applicants who qualified equally for a foundation place and who lived the same distance from the school in breach of paragraph 1.8 of the Code. The objector considered it was unclear how some of the information sought on the school's supplementary information form (SIF) was needed to apply the school's oversubscription criteria and thus the arrangements breached paragraph 14 of the Code which states that parents should be able to look at a set of arrangements and understand how places will be allocated. If this were the case, the arrangements would also be breach of paragraph 1.37 which provides that admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied. The objector also considered that the arrangements might give priority to applicants on the basis of practical support given to an organisation

associated with the school in breach of paragraph 1.9e of the Code.

8. For admission to Y12, the objector believed that the arrangements had not been updated since 2013 and thus had not been determined as required by regulation 17 of the School Admissions (Admission Arrangements and Determination of Admission Arrangements) (England) Regulations 2012 (the regulations) and paragraph 15b of the Code. The objector considered that the arrangements did not give the required priority to previously looked after children in breach of paragraph 1.7 of the Code and that by stating that account would be taken of applicants' records of work, conduct and commitment to their studies, the arrangements breached paragraphs 1.9g and 3.8 of the Code.

### **Other Matters**

9. In the course of considering the objection, I reviewed the arrangements as a whole. The arrangements appeared not to conform with the requirements relating to admissions as follows:
  - a. the school admits pupils each year to Y12, but no published admission number (PAN) was set out in the arrangements in breach of paragraph 1.2 of the Code;
  - b. the definition of looked after children in the arrangements for Y7 was not accurate and thus breached paragraph 1.7 of the Code;
  - c. the arrangements include an oversubscription criterion "governors places" the award of which appears to be made on a subjective and unclear basis contrary to paragraph 1.8 of the Code;
  - d. the SIF for Y7 asked for a copy of the child's birth certificate which is contrary to paragraph 2.5 of the Code and for proof of home address which is covered in the LA's common application form (CAF) and thus not allowed by virtue of paragraph 2.4 of the Code;
  - e. the arrangements state under a heading "Area served by the school" that places are offered to children who live within the Archdeaconry of Croydon, but this is not what the oversubscription criteria provide and the arrangements are therefore unclear and do not comply with paragraph 1.8 of the Code;
  - f. the arrangements lack a clear statement that a child with a statement of special educational needs (SEN) that names the school will be admitted in breach of paragraph 1.8 of the Code
  - g. the arrangements for Y12 applicants do not provide for students to apply in their own right for a place at the school and thus do not meet the requirements of paragraph 2.6 of the Code; and

- h. the Y12 application form was not published on the school's website which is a breach of paragraph 1.47 of the Code and the form includes a question about intended careers which is not needed to apply the school's oversubscription criteria and is accordingly not allowed by paragraph 2.4 of the Code.

## Background

10. Archbishop Tenison's is a relatively small secondary school. Its PAN of 108 for Y7 for September 2015 is the lowest of any secondary school in its LA. This PAN was introduced in September 2012 and before that the PAN was 96. The school is popular and regularly oversubscribed. It received a total of 763 applications for places in Y7 for admission in 2013 of which 154 were first preference applications and 699 for admission in 2014 of which 135 were first preference applications. When I first reviewed the school's website in May 2014, I found that information about admissions was easy to find via the admissions tab on the homepage which provides access to information about the arrangements for Y7 and Y12.
11. The arrangements for Y7 split the places available into "foundation" and "open" categories and each category then contains a number of criteria. This means that the arrangements are several pages long and I have therefore summarised them in the following paragraphs.
12. Y7 Foundation Places: This category relates to 90 per cent of the available places and is broken down into two sub-categories to give priority for 50 per cent of the total places to Church of England children and priority for 40 per cent of the total places to those of other Christian denominations. A comprehensive definition is given of the denominations covered. Where either or both of the sub-categories is oversubscribed the following criteria are used:
  - i) looked after and previously looked after Christian children;
  - ii) governors places allocated on compassionate grounds;
  - iii) siblings who with their parent or carer continue to maintain as active a role in the church as when the previous child was admitted;
  - iv) children who attend church worship weekly with their parent or carer and whose parent or carer is highly involved with them in church life;
  - v) children who attend church worship weekly with their parent or carer and whose parent or carer is actively involved with them in church life;
  - vi) children who attend church worship regularly but less than weekly with their parent or carer and whose parent or carer is actively involved with them in church life;

- vii) children who attend church worship weekly with the named parent or carer and whose named parent or carer has some involvement with them in church life;
- viii) children who attend church less frequently with the parent or carer and whose named parent or carer has some involvement with them in church life.

13. This section ends by saying that where two or more parents have an identical level of responsibility or involvement, places will be offered according to the nearness of the home to school and explains how this will be measured.

14. Y7 Open Places: This category gives priority for 10 per cent of the available places. The oversubscription criteria are:

- i) looked after and previously looked after children;
- ii) distance from home to school with the drawing of lots as a tiebreaker should two or more candidates for the final place live exactly the same distance from the school.

15. Y12 arrangements: The school sets academic requirements for its sixth form as it is entitled to do. The oversubscription criteria for admission to Y12 when I first saw them were:

1. looked after and previously looked after children;
2. applicants in Year 11 at the school who have shown a good record of work, conduct and commitment to their studies at Key stage 4;
3. those who submit their application for a place by the published deadline;
4. those who attend the induction programme.

16. The arrangements state that if the school is oversubscribed within any of 1 – 4 above, places will be offered to those who live closest to the school.

### **Consideration of Factors**

17. In the following paragraphs I indicate whether the issue under consideration is relevant to admission to Y7 or Y12 or both. In relation to some of the concerns raised with the school, it has acted with commendable speed to bring its arrangements into line with the requirements relating to admissions using the provisions of Section 88E of the Act which allows arrangements to be varied after determination in order to comply with admissions law or a mandatory provision of the Code. There are some matters in relation to Y7 where the arrangements continue not to comply with the requirements relating to admissions and I have identified these in the following paragraphs

indicating in what way the arrangements do not conform.

