



## **DETERMINATION**

**Case reference:** ADA 2601

**Objector:** The Fair Admissions Campaign

**Admission Authority:** The Governing Body of Bury Church of England High School

**Date of decision:** 25 September 2014

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the governing body for Bury Church of England High School for admissions in September 2015.**

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

**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 was referred to the adjudicator on 17 April 2014 by the Fair Admissions Campaign (the objector), about the admission arrangements (the arrangements) for Bury Church of England High School, (the school) in Bury, the local authority area (the LA), a Church of England voluntary aided school for 11 to 16 year olds for September 2015. The objection concerns *"the overall extent to which preference is given to children from Christian families and the difficulty it presents to children from local South Asian families in gaining admittance."*

### **Jurisdiction**

2. The governors, as the admission authority for the school, determined the arrangements for admission in September 2015 on the 6 February 2014 in accordance with section 88C of the Act and they were subsequently published on the school's website. 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.

3. In addition, I have also used my powers under section 88I of the Act to consider the arrangements for admission to year 7 in September 2015 as a whole.

### **Procedure**

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

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

- a) the objector's email dated 17 April 2014 and the detailed form and further submissions dated 1 May 2014, 19 May 2014, 27 June 2014 and 14 July 2014;
- b) the school's response to the objection and supporting documents dated 30 April 2014 and other correspondence dated 7 and 24 May 2014;
- c) a letter from the headteacher of the adjoining school dated 16 June 2014;
- d) the Diocese of Manchester's (the diocese) guidance to schools and its response to the objection dated 7 May 2014;
- e) the response from the LA dated 8 May 2014;
- f) the LA's composite prospectus for parents seeking admission to schools in the area in September 2014;
- g) a map of the area identifying local schools;
- h) the school's most recent Ofsted report (December 2011);
- i) copies of the minutes of the meeting at which the governing body of the school determined the arrangements; and
- j) a copy of the determined arrangements.

6. I have also taken account of information received during a meeting I convened on 9 July 2014 at the school and subsequent correspondence. The meeting was attended by a representative of the objector and by representatives from the diocese, the LA and the school.

### **The Objection**

7. The objector states that the arrangements do not comply with paragraph 1.8 of the Code which says; "*admission authorities must ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group.*" The objection is "*the overall extent to which preference is given to children from Christian families and the difficulty it presents to children from local South Asian families in gaining admittance*".

### **Other Matters**

8. At the meeting on the 9 July 2014 I raised other matters concerning conformity with the Code as outlined below. These matters related to the admission arrangements for entry to year 7 in September 2015 and included queries raised by the objector in the submission of the 19 May 2014.

## Background

9. The school is a voluntary aided Church of England secondary school for 11 to 16 year olds within the Diocese of Manchester. The school has an assessed maximum capacity of 746 and currently has 780 students on roll. It is consistently oversubscribed for admissions to year 7. Its published admission number (PAN) for admission to year 7 has remained the same for the last five years at 156.

10. For the admission arrangements for September 2014, appropriate consultation was undertaken between 31 January 2013 and 1 March 2013 and the arrangements were determined by the governing body on 19 March 2013. The arrangements for September 2015 were unchanged and were determined by the governing body on 6 February 2014 and published on the school's website.

11. The arrangements were agreed following consultation with the diocese and having had due regard to the diocesan guidance. The arrangements ask parents to read the prospectus *"carefully"* and attend open days and open events including school tours *"to satisfy yourselves that our school is the appropriate school for your child, bearing in mind the Christian ethos of the school. We offer a Christian education based on the Anglican tradition which places emphasis on the importance of, and participation in, worship"*. The school does not have a catchment area.

12. The published oversubscription criteria are;

- 1) Looked after and previously looked after children without reference to faith.
- 2) Children with special medical or social circumstances without reference to faith.
- 3) Children who attend public worship regularly with their parent(s) at a Church belonging to Churches Together In Britain and Ireland or a local grouping of Churches Together.
- 4) Children who attend a church primary school whose foundation is in membership of Churches Together in Britain and Ireland
- 5) Any other children.

