

## **DETERMINATION**

**Case reference:** ADA/002146 and ADA/002148

**Objector:** An eligible parent and the Archdiocese of Southwark

**Admission Authority:** The Governing Body of Coloma Convent Girls' School, Croydon

**Date of decision:** 20 October 2011

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objections lodged by the parental objector and by the Archdiocese of Southwark.**

**I determine that for September 2012 admissions, the arrangements shall nevertheless remain unaltered.**

### **The referral**

1. Objections have been referred to the Adjudicator by an eligible parent, and by the Archdiocese of Southwark, the Roman Catholic religious authority in respect of the admission arrangements for Catholic schools in the area covering the London Boroughs south of the River Thames, Kent and the Medway (the Diocese), about the admission arrangements (the arrangements) for Coloma Convent Girls' School (the School) for September 2012. Coloma is a voluntary aided, Catholic secondary comprehensive school for girls situated in the London Borough of Croydon (the LA).

2. The parental objection is to the use by the School in its oversubscription criteria for admissions of the date of baptism to award points in four categories to candidates, with those who were baptised sooner after birth receiving more points. The second objection, by the Diocese, is to the use in those same oversubscription criteria of service by the child or a parent in a Catholic parish or the wider church to award points to candidates. Because of the common ground which must inform both objections (namely the extent to which the School is able to depart from Diocesan guidance in setting its admission arrangements that are faith-based, and the possible justification that there might be for doing so), I have considered them together. Where the different objections require distinct considerations, I have identified this.

## **Jurisdiction**

3. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the governing body which is the admission authority for the school. The parent submitted his objection on 26 April 2011 and the Diocese its objection to these determined arrangements on 13 May 2011. I am satisfied that these objections have been properly referred to me in accordance with section 88H(2) of the Act, and that they fall within my jurisdiction.

## **Procedure**

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

The documents I have considered in reaching my decision include:

the letters of objection, supporting documents and subsequent correspondence;

the school's response to the objections, supporting documentation and subsequent correspondence;

the Diocese's response to the parental objection;

the LA's booklet for parents seeking admission to schools in the area in September 2012;

maps of the area identifying relevant schools;

the most recent inspection report on the school, and government performance data and statistical information about schools.

5. I have also taken account of information received during a meeting I convened on 23 August 2011 at the School attended by the objectors and representatives of the School, and subsequent correspondence.

## **The Objections**

6. Both objections concern the oversubscription criteria employed by the School to give priority to Catholic candidates for admission.

7. The parental objection maintains that the School's practice of awarding differential points for baptism depending on how many months after birth the baptism took place does not comply with a number of mandatory aspects of the Code. The objector refers to guidance provided to the Governors by the Diocese which he says they have ignored, and alleges breach of the

requirements of paragraphs 2.48, 2.51 and 2.52, in that these place obligations on Governors concerning their response to this advice. He also states that he believes the practice itself to be unfair, and therefore invokes those mandatory aspects of the Code that refer to fairness, such as paragraph 1.72.

8. The Diocese makes two specific objections. It, too, alleges that the School has failed to have regard to the guidance given to them by the Archbishop (in breach of paragraph 2.52), and also that the School's oversubscription criteria are unclear (breaching paragraph 2.48) and discriminatory (breaching paragraph 2.47). It does so with particular reference to the use by the School of the candidate's and the parent's participation in the parish and in Catholic community life to award points within its oversubscription criteria.

## **Background**

9. Both the School and the Diocese openly acknowledge that there is a long history of a degree of tension between the Trustees of the School, who are The English Province of the Order of the Daughters of Mary and Joseph, and the Diocese concerning matters such as the latter's role in the setting of the School's admission arrangements. These disagreements appear to have their origin in the School's independent sense of purpose, which it derives from the status of its Trust as one constituted by Pontifical Right, which I understand to mean that its governance is a matter for the Holy See rather than for the Archbishop. I shall return to this disagreement below.

10. The School is now very heavily over-subscribed, and extremely successful. Its most recent Ofsted inspection (October 2009) judged it as outstanding.

11. The School's admission arrangements for 2012/13 – those which are the subject of these objections – were determined as those which should apply for September 2011 in a previous determination (ADA/001759). The Governors made a decision at the appropriate time and following the relevant period of consultation, to retain the arrangements unaltered (except for some changes to parts of the wording requested by the Diocese), for September 2012. The only two responses which were received to the consultation had been from the Diocese and from the parental objector (from his wife). The parent suggested giving maximum points for baptism within one month of birth, but fewer points for later baptism. The Diocese specifically asked the School to remove the awarding of points for participation in church activities from the arrangements. So in setting its arrangements the School was fully aware of the Diocese's objection to their continued use of "church activities" criterion, which had effectively been the subject of a meeting between the School's Admissions Committee and the Diocese on 24 January 2011. The School wished to evaluate the effect of the changes which had been required by the Adjudicator in admissions made in September 2011 before considering any further amendments, and says (in its letter of 13 June responding to the objections) that it had considered that the arrangements for 2011 had worked satisfactorily in implementation (in that there had been no complaints and only

a very small response to the consultation) and that it wishes to review the effect of the 2011 arrangements on the actual admissions which had resulted, when considering the admission arrangements for 2013 during the present school term.