#### Determination and publication of the arrangements

18. I shall deal first with the matters relating to publication and clarity of the arrangements, dealing first with Y7 and then with Y12. At the time the objection was made the school had not published its arrangements for 2015 for admission to Y7 on its website and the objector considered that the school had either not determined its arrangements or had not published them. However, that objection was made only two days after the deadline for determining arrangements. The arrangements had in fact been determined. The arrangements excluding the SIF used by the school to apply its faith-based oversubscription criteria were published on the school's website by 1 May 2014 as noted also in the objector's submission of 9 May 2014. However, the school did not at that time publish the SIF on its website. The SIF is part of the arrangements and is thus covered by the requirements relating to publication. Having had this drawn to its attention by the OSA, the school has now published the SIF on its website. As regards the arrangements for 2014, the school acknowledged in its letter of 4 June 2014 that it had inadvertently removed these from its website and apologised. The school has now re-instated the 2014 arrangements on its website. I accordingly uphold this part of the objection, but the school need take no further action in relation to publication of the arrangements for 2014 and 2015.

19. So far as the Y12 arrangements are concerned, the objector questioned whether these had been determined each year as the version on the website was dated 2013 and the website did not make clear which year the arrangements referred to. In addition, when I first reviewed the website, I could not find the SIF for Y12. The school has confirmed that it had determined the arrangements as required. I do not uphold this aspect of the objection. However, I consider that as the arrangements were not dated, they were not clear and did not therefore conform with paragraph 1.8 of the Code. In addition, the failure to include the SIF breached the requirement to publish arrangements set out in paragraph 1.47 of the Code. The school has now met the requirements of the Code to publish its arrangements for Y12.

#### Clarity, objectivity and fairness of the arrangements

20. As noted above, the oversubscription criteria for Y7 provide for children to be admitted to "governors places" on compassionate grounds. The full description of this category is:

*"Governors may allocate a small number of places on compassionate grounds, amongst which are the following: health, disability, child attending worship regularly but unsupported by family, applicant living outside the Archdeaconry of Croydon. Those applying under this category should state this on the application form and supply in writing relevant supporting professional evidence. Governors are able to allocate compassionate places irrespective of whether the school is*

*oversubscribed by applicants who meet the criteria listed below. Allocation of such places does not set a precedent for future applications as each case is considered on its merits.”*

21. At the meeting with the school, I drew attention to paragraph 2.7 of the Code which provides that admission authorities “**must allocate places on the basis of their determined arrangements only**”. While the provisions about governors places are stated in the arrangements, I was concerned that the wording suggested that discretion would be exercised in deciding whether to allocate a place under this heading which would not be consistent with paragraph 2.7 as such places would not have been allocated on the basis only of the arrangements. I also raised my concerns that the criterion was not objective as required by paragraph 1.8 of the Code and might be interpreted in different ways by different people and that it was also not clear as required by paragraph 1.8, as the reference to “*grounds, among which are the following*” implies that there are other possible unspecified grounds. In response, the school said that that the criterion was intended to address social and medical need. I noted that paragraph 1.16 of the Code which explains how social and medical need can be addressed in admission arrangements and the school said that it would review this aspect of the arrangements. However, the arrangements as provided to me after the meeting continue to use the wording above. In addition, since the meeting the school has changed its arrangements so that the preamble to the section on foundation places refers to those living in the Archdeaconry of Croydon, while the examples of compassionate reasons for awarding a governors place continue to refer to living outside the Archdeaconry of Croydon. Living inside and outside the Archdeaconry of Croydon are mutually exclusive and this renders the criterion unclear. The criterion does not conform with paragraphs 1.8 and 2.7 of the Code. The Code requires that the arrangements be revised as quickly as possible.
22. The objector’s submission of 9 May 2014 noted that applicants were required to apply for either a foundation or an open place. The objector queried how the school would deal with a situation where it was oversubscribed in one of these categories but not oversubscribed in the other. In addition, the arrangements did not make clear whether unsuccessful applicants in one category would automatically be considered for the other. The revised arrangements provide that unsuccessful applicants for foundation places will be considered for open places. However, the arrangements still do not address what would happen if the school received more applicants than its PAN but fewer applicants for either foundation or open places than were available in that category, for example, whether the “spare” places in one category would be allocated according to the criteria for the other as the school cannot leave any places unfilled. The arrangements are in this matter not clear and do not conform to paragraph 1.8 of the Code. I uphold this part of the objection and the Code requires the school to revise its arrangements as quickly as possible.



23. I have dealt above with the publication of the SIFs for Y7 and Y12. I now consider some of the questions posed on the SIFs (other than those connected with the school's faith-based criteria for Y7 which I consider separately below under the heading: The clarity, objectivity and fairness of the faith-based criteria for Y7). The SIF for Y7 asked for a copy of a child's birth certificate (a breach of paragraph 2.4 and 2.5 of the Code) and for proof of address (a breach of paragraph 2.4 as this is covered on the CAF). The SIF for Y12 asked for information about the applicant's intended career which is not necessary to apply the oversubscription criteria and is thus a breach of paragraph 2.4 of the Code. The revised SIFs do not include these questions so the arrangements accordingly do not breach the Code's requirements as regards these matters.

#### The clarity, objectivity and fairness of the faith-based criteria for Y7

24. I turn now to the criteria related to attendance at worship and involvement in church activities. I need first to say a little about the process used by the school. The parents complete a SIF. In respect of every child for whom it has received a SIF seeking a foundation place, the school then sends its church reference form to the family's Minister of religion to complete. The admissions committee then consider applicants with the SIF and the church reference form before them. I asked at the meeting how the admissions committee would deal with a case where the information given on the SIF did not tally with that provided by the Minister of religion on the church reference form. The school said that they would base their decision on what category of their oversubscription criteria the applicant should be placed in on the Minister of religion's comments.