It goes on to provide details of how attending public worship regularly is measured and that where a single place remains within any category siblings and then distance criteria are used.

13. In 2012, there were 173 first preference applications for the 156 school places, 134 pupils were admitted under criteria 1 to 3 and 22 were admitted under criterion 5 relating to any other children. Criterion 4 (above) was new to the arrangements in 2014. Seventeen applications were unsuccessful.

14. In 2013, there were 232 first preference applications for the 156 school places, all 156 pupils were admitted under criteria 1 to 3. Seventy six were unsuccessful including a number who attended worship.

15. In 2014, there were 177 first preference applications for the 156 school

places, 120 pupils were admitted under criteria 1 to 4 and 36 were admitted under criterion 5; any other children. Twenty one were unsuccessful.

### **Consideration of Factors**

16. I have considered the objection with reference to paragraph 1.8 as cited by the objector “*admission authorities must ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group.*” and other relevant paragraphs of the Code including paragraph 1.36 which states that “*schools designated by the Secretary of State as having a religious character may use faith –based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed.*”

17. I have also considered the objection in the light of the Equality Act 2010 and the exemption within it for faith schools. The Act states under section 85 that

“ (1). *The responsible body of a school to which this section applies must not discriminate against a person—*

*(a) in the arrangements it makes for deciding who is offered admission as a pupil;*

*(b) as to the terms on which it offers to admit the person as a pupil;*

*(c) by not admitting the person as a pupil.*

*(2) The responsible body of such a school must not discriminate against a pupil—*

*(a) in the way it provides education for the pupil;*

*(b) in the way it affords the pupil access to a benefit, facility or service;*

*(c) by not providing education for the pupil;*

*(d) by not affording the pupil access to a benefit, facility or service;”*

The exemption for faith schools under schedule 11 paragraph 5 of the Equality Act 2010 states that “*section 85 (1) and (2)(a) to (d) so far as relating to religion or belief does not apply in relation to a school designated as a school with religious character.*”

18. The objection states that the arrangements do not comply with paragraph 1.8 of the Code and points out that “*the school is located in an area where race and religious belief within its local residential population very strongly correlate for some sections of the population*”.

19. The objector acknowledges that paragraph 1.36 of the Code permits faith schools to have faith-based oversubscription criteria and this is enabled by schedule 11 paragraph 5 of the Equality Act 2010 which disapplies the general prohibition on discrimination by religion or belief in section 85 of the same act. However, the objector maintains that this is not a blanket freedom

as limitations are placed on this by the rest of the Equality Act and the Code. The objector suggests that the arrangements are contrary to paragraph 1.8 of the Code because *“the extent to which selection due to Church attendance and membership in the school’s oversubscription criteria also serves to control admissions on racial lines, namely that the policy disadvantages children from South Asian families who in large part, are non-Christian”*.

20. The objector defines families of South Asian heritage as those who, on census information, describe their ethnicity as Indian, Pakistani or Bangladeshi. The objector uses census information to show the ethnicity and religion of the local population and concludes that *“being of Indian, Pakistani or Bangladeshi heritage in Bury, makes one significantly less likely to be Christian than any random member of the general public”*. The statistics show that the majority of Asian families in Bury are of Pakistani heritage and the objector concludes that *“.. to a significant extent the disadvantage is for those of Pakistani origin and Muslim background”*.

21. The objector compares the ethnicity statistics for the local community with the statistics of the school and concludes that there is a far greater proportion of South Asian families living in the community around the school than can be found attending the school. The school does not disagree with this conclusion, it is a statement of fact.

22. The chair of governors reports that the school can trace its origins to 1748 when it opened as a charity school. The current school opened in 1964 as a Church of England school and is the only such school in Bury. It has traditionally served a wide geographical area including Bury and surrounding areas of Greater Manchester. The governing body includes appointees from four separate Deanery Synods together with foundation governors appointed by the Diocese and the Parochial Church Council.