12. The changes made in the last determination improved considerably the clarity of certain aspects of the arrangements, reduced from nine to four the number of time-periods after birth of the date of baptism for which points are awarded and reduced the number of points for service and assistance in Church activities from 20 to 6. The Adjudicator noted that the School and the Diocese have “no common ground” concerning this latter issue, and that the Diocese does not support the use of differential time periods concerning baptism.

### **The arrangements**

13. In summary, the essential elements of the 2012-3 admission arrangements are given below.

14. Priority is given firstly to baptised and practising Catholic girls and secondly to other girls. The School applies oversubscription criteria to determine priority within the first category (in which it is always oversubscribed) as follows:

(i) Looked after girls

(ii) Girls for whom there is medical or other special reasons why the School is the only reasonably available suitable school

(iii) Siblings of girls attending at the point of entry

(iv) Other girls ranked according to the Candidate’s and Applicant’s Catholic religious practice

Points are awarded to measure Catholic practice in categories which have the following maximum scores possible:

Sacrament of baptism 10

Sacrament of First Holy Communion 6

Frequency of Mass Attendance 20 (candidate 10, applicant 10)

Service during last five years in any Catholic Parish or in the wider church 6 (candidate 2, applicant 4)

The baptism category has four time periods ranging from 6 months which scores the maximum, to after 18 months which scores 2 points. Each of the categories of Mass attendance has four levels of attendance which range from weekly (10 points) to less than monthly (1 point). Service gains 2 points, with candidates credited for up to one service, and applicants up to two.

## **Consideration of factors**

### **(i) the status of Diocesan guidance**

15. The status of the guidance provided by the Diocese to the School concerning its admission arrangements is the central issue to which I have given consideration, for both objections.

16. Schools which are designated by the Secretary of State as having a religious character (faith schools) are exempt from the provisions of the Equality Act 2010 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.

17. The Code (paragraphs 2.48, 2.50 and 2.52) requires admission authorities for faith schools to consult their religious authority about their arrangements, and to have regard to its guidance concerning the way in which membership or practice of the faith is established as part of them.

18. The Archdiocese of Southwark provides written guidance to Catholic schools in the Diocese about such matters, and this states with reference to the requirement of paragraph 2.48 that admission authorities should only use definitions of membership or practice agreed by the faith provider, that its *"definition of membership of the Catholic Church is baptism or reception"* and that its *"definition of Catholic practice for the purpose of admission to voluntary aided schools and academies in this Diocese is membership of the Catholic Church and attendance at Sunday Mass, evidenced by a priest. Normally no further evidence of practice should be sought or required."*

19. It goes on to say that *"Where there are schools oversubscribed with Catholic children, governing bodies may give a higher priority to children from families who are able to demonstrate their commitment to the faith by their frequency of attendance at Sunday Mass"*, and that *"further information regarding involvement in parish community life must not be sought"*. The guidance provides governing bodies with further possible oversubscription criteria which they might employ.

20. In its initial response to both objections via its solicitors, the School states that it believes that previous adjudications have established that it is not a mandatory requirement that a school should follow Diocesan guidance, but rather that it must be able to show that it had had regard to it. Although aware of the Diocesan view concerning the use of involvement in church activities as an oversubscription criterion, the School took the view in determining its arrangements that it was unable to agree to remove this criterion as it was its view that *"such a change would cause the policy to be less fair than it is"*.

21. In response to the parental objection concerning the awarding of points according to the date of baptism, the School referred to the previous

adjudication which had stated that in the view of the adjudicator having such a system did not contravene the Code, although it was noted that the Diocese had made clear at that time that it did not support it. The Diocese confirmed this view in relation to the current parental objection, stating that the use of date of baptism is unfair, as well as being unjustified as the School says by Canon Law. I must now examine this issue afresh.