25. The church reference form asks the same questions about practice and involvement as the SIF with two exceptions. These are that a space is provided on the church reference form which is headed "*As the school does not interview applicants, the information that you give is vital in enabling the Governors to decide whether or not to offer a place*" and which ends by saying "*Please ensure that you have listed everything in which the named/parent carer and child are involved and any special circumstances which should be taken into account.*" The church form also includes in the context of posts of responsibility held by applicants: "*Please note that the terms Bishop , Minister, Pastor, Deacon and Elder are used with widely different meanings in different churches.*"

26. As outlined above, the school gives priority for its foundation places on the basis of children's and parents' attendance at worship and involvement in the church. The arrangements set out five possible combinations of frequency of attendance at worship levels of involvement which I have found it helpful to set out in the form of a table:

Frequency of attendance	Weekly	Weekly	Regularly less than weekly	Weekly	Less frequently
Level of involvement	Highly	Actively	Actively	Some	Some

27. Definitions are provided of

- a. highly involved: *“this activity is likely to be very frequent (eg at least weekly), very well established (eg three or more years) and to include a responsibility vital to the life of the whole church”;*
- b. actively involved: *“this activity is likely to be frequent (eg fortnightly), well established (eg for at least 1 – 2 years) and to carry with it some responsibility for an aspect of the church”;*
- c. some involvement: *“this activity is likely to be less frequent (eg monthly), less well established (eg for less than a year) and more passive (eg attending a meeting).”*

28. The objector has argued that these aspects of the arrangements are not clear as the use of “for example” means that other patterns of attendance or involvement might also qualify for inclusion in the different categories. The SIF asks how often the parent or carer and the child attend Sunday worship giving the options of weekly, three weeks out of every four, fortnightly, monthly, less than monthly and seldom/never. However, no indication is given of how frequent attendance at worship would be expected to be to be classed as attending “regularly” or “less frequently”. I note also in this context that while the SIF refers specifically to Sunday worship, the arrangements refer to weekly worship which is, of course, provided for in many churches on other days of the week in addition to Sundays. I also consider that the arrangements are not clear in relation to frequency of worship as it is simply not possible for parents who attend, say, fortnightly to know whether or not their pattern of practice will meet the school’s requirements for “regular” worship. I uphold this part of the objection.

29. It is also clear from the table that the five options do not include all possible combinations of frequency of attendance and levels of involvement. For example, those who attend church weekly but have only “*some involvement*” are not covered. It is not for me to say what relative levels of priority should be afforded to different levels of attendance and worship. It is, however, within my jurisdiction to find that in not covering such groups the arrangements mean that some parents would not be able to tell how the school regarded their practice. This means that the arrangements do not conform with paragraph 1.37 of the Code which requires that admission authorities “**must ensure that parents can easily understand how any faith based criteria will be reasonably satisfied**”.

30. The version of the arrangements provided to me following the meeting with the school continues to use the provisions outlined above which do not conform with the Code. The Code requires the school to amend its arrangements as quickly as possible.
31. The SIF when I first reviewed it asked for “details of church offices held or posts of responsibility and all other church activities... Please note that the terms Bishop, Minister, Pastor, Deacon and Elder are used with widely different meanings in different churches. Please therefore indicate precisely what you do and how often you do it.”
32. The objector in the original objection argued that it was not clear how information about posts held in the family’s church was needed to apply the oversubscription criteria and that the arrangements were thus unclear. The objector also considered that if the school gave priority on the basis of the office held by a parent, this could breach the prohibition in paragraph 1.9e of the Code on giving priority to children on the basis of practical or financial support parents may give to the school or any associated organisation, including any religious authority. I am clear that the Church of England and any of its churches and the Diocese of Southwark (which is also the body representing the religious denomination of the school in accordance with its designation as a Church of England School under section 69(3) of the Act) are associated organisations of the school.
33. Paragraph 1.9i of the Code allows “*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 or religious denomination*”. The school said in its letter of 7 May 2014 that both attendance and involvement are outward expressions of Christian worship and that they were not taking account of practical support given to the church. In order to reinforce this point, the school has varied its arrangements since the meeting by adding the sentence “*It excludes any practical or financial support given to the school or any associated organisation, including any religious authority.*” immediately after its definition of “Involvement” which is “*Involvement is any activity (practical, social, education, cultural or spiritual) which is an outward expression of the family’s participation in the life of the church to which they belong*”.
34. I consider that the provision in paragraph 1.9i of the Code means that a school can take account of religious activities where these have been laid out by the body or person representing the religious denomination (the Diocese of Southwark in this case) and where they do not amount to practical or financial support which is prohibited by paragraph 1.9e. It is not for me to say what is or is not a religious activity but my view is that even if an activity is a religious activity and universally accepted as such, if it also amounts to practical or financial support to an associated religious authority it is prohibited by paragraph 1.9e of the Code.

35. As it happens, the school has made a real attempt in the variation made to its arrangements since the meeting to distinguish between activities which breach paragraph 1.9e and those which do not and are allowed by paragraph 1.9i if they are religious activities as laid out by the diocese and if they also do not breach paragraph 1.9e. I accept that many forms of involvement will not amount to practical or financial support. I also note that the diocesan guidance has laid out activities in its guidance to schools which the school is entitled to take into account, such as reading in church or acting as a sidesperson, which would not amount to practical or financial support.
36. There is a valid distinction to be drawn between involvement on the one hand and support on the other. However, I consider it inevitable that an involvement which amounts to *“a responsibility vital to the life of the whole church”* which is the cornerstone of the school’s concept of highly involved will also amount to practical if not financial support to the church as the word vital means essential. The arrangements where they give priority to a child on the basis that a parent’s involvement is vital to the life of the whole church thus falls foul of the prohibition in paragraph 1.9e. I uphold this aspect of the objection and the Code requires the school to revise its arrangements as quickly as possible.
37. Linked to this, I raised at the meeting my concern that giving priority to a child on the basis that his or her parent was a Bishop or Minister could also breach the prohibition in paragraph 1.9f of giving priority to children on the basis of the occupational status of parents. The school at the meeting made the point that some of the offices held might not be paid or be the parent’s “occupation” and that they would not in their view breach the prohibitions in 1.9e or 1.9f of the Code. They said that they did not afford any priority on the basis of occupation. I note in this context that the revised SIF does not mention the posts named above but refers instead to *“church offices held or posts of responsibility and all other church activities. Since terms are used with widely different meanings in different churches, please indicate precisely what you do and how often you do it”*.
38. However, as noted above, the church reference form does still include the references to “Bishop, Minister, Pastor, Deacon and Elder” in the context of asking for information about offices or posts held. The church reference form is part of the arrangements as it falls within the definition given in footnote 4 of the Code which states that: *“admission arrangements means the overall procedures, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered.”* In my view, this leaves open the possibility that account will be taken of a parent’s occupation. While not all the groups listed will in all churches be filled by paid employees or office holders, in many cases they will be. Any priority given on this basis will be contrary to paragraph 1.9f of the Code. If the school does not give priority on this basis, then there is no reason for seeking the information. The arrangements are contrary to paragraph 1.9f of the Code if any priority is given and if none is then they are contrary to

paragraph 2.4 as they seek information not necessary to apply the oversubscription criteria. The Code requires the school to revise its arrangements as quickly as possible.