23. The chair of governors draws attention to the fact that the Code does not require schools to give priority to those who live geographically close to the school and maintains that it is therefore invalid to use a local community as a comparator. He goes on to say that the Code allows an admission authority to choose to define a catchment area, but there is no requirement to do so. He maintains that the school’s arrangements make it clear that it does not have a catchment area.

24. The chair of governors refers to paragraph 1.36 of the Code in which schools which are designated by the Secretary of State as having a religious character may use faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed. He reports that in the school’s view these arrangements comply with paragraph 1.36, that the arrangements are clear and that parents can easily understand them in line with paragraph 1.37 of the Code which states that *“admission authorities must ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied”*.

25. He points out that *“the school’s admissions criteria do not give priority to children who are baptised. .... they reflect diocesan recommendations ..... attendance at public worship is open to all at any parish church in the Church*

*of England” and concludes that “the school’s arrangements are consistent with the requirements of the Code, take account of diocesan guidance and do not disadvantage unfairly, either directly or indirectly, a child from a particular racial group”.*

26. The school says that the objector’s use of the phrase *‘selection due to Church attendance and membership’* is factually incorrect. Faith-based oversubscription criteria are based on attendance at public worship and do not require any faith commitment or church membership on the part of the person attending. The school is adamant that the characteristic which is in question under the equalities legislation is religion and not race and that this element of the arrangements is allowed under the exemption of the Equality Act 2010.

27. The school shares a boundary with another secondary school. The headteacher of the neighbouring school states in her letter of 16 June 2014 that her school is a successful community school which is proud to serve the community. She suggests that both schools have their own distinctive ethos. She acknowledges that Bury Church of England School is a faith school and suggests that it serves its faith community which is spread throughout Bury and beyond. She goes on to say that *“the current arrangement has allowed the two schools to co-exist most successfully bringing measurable benefit to the students and parents of both our schools.”* She concludes that *“the present arrangement has undoubtedly stood the test of time, contributes significantly to the excellent student outcomes achieved in Bury and has allowed two schools to co-exist in a positive and mutually supportive manner”.* The chair of governors suggests that the admission arrangements for the two schools have been in place for some time and that the other school *“serves the local area”.*

28. All admission arrangements which utilise oversubscription criteria give increased priority to some children and therefore lower priority to others. In the oversubscription criteria, families who attend Christian worship have a higher priority for admission than those who do not. This is in line with the Code and the exemption under the Equalities Act 2010. This means that children who are not practising Christians and who wish to apply to the school will have lower priority for admission. The objector suggests that this discriminates on racial grounds because children of South Asian heritage are more likely to practice a faith other than Christian. I am of the view that the oversubscription criteria prioritise on faith and not racial grounds.

29. In my consideration I have also taken into account the wide geographical area from which the school draws its pupils, its statement that it does not have a catchment area and the locality and capacity of other schools in the area.

30. The objector cites section 19 of the Equality Act which *“outlaws indirect discrimination on the basis of race if it cannot be shown ‘to be a proportionate means of achieving a legitimate aim.’”* The objector suggests that *“the school’s policy falls short”* because *“it is not clear to us whether a ‘legitimate aim’ is being pursued, and if so what it is”.* The objector goes on to say that *“given national church policies and the openness of most other Church of England schools (including some schools within the diocese) the current*

*indirect racial discrimination by this school, cannot in our view be said to be a proportionate means of achieving a legitimate aim, whatever that aim may be.*" The objector maintains that the arrangements do not comply with the provisions of Equality Act as they result in indirect discrimination on the basis of race because they cannot be justified as a proportionate means of achieving a legitimate aim.

31. The school states that *"it is known as Bury Church of England High School because that is exactly what it is"* and quotes from the arrangements; *"We offer a Christian education based on the Anglican tradition which places emphasis on the importance of and participation in worship"*.