22. The parental objector responded to both the School's and the Diocese's comments on his objection, raising firstly the reliance placed on Canon Law by the School, as noted in the previous determination. The objector acknowledges that the Code of Canon Law of the Catholic Church, article 867 ("Canon Law 867") states that "Parents are obliged to take care that infants are baptised in the first few weeks", but emphasises the view expressed by the Diocese that Canon Law also provides no sanctions for those who do not follow this instruction. He believes that the Diocese has as a result made clear its view that the School is not entitled to invoke Canon Law to justify its practice regarding baptism. The actual wording used by the Diocese is that it believes that "it is wrong for school governors to make judgements about the rights and wrongs of a parent who does not follow Canon Law", which does not I think amount to exactly the same thing, but which is very close to it. Secondly, he makes the point that since baptism can by definition only happen at a point in time, early baptism (and therefore adherence to Canon 867) can only ever evidence a strong commitment to the Catholic faith when the baptism took place (eleven years previously) and does not reflect commitment over a period of time. In his view, this is demonstrated by Sunday Mass attendance, and points out that this what is stipulated by the Diocese (see paragraph 19 above).

23. These views were repeated and built upon in a meeting which I held with the parties at the school on 23 August 2011. The Diocese gave reasons why its view is that the use of "service" in oversubscription criteria is unfair. These included the following:

- (i) in many immigrant Catholic communities (referred to by the Diocese as "chaplaincies") no parish exists comparable to an English parish and so there is no tradition of community service, in others the parish is large and cannot provide all with an opportunity to participate;
- (ii) parents who can't evidence participation are being discouraged generally from applying to the School, and the need to provide justification for this situation in writing places a further barrier in the way of application for parents for whom English is not their first language, or who are less literate;
- (iii) one parent families are particularly disadvantaged in being able to participate.

The Diocese also said that there was evidence that parents are participating in parish activities for the wrong reasons (ie in order to gain access to the School).

24. The parental objector has stated the following as his reasons for believing that the use of differential dates of baptism is inherently unfair:

- (i) any lapsed Catholic or any convert who has their child baptised at that (later) point is reliant on the discretion of the School if points are to be awarded
- (ii) some faithful Catholics could be in a position where early baptism is impossible (for example working abroad in certain countries), and would be again reliant on discretion being exercised in their favour
- (iii) the arrangements are such that it is necessary to obtain maximum possible points for baptism to gain entry.

25. The objectors anticipated the arguments advanced by the School in support of the present arrangements, which bring the issue of pupil disadvantage centre-stage. Both made a reference to disadvantaged pupils – the parent saying that none of the School’s oversubscription criteria address the issue directly, and the Diocese – in support of the parent’s objection – saying that it saw no relationship between the date of baptism of a child and its level of disadvantage.

26. Essentially, the School says

- (i) that it is part of the School’s ethos to allow less advantaged girls to access it;
- (ii) that the role of the religious authority for a faith school is to define those which it considers members of the faith, and not to go beyond this to say how priority shall attach to those of the faith;
- (iii) that the School is free not to follow the Diocesan guidance, and that it does so for good reason;
- (iv) that the oversubscription criteria which afford priority on the basis of the date of baptism and for parish activities are needed because the alternative would be that priority would have to be decided on the basis of distance of the parental home from the School, leading to admissions being dominated by those able to afford homes closer to the school, thus conflicting with a basic aim of the School. The School is aware that there are parishes where service “is more difficult” but is aware which these are, and has included a wider range of activities to compensate.

27. I have given very close consideration to all aspects of the case which the School has made to me in not inconsiderable detail in a letter dated 16 September 2011 (that is, subsequent to my meeting with them). It has stated its aims in the following way:

*“The School considers that, in order to preserve its wide ranging intake of Catholic girls who will benefit from the School’s ethos of serving God through serving others, the School needs to ensure that as far as possible (1) girls continue to come from a mixture of backgrounds – social, ethnic, financial and geographical and (2) as far as possible only genuinely committed Catholics be offered places (ie not those who abuse the admissions system).”*

28. Paragraph 2.16k says that there no prohibition on faith schools in giving

priority to children by taking into account “membership of, or participation in, religious activities....providing this is consistent with this Code and guidance issued by the faith provider body/religious authority”. This makes it clear, it seems to me, that the Code intends that the use made of participation in church activities as part of a school’s oversubscription criteria should be consistent with guidance from the faith body about membership or participation in the faith, to the extent that the guidance itself is consistent with the requirements of the Code. This is not quite therefore the position which the School has invited me to accept concerning the effect of Diocesan guidance on this matter.

29. The School has provided me with documentation describing in detail its rationale and ethos, and the Canon law which it says this relies upon for support. These extracts from Canon law describe the duty of Catholic parents concerning the type of education which they should seek and the complementary duty of Catholic schools towards them in the education which they provide. The School says that in fulfilling what it sees as its duties so defined, “at times this has brought them into conflict with the Diocese” and that “while always being obedient to the Diocese in matters of Faith and Morals, the Daughters of Mary and Joseph are also mindful of their ‘patrimony’” and that Trustees are “not a diocesan congregation but one of pontifical right”.