39. I also consider that the open nature of the request for information from Ministers of religion combined with the lack of precision and clarity in the measures of practice and involvement make it likely that different Ministers may apply different standards in completing the form. Given that the school told me that where there was a discrepancy between the Minister's account of practice and involvement and a parent's the Minister's view would determine the priority to be given to an applicant, I believe that in this respect also the arrangements are not objective and they are unclear and unfair and do not conform with paragraph 1.8 of the Code. The Code requires the school to revise its arrangements as quickly as possible.
40. The objector in the submission of 27 June 2014 argued that the arrangements could disadvantage unfairly a child from a particular social group and so contravene paragraph 1.8 of the Code. As noted above, the parent or carer completing the SIF is invited to describe in writing their involvement in their church. At the meeting I raised my own concern that this could present obstacles to any parent or carer who was not literate or had learning difficulties or for whom English was not their first language. For all of these groups such extended writing might be challenging and much more challenging than a requirement to respond yes or no to a range of closed questions about worship and practice. The school said at the meeting that there were probably relatively few single parent families within the church and its letter of 7 May 2014 said that "*application forms are clearly filled in*". It has not offered any other comments in response to the possibility that the arrangements might contravene paragraph 1.8 of the Code. For clarity, I add that neither the objector nor I raised the question of single parent families. So far as the quality of applications is concerned, this provides no information about those who might be put off applying in the first place because of the SIF.
41. I have reviewed the proportion of pupils entitled to free schools meals (a clear and accepted indicator of socio-economic disadvantage) at the school, at other secondary schools in the LA and at other Church of England secondary schools in the diocese. The school's percentage of pupils entitled to free school meals is 7.5 per cent. This is the second lowest of any publicly funded secondary school in the LA where the average is 21.1 per cent. So far as the other 12 Church of England secondary schools in the diocese are concerned, two have lower levels of free school meals (one of which is a grammar school). Those with higher levels of pupils entitled to free school meals have percentages ranging from 13.6 per cent to 33.8 per cent. The school aims to serve the Archdeaconry of Croydon which covers all of the Croydon LA area and some parts of adjoining areas. However, these figures suggest that its intake is neither representative in terms of socio-economic groups of the area, nor is it typical of that of Church of England secondary schools in its diocese. I have already stated my conclusion that the

arrangements are not objective and not clear and my concern about the challenges that the application form may present to certain groups. I conclude in addition that the arrangements are contrary to paragraph 1.8 of the Code because they “*disadvantage unfairly, either directly or indirectly, a child from a particular social group*”, namely children whose families are poor.

#### Looked after and previously looked after children

42. The objector complained that the arrangements for Y12 did not refer to previously looked after children as well as to looked after children in contravention of the requirement to give priority to both these groups as set out in paragraph 1.7 of the Code. The school has now amended its arrangements to include previously looked after as well as looked after children for admission to Y12. I uphold this part of the objection as the arrangements did not conform with the Code when the objection was made, but the school need take no further action.
43. I am certain that the school fully intends to give the required element of priority to all looked after and previously looked after children. Nonetheless, I consider that its arrangements do not conform with the Code in this matter. As a school with a Church of England religious character the school has two possible options in relation to priority for looked after and previously looked after children.
44. It can give first priority to any looked after or previously looked after Church of England child as set out in paragraph 1.37 of the Code, then to other Church of England children and then to other looked after and previously looked after children. For looked after and previously looked after Church of England children, the school cannot take any account of their involvement in activities or attendance at worship; all that matters is that the child is a member of the Church of England, a condition which would be satisfied by the child's having been baptised into the Church of England. The school's arrangements by requiring the completion of a SIF giving details of involvement in worship and other activities does not conform with the Code.
45. Alternatively, the school can give the highest priority to all looked after and previously looked after children. What the school cannot do is give priority to any children who are not looked after or previously looked after and who are not members of the Church of England, the designated faith of the school, ahead of any looked after or previously looked after children. Because the school's arrangements are divided into foundation and open places, there is a risk that if the open places were oversubscribed with looked after and previously looked after children, a looked after or previously looked after child would not gain a place while children who were not looked after or previously looked after gained foundation places. The arrangements do not conform with the Code and must be revised as quickly as possible.

### Inclusion of a final tie-breaker

46. The objector in his submission of 30 April 2014 noted that the arrangements for Y7 foundation places did not include a final tie-breaker as required by paragraph 1.8 of the Code in order to separate two applicants who qualified equally for the final available place. The objector also noted that while the arrangements for open places did include random allocation (described in the arrangements as the drawing of lots), they did not make clear that this would be supervised by someone independent of the school as required by paragraph 1.34 of the Code. The school has addressed both of these points. The new arrangements for Y7 provide for random allocation by the drawing of lots to be used for this purpose. I uphold these parts of the objection but there is no further action required of the school. The arrangements for Y12 have included a tie-breaker since they were determined and these also now also make clear that the drawing of lots where necessary will be independently verified.

### The admission of children with a statement of SEN

47. The arrangements when I first saw them explained that the admission to school of pupils with statements of SEN were subject to a completely separate procedure. This is true, but I was concerned that the arrangements did not say clearly that the school would admit any child who had a statement of SEN that named the school. The revised arrangements now state very clearly that such a pupil will be admitted to the school.

### Priority for children who live in the Archdeaconry of Croydon

48. The arrangements state that the school wishes to give priority to children who live in the Archdeaconry of Croydon. However, the oversubscription criteria provide that when the PAN is reached and exceeded in any category, then priority will be given to those who live nearest to the school, measured in a straight line distance. The school is not in the centre of the archdeaconry and the archdeaconry is not circular. This means that some children who live outside the archdeaconry will live closer to the school than some living inside the archdeaconry. The arrangements are inconsistent and not clear as required by paragraph 1.8 of the Code and the Code requires the school to revise the arrangements as quickly as possible.

### Matters relating only to Y12

49. When I first reviewed the arrangements, I could not find a PAN for Y12. The school is required set a PAN for each year group to which it regularly admits pupils by virtue of paragraph 1.2 of the Code and for Archbishop Tenison's this includes Y12. The revised arrangements include a PAN of 50 for Y12.

50. The arrangements when I first saw them did not include provision for applicants for Y12 to apply for places themselves as required by

paragraph 2.6 of the Code. The arrangements also gave priority to those who attended an induction meeting or did not attend but had a good reason for not doing so. At the meeting, it emerged that the induction meeting was held in July (that is in July 2014 for admission in September 2015). However, the arrangements state that the date for the meeting will be provided in September (that is September 2014 in this example). Clearly, this makes no sense and could not therefore be considered to be fair. Moreover, the school said it did not, in any case, take into account in offering places whether an applicant had attended the meeting. The objector noted that the arrangements included priority for those currently attending Archbishop Tenison's and who have shown a "*good record of work, conduct and commitment to their studies in key stage 4*" which the objector considered a breach of paragraph 1.9g of the Code. In fact, pupils in Year 11 who transfer to the school's Y12 are not "admitted" to the school as they are already registered pupils at the school. Paragraph 1.9g refers to reports from previous schools and, in this case, the report would not be from a previous school, so paragraph 1.9g does not apply. However, while the Code allows admission authorities to set academic criteria for admission to Y12 which if used must apply equally to students transferring from Y11, it does not allow for students registered at the school to be removed from the register for any other reason. The school has already removed this element of the oversubscription criteria from its arrangements to remedy these breaches of the Code.

#### The compliance of the arrangements with the Equality Act and paragraph 1.8 of the Code

51. I now turn to the provisions of the Equality Act and paragraph 1.8 of the Code quoted in the objection and noted above. Archbishop Tenison's is a school with a Church of England religious character designated as such by the Secretary of State under section 69(3) of the Act. Schedule 11 to the Equality Act exempts schools designated with a religious character from the requirement in section 85 of the Equality Act not to discriminate on the grounds of religion in terms of the admission of pupils to the school and this is the provision the school relies on when oversubscribed and wishing to give priority to children on the basis of religion.
52. The aspects of this objection relating to the Equality Act provisions and paragraph 1.8 of the Code have included a number of strands with different arguments set out in different pieces of correspondence. It is worth outlining here the key arguments made by the parties.
53. The objector's core argument is that the school's arrangements are unfair to people of South Asian heritage as they are well represented in the area in which the school is located but are less likely than the general population to be from Church of England or other Christian backgrounds. People of South Asian heritage are thus less likely than those of some other racial groups to meet the school's faith-based oversubscription criteria and so gain places at the school because of the correlation between faith and race. In support of this argument, the



objector points to the ethnic profile of children at the closest state funded and independent schools to Archbishop Tenison's and notes the higher proportions of Indian, Pakistani or Bangladeshi pupils at those schools.

54. I want first to address the issue of the area served by the school. This is important in relation to the objector's comparisons between the school's pupil population and that of its local area. The objector has looked at the 2011 data from the census middle super output area in which the school is located, the area comprising that super output area and all those adjacent to it and the Borough of Croydon as a whole. The objector notes that the middle super output area in which the school is located included 508 children between the ages of 10 and 19. The objector notes both that 112 (22 per cent) were recorded as being of South Asian origin (that is Indian, Pakistani and Bangladeshi) and that the total number of children in the area was less than the school's capacity. The corresponding figures for the school's super output area and those adjacent to it and for Croydon as a whole showed the proportions of children of South Asian origin to be 9.7 percent and 9.6 percent respectively.
55. I do not think it is right to compare the school only to the middle super output area in which it is located. First, as the objector notes, there are fewer children of secondary age living there than even this relatively small school has space for. Second, Croydon has 44 middle super output areas but only 21 secondary schools (planned to rise to 26 by 2016) so it is just not possible for all children to attend a secondary school in the middle super output area they live in. Given that the percentages of those of South Asian heritage living in the slightly wider area and the borough as a whole are so similar, it makes little practical difference which comparator out of the whole of Croydon or the school's middle super output area and those surrounding it is chosen for the purposes of comparing the school's population with that of the wider area. It is also the case that the school and diocese argue that the school was set up to serve the whole of the Archdeaconry of Croydon. In support of this argument, the LA makes the point that in its area there are only two Church of England Secondary schools to serve those who would like a Church of England education and that between them those schools have only six per cent of the total places available in the LA for Y7 places each year. The LA has also provided a statement that says that the borough is diverse and *"the authority is actively working towards a more diverse range of provision that properly reflect the needs of our communities"*.
56. The objector's submission of 9 May 2014 explained that the objector had also studied the DfE school census data for January 2013 and concluded from this that the school's population included no more than 2.7 per cent South Asian children. The objector argued that "the extent of this mismatch [between the school's population and that of the local area] highlights a particular disadvantage arising to the local population". Since the objection was made, the DfE school census

data for 2014 have become available. This shows that the proportion of pupils at the school of Indian and Pakistani heritage has grown to 3.1 per cent in total. The number and percentage of pupils of Bangladeshi heritage remains too small for a percentage to be given although the census entry confirms there are one or two such children in the school.

57. In the submission of 10 July 2014, the objector stated that the “*most significant disadvantage shown at Archbishop Tenison, within those of South Asian heritage, is to those of Pakistani and Bangladeshi origin*”. I am not persuaded by this argument. The proportion of Bangladeshi and Pakistani heritage pupils at the school is lower than the proportion of Indian pupils. However, the percentage of children of Bangladeshi and Pakistani heritage in Croydon is also lower than the percentage of pupils of Indian heritage. The percentage of children of Bangladeshi heritage aged 10 – 19 in Croydon is 0.94, for children of Pakistani heritage it is 3.4 and for children of Indian heritage it is 5.1 per cent. The percentage of children of Pakistani heritage at the school is 0.5, the percentage for those of Bangladeshi heritage is too small to be given in the DfE data set although the school (which will have provided the figures to the DfE) has told me that there are two such pupils. While the proportions of children from Pakistani and Bangladeshi backgrounds at the school are lower than the proportion of those from an Indian background (2.6 per cent) I do not agree that they are disproportionately lower compared to the proportions of children from an Indian background in Croydon.