30. The Diocese has responded to the emphasis placed on this status of the Trustees by the School by re-asserting their view that the School Admissions Regulations are unequivocal that it is the Diocesan Bishop who constitutes the religious authority for Catholic schools concerning matters of faith membership and practice, and the School has made it clear that it accepts that this is the position, but that it nevertheless maintains that it is “not bound to follow the guidance of the Archbishop”. I must therefore examine how I believe the Code and Regulations intend the guidance of the religious authority to have its effect.

31. I am invited on the one hand (by the Diocese) to accept that because it has stated in guidance what its view of membership of the Catholic faith is (namely, baptism or reception), and what it regards as an acceptable measure of practice (frequency of attendance at Sunday Mass) that the School is bound to use only these measures in oversubscription criteria. The School on the other hand believes that it must “have regard” to the guidance of the Archbishop but is not bound to follow it. Both cite in support of their view paragraph 2.52 of the Code which states that “admission authorities of faith schools that propose to give priority on the basis of membership or practice of their faith must have regard to such guidance” (that provided by the religious authority concerning the objective processes and criteria that may be used to establish membership and to evidence practice).

32. The Oxford English Dictionary has the following definition of having “regard” to something: it says it means to “give heed to, take into account, let one’s course be affected by”. In the light of this expansion, what meaning in practice can be assigned to what the Code has to say - in paragraph 2.52 and elsewhere - about the status of the guidance given by a religious authority concerning definitions of membership and practice?



33. Firstly, it is clear to me that “having regard to” cannot mean “must act exactly in accordance with” since this would allow dictation of specific processes and criteria, and this is clearly not what is intended, since as other Adjudicators have observed, if it had intended this, the Code would have made an explicit statement to that effect. I have examined carefully previous adjudications which have examined this issue, and find myself in agreement with what they have to say on this point: the religious body cannot dictate the processes and criteria to be used.

34. The Code at paragraph 2.48 states that “in determining faith-based oversubscription criteria, admission authorities should only use the methods and definitions agreed by their faith provider”. It does not say they “must”. In practice this therefore means that if an admission authority departs from the advice of its religious body, it must have good reason to do so. This means that it must do more than consider that advice and, if it chooses, reject it.

35. Finally, as we have already seen (paragraph 28 above), the Code (paragraph 2.16k) requires the way a school takes into account membership or practice to be consistent with guidance issued by the faith provider to the extent that the guidance is consistent with the mandatory provisions and guidelines of the Code. Again, I agree with previous adjudications that “consistent with” does not imply having to follow explicitly. But it does in my view imply that there must be some limit on the extent to which the practice which is followed can be allowed to depart from the guidance which has been given. If regard is paid to guidance, and if this means that “heed is paid” to it, let alone that it “affects one’s course”, and if the outcome has to be consistent with the advice at the end of the day, then it is very clear indeed that an explicit prohibition on the part of the religious body means that an admission authority must be able to give clear justification for ignoring it, if the intentions of the Code are to be met.

36. In a letter dated 2 July 2010, written in connection with a previous objection about the arrangements, which was copied to me by the School following my meeting with the parties, the School’s solicitor had the following to say:

*“It is the school’s position that if there is a conflict between the wishes of the Diocese and those of the trustees in relation to matters other than a strict definition of membership or faith practice, the school is entitled (and perhaps obliged) to give precedence to the views of the trustees who in this case support the approach of the governing body. It says that it is entitled to depart from Diocesan guidance with lesser reason than if it were a Diocesan school.”*

37. The School, here at least, says that it accepts the authority of the Diocese on those matters (definitions of membership and practice) on which discrimination on the grounds of faith are permitted by the Code. It seeks elsewhere to justify departure from Diocesan guidance by seeking to draw a distinction between as the School’s legal representative put it in my meeting with them “the definition of who is a member”(which is a matter for the Diocese) “ and the pecking order within that definition”(which is a matter for the Governors).

38. As I have said, I agree with that, but up to a point. I am almost persuaded (paragraph cc above) that this is subject to a practice used by governors not having been forbidden. I am certainly persuaded that this is subject to any proscribed practice, or to a practice which simply departs from guidance, being capable of being justified. I do not agree with the School therefore that it is “entitled to depart from Diocesan guidance with lesser reason than if it were a Diocesan school”. Justification is still required.

39. Let me now turn to what exactly the Diocese has said about both matters which are the subject of the objections. In its final letter to me dated 15 September 2011, the Diocese states that in its view the School uses tests of “Catholicity” which it specifically prohibits, and refers to that part of its guidance which describes its definition of membership and practice, and which includes a requirement that information concerning involvement in parish community life “must not be sought”. So far as its guidance on the awarding of points for participation in parish activities is concerned, the position of the Diocese is plain. It prohibits this practice. The School accepts that it departs from Diocesan guidance, but believes that it has good reason to do so, and has tried to convince me of the same.

40. The Diocesan guidance contains no equivalent statement of condemnation concerning the awarding of points for different dates of baptism, but in its letter dated 26 May 2011 commenting on the parental objection, the Diocese states (as mentioned above, paragraph 21) that it considers it “wrong for school governors to make judgements about the rights and wrongs of a parent who does not follow Canon Law” and that “the awarding of points according to the date of baptism may be seen as objective, but it is nevertheless unfair and is not a good indicator of Catholic practice in relation to school admissions “.

41. The School’s view of this is that this was the first time the Diocese had expressed unhappiness with its use of baptism dates (although it clearly did so during the previous objection, on the grounds of the complexity of having eleven categories), and that it has therefore not departed from Diocesan guidance on this matter. I agree that it has not acted inconsistently with guidance, by doing something specifically prohibited. However, it does clearly go beyond the guidance’s provision for dealing with oversubscription by using baptism date as a criterion. The guidance says

*“Where there are schools oversubscribed with Catholic children, governing bodies may give a higher priority to children from families who are able to demonstrate their commitment to the faith by their frequency of attendance at Sunday Mass.”*

42. It is clear from the context in which this appears that it is the Diocese’s guidance that only this criterion be used in these circumstances.

43. In summary, then, my view is that the School acts inconsistently with Diocesan guidance concerning its use of parish activities. It does not follow Diocesan guidance in respect of both matters complained of, and would have to be able to show that it was justified in so doing were it not to contravene the Code. I will now turn my attention to an examination of why the School

believes itself to have such good reason.

## **(ii) the School's reasons for departing from guidance**

44. The School has told me that it departs from Diocesan guidance in respect of parish activities, because “not to do so would result in (1) the ethos of the school being undermined and (2) the intake of the school changing to exclude more children from deprived areas”. The School's ethos has been referred to previously (paragraphs 26 to 30), and as described it is of course beyond reproach. I am sure from my reading of the School's latest inspection report that it is a real and active feature of daily life there, from which the pupils obtain enormous benefit. I only note in passing that I do not believe that it is the expectation of the Code that a school's ethos should act as any sort of template or threshold for individual pupil admissions, since this would mean the school choosing the pupils, when it is clear that the reverse is the intention – that parents choose schools, sometimes because of their ethos.

45. The School's belief that no longer using parish activities as a criterion in its admissions would result in children from more deprived areas failing to obtain places there is based on two propositions which the School invites me to accept. The first of these is that any realistic alternative oversubscription criterion would result in priority being given on the basis of distance – either from the School or from some other point or points. The second idea is that this would then result in those able to afford to do so ensuring that they lived close enough to the school or wherever else they needed to live close enough to, and this would mean that only the more privileged children would be able to access the School.

46. To support this view, the School has told me that it currently has “a good ethnic and socio-economic mix” and so I have examined the available evidence to see whether that this is the case. If the existing arrangements do indeed ensure such equity of access, then the School would be starting from a position of strength when trying to make the case for not following Diocesan guidance. It might then only need also to show that the alternative approach resulting from following Diocesan guidance would be detrimental in this regard.

47. The School has helpfully provided me with a copy of the “Croydon Borough Profile” (August 2009) and other sources of statistical information, and the parental objector has referred me to other places such as the Department for Education January 2011 publication “Schools, Pupils and their Characteristics”(often referred to as the “statistical first release”, drawn from the January 2011 school census), and I have examined these in so far as they relate to the arguments put forward.

48. The School has offered me some data showing the wards of London Boroughs from which girls currently attending the School are drawn. For each ward, a figure for the Income Deprivation Affecting Children Index (IDACI) is given, and the School tells me that this shows “the wide socio-economic mix at the School”. It may do, but it may not, since London wards often contain

both deprivation and affluence. The IDACI is collected at super output area level, much smaller than a ward, and I have not been able to ascertain the source of the School's data and what the meaning is of the figure quoted for the IDACI at ward level. In any case it shows me only that somewhat less than 50% of the girls attending the School live in wards with above the average level of deprivation of those listed. To have more convincing information about actual levels of deprivation, it would be necessary to know in which super output area each girls lived, not the ward. Even better would be information about the pupils themselves such as ethnicity or free-school meal data.