58. The school and diocese accept that the school population has a lower proportion of those with South Asian heritage than can be found in Croydon’s population. They do not accept that this means that the school’s admission arrangements amount to indirect discrimination on the grounds of race. The school has also pointed out that it would very much like to expand its provision and so offer more places and, as part of that, increase the proportion of open places. It has explained its disappointment that plans to relocate the school and double its size had to be abandoned in 2010.

59. Neither the initial objection of 17 April 2014 nor the objector’s email of 30 April 2014 referred to the Equality Act, although they did refer to the provision in paragraph 1.8 of the Code dealing with the requirement that arrangements do not disadvantage children from a particular social or racial group. It is accordingly not surprising that the initial responses from the school, diocese and LA similarly did not refer to the Equality Act. It was in the objector’s submission dated 9 May 2014 that the objector first argued that the school’s arrangements breached the Equality Act by constituting indirect discrimination on the grounds of race. As the DfE guidance explains:

*“Indirect discrimination occurs when a “provision, criterion or practice” is applied generally but has the effect of putting people with a particular characteristic at a disadvantage when compared to people without that*

*characteristic. An example might be holding a parents' meeting on a Friday evening, which could make it difficult for observant Jewish parents to attend. It is a defence against a claim of indirect discrimination if it can be shown to be "a proportionate means of achieving a legitimate aim". This means both that the reason for the rule or practice is legitimate, and that it could not reasonably be achieved in a different way which did not discriminate."*

60. In the submission of 9 May 2014 under a heading "Proportionality Assessment" the objector argues that the school's oversubscription criteria are not a proportionate means of achieving its aim and must therefore be changed. The objector acknowledges that the school's population is ethnically mixed but is concerned that few pupils of South Asian origin are admitted to the school. The submission states: "*We do not explore what would constitute a legitimate aim that would justify this discrimination, but given the national and Diocesan policies and the openness of most other Church of England schools, the current indirect discrimination by this school cannot, in our view, be said to be a proportionate means of achieving legitimate aim.... There should be a greater limit on the number of places given by the school due to church attendance.*" The objector's letter of 12 June 2014 adds to this as follows: "*It is of course for the adjudicator to decide whether the Christian ethos of the school as set out in the response and in the admissions criteria is a legitimate aim. Assuming that it [sic] does, the question is whether or not it is proportionate. ... As set out in our original objection, large numbers of faith schools manage to maintain that ethos with a much lower level or no faith or church based admissions criteria at all.*"

61. The objector's letter of 27 June said "*the FAC are not taking issue with the school's aims and ethos.... We are operating on the assumption that the Adjudicator will consider these to be legitimate aims and will look at our objection in that light.*" However, in the letter of 10 July 2014, the objector took a different approach by arguing: "*If prioritising Christian children in the admissions criteria has an effect that disadvantages children from a particular racial group (like it does in Archbishop Tenison's case), then to argue that the legitimate aim being sought is to prioritise Christian children is a circular one. As the aim is linked to ethnicity, it is incapable of constituting or forming part of a legitimate aim.....An aim of which the inevitable effect is to make and enforce distinctions based on race or ethnicity cannot be legitimate. For that reason, the argument that the aim being pursued is to educate Christians is not a legitimate aim, and it is not necessary for us to go on to consider any issues of proportionality in its respect. We have dealt with the proportionality issue of aims related to the school's Christian ethos in previous correspondence.*"

62. Against this background, I have decided to consider both the legitimacy of the school's aim and whether its approach is a proportionate means of achieving this aim. I must consider also whether the arrangements conform with the requirement in paragraph 1.8 of the Code that they

*“will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group.”* I consider separately the question of the PSED. In assessing these matters, I wanted to be absolutely clear about the school’s aims.

63. The school’s website when I first reviewed it included a page headed ethos and aims. This states that the school is *“an 11 – 18 mixed comprehensive delivering Academic Excellence in a Christian community”*. This is followed by an opening phrase: *“Specifically, the school aims:”* which in turn is followed by seven bullet points. Five of these are not in my view relevant to the objection as they deal, for example, with attitudes to health and safety or the love of learning. Two are relevant and they are:

*“To uphold Christian belief through worship and daily life and to enable students to grow in a living faith.*

*To create in students an awareness of their abilities enabling them to realise their potential and to play their full part as Christians, in the wider community in this country and overseas.”*

64. While I am of the view that it is for the school to determine its aim (within the requirements of the legal framework and taking account of the guidance of the diocese), the objector and the LA and diocese have all indicated their views as to what the school’s aims might be and I think it worth outlining them here. The LA in its email of 1 May 2014 said that the school *“is intended to specifically cater for pupils of particular faith”*. The diocese in its letter of 4 June 2014 referred to the school’s instrument of government made in January 2005 which requires the school to preserve and develop its religious character and states that the school’s aim must accordingly be to uphold this character. The diocese in its letter of 19 June 2014 elaborated on this by stating that in conducting the school in accordance with its trust deed and/or historic foundation, it is for the governing body to interpret these. The diocesan view is that this school has interpreted its founding documents appropriately and that it is has had proper regard to the diocese’s guidance. The objector in the submission of 27 June 2014 refers to *“upholding the school’s Christian ethos (the legitimate aim being pursued)”*.

65. At the meeting I held I asked the school to provide for me and for the other parties a statement of its aims. It did so in its letter of 18 July in the following terms: *“Archbishop Tenison’s Church of England High School exists to provide a Church of England education primarily for children of Anglican and other Christian families living within the Archdeaconry of Croydon.”*

66. The objector in the letter of 25 July 2015 noted that the school had put forward a number of aims at different times. I agree that there has been a lack of clarity about aims and that is why I asked the school to set out its aims. There has I believe also been confusion between aims on the

one hand and the means adopted to support those aims. However, I find that the aims as set out by the school in its letter of 18 July 2015 are clear. I also consider that they are consistent with the statements highlighted above taken from ethos and aims page of the school's website, for example, it would be wrong to expect pupils who were not Christians to join in Christian worship as part of upholding Christian belief. The aims set out in the letter of 18 July 2014 from the school are accordingly the aims I have used to decide whether the school's aims are legitimate for the purposes of the Equality Act.

67. I start with the provision in the Equality Act which gives a specific exemption to the requirement not to discriminate on the basis of religion in order to allow schools designated with a religious character to give priority for admission to those of their or other faith. Guidance is given by the EHRC and the DfE on this exemption and the key paragraphs are set out below for ease of reference.

68. The ECHR guidance says:

*“If you are designated as a school with a religious character you are exempt from the requirement not to discriminate on grounds of religion or belief in relation to admissions.....In practice this might mean that you are unable to impose religious criteria, if you are not oversubscribed, or you might be able to select all of your pupils on religious grounds if you are heavily oversubscribed.*

*This exception does not allow you to discriminate on any other of the prohibited grounds, such as sex, race or sexual orientation.*

*A Muslim school may give priority to Muslim pupils when choosing between applicants for admission. However, the school may not discriminate between pupils based on other protected characteristics, such as by refusing to admit a child of the school's own faith because she is of African origin or a lesbian.”*

69. The DfE guidance says:

*“Schools with a religious character may give priority in admissions to members of their own religion. The Admissions Code provides that this may only be done when a school is oversubscribed – schools subject to the Code are not permitted to refuse admission to pupils not of their faith if they have unfilled places.*

*For example, a Muslim school may lawfully give priority to Muslim pupils when choosing between applicants for admission. However, the Admissions Code will not allow it to refuse to accept pupils of another or no religion unless it is oversubscribed.*

*The exception is not in fact confined to preferring children of the school's own faith. It would, for example, allow a Church of England school to allocate some places to children from Hindu or Muslim families if it wanted*

*to ensure a mixed intake reflecting the diversity of the local population. It would not, however, allow the school to base this selection on ethnic background rather than faith.”*

70. Neither the DfE nor the EHRC guidance addresses directly the situation where giving priority to people of the school’s faith leads to a situation where people living in the vicinity of the school are unlikely to gain a place because they are predominantly of a race or races from which relatively few people practise the faith in question. The DfE guidance is to my mind relevant, however where it says: *“The exception is not in fact confined to preferring children of the school’s own faith. It would, for example, allow a Church of England school to allocate some places to children from Hindu or Muslim families if it wanted to ensure a mixed intake reflecting the diversity of the local population.”*
71. The guidance is non-statutory and its purpose is in part to set out for schools and others what it is that the law (and Code in the case of admissions) requires them to do, allows them to do or prohibits them from doing. The sections of the guidance quoted above fall within the category of things which schools are allowed to do. The guidance does not suggest that schools with a religious character which give priority for the majority of places to children from their faith would be in breach of the Equality Act if this results in an intake which does not reflect the diversity of the local population. The fact that the guidance says that schools are allowed to give some priority to other faiths if they wish to in order to reflect the diversity of the local area is a clear – if implicit – acknowledgement that schools may legitimately choose not to.
72. The objector states in the submission of 9 May 2014 that not more than 49.7per cent of places at Church of England secondary schools were allocated on the basis of faith (the submission does not say which year this figure relates to). The objector also quotes from documents dated 2011 and 2012 published by the National Society of the Church of England which refer to the Church of England’s mission to serve Anglicans and the wider community in its provision of schools. The objector also gives figures for the proportion of places for which priority is given on the basis of faith at all Church of England secondary schools in the diocese. The objector’s arguments here were made in the context of the question of the proportionality of the school’s approach but they are relevant also to the objector’s later arguments about the legitimacy of its aim.
73. It is certainly the case that there is a wide range of approaches among Church of England schools, from those whose aim is to provide a Church of England based education to anyone who wishes to attend the school to those who seek to provide a Church of England education to Anglican families. Some schools – including Archbishop Tenison’s – will seek to do both. The admission arrangements adopted will reflect the aims. In judging whether this school’s aim is legitimate I do not think that the practice of other schools which quite lawfully and

reasonably have different aims is of great significance. All schools must comply with the law and conform with the Code. However, that does not mean that they must all have the same aims.

74. Archbishop Tenison's School has said that its aim is primarily to provide for a *Church of England education primarily for children of Anglican and other Christian families*. I think that is a legitimate aim for a Church of England school. I do not think that the legitimacy of the aim is constrained by the circumstances of the individual school. In other words, I do not agree that because there are significant numbers of people in the local area who are unlikely by virtue of race to be Christian this renders the aim itself not legitimate.
75. I want to address the specific argument made by the objector and set out above that "*As the aim is linked to ethnicity, it is incapable of constituting or forming part of a legitimate aim ... An aim of which the inevitable effect is to make and enforce distinctions based on race or ethnicity cannot be legitimate*". Faith-based oversubscription criteria do not, adopting the phrasing used by the objector, make and enforce distinctions based on race or ethnicity; they make and enforce distinctions based on religion or belief which apply equally those to those of all races. In my view, the circularity is in the objector's argument that the fact that a criterion is potentially indirectly discriminatory means that it cannot be designed to fulfil a legitimate aim. I do not think that the objector's argument is well founded for the reasons I have set out above when considering the guidance provided by the DfE and the EHRC on the provisions in the Equality Act which allow schools with a religious character to give priority to children of their own – and indeed other – faiths or denominations.
76. I turn now to consider whether the school's approach – by which I mean its admission arrangements – represent a proportionate means of achieving its aim. As the DfE guidance recognises, an aim may be legitimate but the means of achieving it may not be proportionate. Such cases will constitute unlawful indirect discrimination. The objector argues in the submission of 12 June 2014 that "*There are numerous ways of ensuring that the school has a Christian ethos (which is the aim being pursued). It is not necessary to discriminate to do so*". The objector also draws attention to guidance published in 2011 by the National Society of the Church of England which states that: "*in individual schools the balance between nurture and service will depend on ethos, history and tradition, local circumstances including whether there are other Church of England schools in the area and the current governors' commitment to the purposes of the school*". The objector also argued at the meeting that the school does give priority for some places not on the basis of faith and has done so for a number of years with no adverse effect on its ethos and could accordingly give priority for more places not on the basis of faith.