49. The School tells me that it "is in the top 20% of the country in its admission of minority ethnic groups, which is over twice the national average". The figures which support this are the Raiseonline (2009) data (produced by the DfE and Ofsted). The national average ethnic minority (that is, those not classing themselves as white British) percentage in schools is given as 20.9% against Coloma's 43.7%.

50. This would indeed be impressive if Coloma drew its pupils from an area typical of the country as a whole – but it does not. While the School draws pupils from a wide geographical area, virtually all come from London Boroughs and about 60% live in the Borough of Croydon. The January 2011 school census data gives a national average figure for ethnic minority pupils in secondary schools as 22.2%, with that for London as a whole being 63.3% , that for outer London (which includes Croydon) 56.7% and that for the Borough of Croydon itself is 60.6%. So the proportion of ethnic minority pupils at Coloma is considerably less than the average for other secondary schools in the area from which it admits girls.

51. The School has copied to me correspondence from the previous adjudication, including a letter dated 2 July 2010 from the School's solicitor in which the view is expressed that free school meal data gives a misleading picture. Referring to the low figures for the School it says that this "suggests that pupils do not come from relatively disadvantaged homes but the truth is that a large number of parents are ineligible for free school meals simply because both parents work, albeit in quite low paid and low profile jobs."

52. This view was repeated and expanded on in a final letter to me from the School (26 September 2011) commenting on a letter from the parental objector dated 21 September 2011. The School asserts that "it is because the years 7-11 cohort is almost 100% Catholic that the % of two parent families is much higher for Coloma than the national average."

53. While I am sure that what the School says is true, free school meal data is the best means we have of assessing the relative disadvantage of pupils attending different schools. It is the statistic used in Ofsted inspection reporting, and I reject the School's view as to its lack of meaning. It may be that Coloma does indeed have very few single parent families, but this may in turn be because such families are disadvantaged in obtaining places at the School as the Diocese complains (paragraph mm above).

54. Data from the January 2011 school census which I have viewed gives the national average free school meal eligibility for secondary schools as 15.9%

and that for Croydon secondary schools as 19.9% (table 11b). The percentage of girls at Coloma entitled to free school meals as 3.5%. The School invites me to accept an argument that this figure results from the almost exclusively Catholic nature of its intake. I would expect, if this were the explanation that similar figures would pertain for other nearby Catholic schools. There are four such secondary schools in Croydon, and the figures given for their free school meal entitlements, and for Coloma are as follows

St Joseph's RC (boys) 10.2

Thomas More 17.3

Virgo Fidelis (girls) 12.1

St Mary's Catholic High 19.9

Coloma 3.5

(school level pupil characteristics table, column DL)

55. Two of these other schools (St Joseph's and Virgo Fidelis) admit 10% of their intake on the basis of aptitude, but the others do not, giving priority (after that given to Looked After children) to Catholics. All are significantly oversubscribed, and as far as I can ascertain predominantly admit children from Catholic families. St Mary's is the geographically closest Catholic secondary school, and the nearest secondary school is Shirley High, for which the free school meal entitlement figure is 14.4%.

56. In summary, the evidence is that Coloma admits considerably fewer girls from ethnic minorities than is the average for secondary schools in the area from which it draws its pupils, and that a significantly lower proportion of girls attending Coloma are entitled to free school meals than is the national average, the Croydon average, or the average for Croydon's other Catholic secondary schools. It is against these facts that I need to consider whether the justification which the School invokes for its departure from Diocesan guidance – that adhering to the guidance is likely to worsen the ethnic and social mix of the School – can be seen to be valid.

### **(iii) the availability of alternative oversubscription criteria**

57. The School has consistently argued that the alternative to their use of parish activities in oversubscription criteria is that distance from some location will need to be used, and that to do so will mean that the admissions arrangement will become less fair than at present (see paragraph 26 above).

58. The School has told me that it has considered alternative oversubscription criteria but "have not found an alternative that is workable". I agree with them when they say that using feeder primary schools can be problematic because it then places great pressure on the admissions of these schools and essentially moves the problem over to them.

59. The possibility of using Deanaries or Parishes has been considered but rejected and this is in part because of what seems to be a misreading of the requirements of the Code. The School tells me that it would require “all parishes to be treated equally, therefore this may mean allowing an equal number of places per Parish and administration of places per Parish by a lottery system”. I am unaware of anything in the Code that would make that the case, and it would certainly be possible simply to give priority to those living in certain parishes, or groups of parishes, and for these parishes or groups of parishes to be given different levels of priority. The School tells me that, on the basis of their understanding of how such an oversubscription arrangement would work (which I believe to be flawed) that “It would not preserve the continued socio-economic and ethnic mix at Coloma and would not preserve Coloma’s ethos”. My view is that the School has not been able to demonstrate that such an (appropriate) mix exists now (paragraph 59 above), and that it is certainly capable of being improved, at least in principle, by a use of priority parishes that was designed to give such an outcome.

60. A third possibility would be to give priority to those living within distance rings from the School, but this has been rejected because “those that can afford to move to areas where there are more places will do so” according to the School. This must remain an unproved assertion, and as the School has correctly pointed out, a given distance ring will cover areas of both affluent and of poorer housing, mitigating any such effect in the short term at least. The School has helpfully provided me with ethnicity data for existing pupils broken down by distance from the School in four bands: less than 1 mile, 1-3 miles, 3-5 miles and over 5 miles. The School tells me that this shows that admitting children from beyond 5 miles adds significantly to the ethnic minority population of the School, (the figure is 57 out of 335 girls from the ethnic minorities, in a total school population of 792) and that this justifies the present system since the alternative would use distance.

61. The objector has pointed out that the figures tend to run counter to this argument, and I have to say that my own examination of them supports his view. Admissions to the School from within a mile are dominated by the white British population, and only have 11.4% ethnic minority pupils, but the 1-3 mile band has the highest proportion of ethnic minority admissions (40.3%), which then decreases with distance. The group admitted from 3-5 miles distant has 31.2% ethnic minority pupils and that from over 5 miles 17.2%. This evidence, together with the detailed evidence concerning location and deprivation (see paragraph 48 above on IDACI data) could form the basis of targeted oversubscription criteria whose effect on the ethnic and social mix in the School could be reasonably modelled. My view is therefore that the existing oversubscription criteria are not only not necessary if the School is to meet the aims of the Trustees (which is its reason for departing from Diocesan guidance), they are capable of being improved upon.

62. At my request, the School very helpfully carried out an exercise on the cohort which had sought admission in September 2011, removing in turn the effect of the points awarded for date of baptism and then additionally the points awarded for parish activities. It has presented the results of this exercise to me in graphical form, showing the “scattergrams” of pupil admissions that would result. The effect was, as far as baptism points were

concerned, that it had in the School's words "little effect on the wide span of intake", a view with which I concur.

63. Taking away the effect of both, the School says, "the intake ....narrows and is more focussed in the area directly around the school". Again, I agree that this is so, but it also does not seem to me that there is much evidence that the result of this second exercise was obviously to cause children from more affluent areas to gain admission. A very small cluster of girls who did not have sisters already at the School and who live in the School's immediate vicinity would have gained admission, but the area from which admissions would have predominated is to the north and west of the school from a radius of about 1½ to 3 miles distant, and includes areas which have a high Index of Multiple Deprivation, making a significant negative effect therefore unlikely. However, this is not the real comparison that needs to be made, since if the present criteria were not used, it would be possible to use alternatives, as discussed above.

64. I accept the School's view that such modelling exercises can have only limited value, since they are unable to predict the effect of changes in behaviour which they will also cause. However, even taking that into account, I do not believe that the School's argument for needing the existing criteria as opposed to others that might be used has received any support through this exercise, rather the reverse.

65. The School has also invoked the issue of parental "playing of the system" in defence of its present criteria, which it says are inherently more difficult to manipulate than the economic ones which they say must necessarily apply as an alternative. That is not the view of the Diocese, who as long ago as 2009 were expressing directly to the Governors Admissions Committee (23 September 2009) that "parents and children are carrying out activities in church to gain points". In my meeting with the parties, the Diocese stated that in one parish there were "100 children on a waiting list to be altar servers".

66. While I do not dismiss the potential that there may be for economic factors to be introduced if revised oversubscription criteria were introduced carelessly, this is by no means as inevitable as the School claims. It is also clearly wishful thinking to imagine that parents are not currently "playing the system" with the existing criteria.

#### **(iv) the issue of fairness**

67. The parental objector has stated (for the reasons set out in paragraph 25 above) that he believes that the use by the School of differential dates of baptism, as well as not being a justified departure from Diocesan guidance, is unfair, contrary to paragraph 1.72. The Diocese has supported this view.

68. However, the parental objector's concern about needing to obtain maximum points is not borne out by what happened for the 2011 entry to the School. Although maximum baptismal points were needed to be offered a place in the first round, the information which the School has provided shows

that for final offers this was not the case. So the lack of criticality attached to the baptismal score does diminish somewhat the potential for unfairness. I do accept that there is the possibility that the use of baptismal date could be unfair, in the general sense of the term (as opposed to the specific unfairness to particular social or racial groups which is the sense of paragraph 1.72 of the Code), in some of the circumstances described by the objector, but this is also offset by the fact that the School makes provision for allowing for special circumstances. It has told me that in the 2011 admissions 26 candidates had their baptismal score increased because of information which they had asked to be taken into account concerning reasons for late baptism. Neither the parent nor the Diocese has presented me with evidence of specific unfairness of the sort covered by the Code, in paragraph 1.72.