77. It is clear that the school has considered carefully the balance it wishes to strike as between places offered to Church of England children, other Christian children and other children. It has explained in its letters that it has changed its arrangements significantly over the past few years and the net effect of these changes is that more places are now allocated on the basis of membership of a church other than the Church of England and on the basis of distance from the school without any reference to religion. The school and the other Church of England school in the LA together have 258 places to offer in Y7 each year. This represents 6 per cent of the total places available. The school is also oversubscribed and some who would like a place there will not receive one. This will be the case whatever the admission arrangements.
78. There is a disagreement between the objector and the diocese about the meaning of the word necessary in the context of the EHRC guidance about proportionality. The EHRC guidance explains that proportionate for the purposes of Equality Act means: *“‘appropriate and necessary’ but ‘necessary’ does not mean that the provision, criterion or practice is the only way of achieving the legitimate aim”*. As the objector points out, the guidance goes on to say: *“the more serious the disadvantage caused by the discriminatory provision criterion or practice, the more convincing the justification must be”*.
79. The objector is of the view that many South Asian families would actually like to send their children to such a successful school, but has not provided any evidence for this. The objector has also argued that the disadvantage suffered by South Asian children who cannot gain a place at the school is a *“very serious disadvantage (and indeed it would appear to be an even more serious disadvantage for those of Pakistani/Bangladeshi origin)”*. I have set out above the proportions of such families in the area compared to the proportions at the school, noting that the latter is lower than the former. However, the difference is no more than 2.5 percentage points in the case of those of Indian heritage; no more than 2.9 percentage points in the case of those of Pakistani heritage and less than one percentage point in the case of those of Bangladeshi heritage. I do not agree with the objector’s view that this amounts to very serious disadvantage.
80. I have taken account of the very considerable amount of information and argumentation put to me by the objector. I consider that the school’s admission arrangements by giving priority for 90 per cent of places on the basis of Christianity and for ten per cent on the basis of distance from the school are consistent with the school’s aims and represent a proportionate means of achieving these aims in the circumstances of this particular school. I do not uphold this aspect of the objection.
81. The objector has also drawn attention to the fact that the nearest school to Archbishop Tenison’s was found to require improvement in its most recent Ofsted inspection. However, I do not consider that this is



relevant to the proportionality of the school's approach to achieving its aim. Archbishop Tenison's School is not responsible for the quality of provision in other schools in the area.

82. I turn now to the aspect of the objection which concerns the requirement in paragraph 1.8 of the Code that: *“Admissions authorities must ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular ...racial group.”* It is accepted by the school and the diocese that children from some racial backgrounds are less likely to be Church of England or Christian and thus that some racial groups are less likely to be represented in the school. However, I do not consider that this means that the arrangements unfairly disadvantage (directly or indirectly) a pupil from a particular racial group. A child with a South Asian background who meets the school's faith based criteria or who lives close the school has as much chance as any other child of securing a place at the school.
83. Finally, I have considered the objector's points about the PSED set out in section 149 of the Equality Act. This requires public authorities (which include the governing bodies of VA schools) to consider and identify the equality implications of their policies and actions, as well as proactively to consider how to address equality issues arising. The duty includes having due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who do and do not share a relevant protected characteristic, which includes race and religion or belief. The objector argues that the school has not done enough through its admission arrangements to eliminate discrimination, removing or minimising the disadvantage to people of a protected characteristic and encouraging participation within school life of those who share a protected characteristic and whose participation the objector considers to be disproportionately low, namely local children of South Asian origin. Attention is drawn to changes in the demography of the geographical area in which the school is located since its establishment and the argument made that the school should have changed its approach in response to these changes, specifically by adopting admission arrangements that make it easier for South Asian children to be admitted.
84. I begin by making the point that the PSED placed on the governing body of the school goes wider than the arrangements it makes for the admission of pupils and covers matters such as the way pupils are educated within the school, the links the school may have with other schools and organisations and the way the school works with other organisations. Those wider aspects of the duty are outside my jurisdiction and outside the scope of objections to admission arrangements and I have not therefor considered them. The two protected characteristics which I consider relevant in this case are race and religion or belief and I shall deal first with religion or belief.
85. So far as admissions and the PSED are concerned, I consider that a school with a religious character can be considered to be in a similar

position to a single sex school. Single sex schools have an exemption from the requirements of the Equality Act relating to gender so that they can educate only boys or girls as the case may be. It has to have due regard to those matters covered in the PSED in relation to gender but this does not mean that it must admit pupils of the other gender. Similarly, I do not believe that the school must give priority for more than 10% of its places other than on the basis of faith in order to meet the PSED in relation to religion or belief. So far as race is concerned, the reasons I have given above for my finding that the school's approach is a proportionate means of achieving its legitimate aim, apply also in relation to the school's compliance with the PSED in relation to race. I do not accordingly find that the school has failed – in its admission arrangements - to have due regard to the need to eliminate discrimination and the other components of the PSED. I do not uphold this aspect of the objection.

## **Conclusion**

86. I have concluded that at the time the objection was first made, the school's admission arrangements did not conform with the requirements relating to admissions in a number of ways in relation to admission to Y7 and to Y12. I have accordingly upheld a number of aspects of the objection. The school has revised its arrangements in accordance with the provision of section 88E of the Act to make a number of changes to its arrangements. However, the arrangements continue not to conform fully with the requirements relating to admissions in particular in relation to admission to Y7 in the ways set out in this determination.

87. I have considered carefully the arguments made by the objector that the school's arrangements breached the requirements of the Equality Act in that they resulted in indirect discrimination on the grounds of race and paragraph 1.8 of the Code in that they disadvantaged unfairly a child from a particular racial group and that the school had not met the requirements of the PSED in relation to admissions. I do not uphold those aspects of the objection for the reasons given in this determination.

## **Determination**

88. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body of Archbishop Tenison's School, Croydon, for admissions in September 2015.

89. I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

90. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.

Dated: 5 September 2014

Signed:

Schools Adjudicator: Shan Scott