69. By contrast, the accusation of unfairness levelled by the Diocese at the use of participation in parish activities as an oversubscription criterion (see paragraph 23), does refer to specific social and ethnic groups. The evidence which I have seen, and which I have reviewed above in paragraphs 49 to 58, is that the School's existing policies do not achieve their stated aims in terms of the ethnic or socio-economic mix of the School, when viewed in the light of the context in which it exists. To that extent, there is evidence which would tend to support the Diocese's assertion. In other words, the evidence suggests that the admission arrangements could be contributing to a degree of social discrimination, and that they are not discriminating simply in terms of the catholicity of the applicants. The Diocese did not repeat its original concerns about the clarity of the arrangements and has presented no evidence on this point.

## **Conclusion**

70. The School's justification for departing from Diocesan guidance concerning its use of both baptism and church activities in the oversubscription criteria which it employs is that the alternative would have to be distance-based and this would allow the more affluent to have an advantage, worsening the ethnic and social mix of the School's intake.

71. For the reasons stated in paragraphs 49 to 59 above, I conclude that the ethnic and social mix of the School is currently unrepresentative of the area of the School in having a lower ethnic minority percentage, and by being relatively less disadvantaged. It would be strong evidence for the School's claims however if it showed that the ethnic mix of the School did bear comparison with that of the Catholic community from which it draws its pupils as opposed to that of the population at large.

72. An exercise carried out on the 2011 applications (see paragraph 62) does not in my view provide support for the effect that the School claims there would be as a result of following Diocesan guidance and not awarding points to applicants through the baptism or parish activities criteria (that is, of allowing distance of the home from the School to come into play). In any case, for the reasons stated in paragraphs 57 to 66 above, I am unable to agree with the School that using some form of distance-based criterion is the only



alternative. As explained in paragraph 61, and for the reasons stated there, I am of the view that there are alternative oversubscription criteria which could be used, and that if these were employed appropriately an improvement in the ethnic and social mix of the School is possible.

73. I am unconvinced that the School is able to justify fully its reasons for departing from Diocesan guidance in employing the oversubscription criteria which are the subject of the objections. Consequently I uphold those aspects of both objections that relate to a failure to comply with guidance from the faith body (see paragraphs 7,8 and 43 above).

74. I agree with both objectors that there is the potential for unfairness associated with the use of the oversubscription criteria which are the subject of the objections, but only with the Diocese in connection with the use of parish activities that there is evidence of unfairness of the sort that constitutes a breach of the Code, paragraph 1.72. I uphold this part of the Diocese's objection.

75. I have given very careful consideration in the light of my findings to whether I should make changes to the School's admission arrangements for 2012/13.

76. I am also mindful that parents have only until the end of October to make their expressions of preference, and that it would be unreasonable at this juncture to ask them to do so on an altered basis. Accordingly, but with some reluctance, I think it is now too late to amend the arrangements for 2012/13.

77. As far as the awarding of points for baptism is concerned, while the Diocese makes baptism (or reception) its criterion of membership, the School is also entitled to take Canon Law into account in faith-based oversubscription criteria. It seems to me that what Canon Law 867 has to say (see paragraph 22 above) can be used to justify recognition of early baptism, but not necessarily progressively to differentially recognise different dates of baptism, since the reference is only to "the first few weeks". The School has told me that in the exercise which they carried out, removing the awarding of points for date of baptism had little effect on the pattern of admissions. It may be in the light of this that the Governors will wish to remove the awarding of points for baptism, but had I been able at this juncture to do so in terms of the time available, I would now have been consulting the Governors concerning the details of a two-level points system which gave additional points for baptism before a certain date, and a lower level of points for baptism thereafter, since I am of the view that this is what can be justified by invoking Canon Law. I hope that the Governors will be mindful of this when considering the draft admission arrangements for 2013/14 prior to embarking on consultation.

78. Concerning the awarding of point for participation in parish activities, since to continue use of this approach would be to continue to depart from Diocesan guidance, I believe that the School must now do more to justify doing so. The evidence that I have reviewed in this determination is, I believe, unconvincing, and better justification will be needed if the School's practice is to continue in its arrangements for admissions in 2013/14.

**Determination**

82. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objections lodged by the parental objector and by the Archdiocese of Southwark.

83. I determine that for September 2012 admissions, the arrangements should nevertheless remain unaltered.

Dated: 20 October 2011

Signed:

Schools Adjudicator: Dr Bryan Slater