32. The school's published mission statement states that it is committed to the provision of a high quality education within a Christian context and goes to say *"At the heart of this commitment is the notion of the uniqueness and infinite worth of the individual, that every person's being is valuable in the eyes of God..... We are determined to work to enable the school to pursue its commitment to Christian values and principles, to be a worshipping community and to continue learning as it looks to Jesus Christ and faces the challenge of the Gospel in its life and work."*

33. The most recent Ofsted inspection (December 2011) rated the spiritual, moral, social and cultural development of students as outstanding and stated that *"The school's Christian mission statement is successfully implemented and pervades the outstanding spiritual, moral, social and cultural development of students."*

34. I am of the view that the statements within the published mission statement of the school and in the introduction to the arrangements indicate that the school does have very clear aims and the inspection report acknowledged that the mission statement is successfully implemented. The school is a designated Church of England school and therefore I conclude that these statements constitute a legitimate aim of the school.

35. The school is permitted by the Code to use faith-based oversubscription criteria when it is oversubscribed and this has been the case in the last four years. In 2013 there were more faith-based applications than places and therefore a number of pupils who attended worship were not offered a place. In three of the last four years all faith-based applications have been accepted and also other children who do not attend worship, have been offered a place. The school serves a wide geographical area and the demand for places from families who worship in a Christian church, is indicative of the need across the area. In the absence of these criteria a proportion of worshipping Christians may be disadvantaged by not being admitted to this faith school. Therefore, I am of the view that the arrangements are a proportionate means of achieving the legitimate aims of the school. If the objector is right and the arrangements disadvantage local South Asian families, they are both fair and proportionate having regard to the school's legitimate aim.

36. The objector also suggests that the school has not *"had due regard to satisfy the requirements"* of the public sector equality duty (PSED); section

149 of the Equality Act 2010.

37. The objector refers to PSED; Section 149 of the Act which *“requires public authorities and those exercising public functions to consider and identify the equality implications of their policies and actions as well as to proactively 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 projected characteristic which include race and religion or belief.”*

38. The objector provides references to a number of academic works which conclude that ethnic diversity in schools can lead to positive outcomes for the individuals and the communities at large. He goes on to quote from the reports and reviews which were commissioned after the race riots in some Lancashire towns which suggest that *“ethnic segregation in the school system undermined community cohesion.”* He concludes that the research is pointing to the contribution that *“shared schooling”* can make towards improved community cohesion.

39. The school suggests that they have had regard to the Equality Act in this respect. The school reports that the arrangements ensure that *“places are available to all, irrespective of whether they can afford a house in the locality of the school of their choice or not, and irrespective of their racial heritage”*. The chair of governors says that *“We are pleased to welcome pupils from a range of racial backgrounds to our school and believe our policy is fair to all, particularly as there is no requirement for Christian faith, but rather for attendance at public worship which is open to and accessible to all, irrespective of social-economic or racial background.”* He goes on to say that *“we admit pupils from Asian, Afro-Caribbean, Chinese and White backgrounds, some of whom have families who would call themselves Christian, some Jewish, some Muslim, some Buddhist, some of other faiths and some of no faith.”*

40. The PSED requires the school to have due regard to equalities implications whenever making decisions. This covers, not only the admissions arrangements, but also curriculum planning and delivery, organisation and structure of the school and the management of people and resources, The school’s mission statement reflects the ethos of the school and one part states *“We are determined to work to enable the school to: provide a positive environment in which all pupils, irrespective of ability , age ,gender, ethnic or social background, may have equal opportunities to achieve their potential and to enjoy doing so”*.

41. The school is proud of its links with the diocese of Lahore in Pakistan and exchanges and visits have been a regular part of the school’s curriculum for some years. The links have a high profile in the displays around the school, in the publicity distributed by the school and on its website. Visits by staff and pupils to a number of schools in the Lahore diocese has led to a special link with St Denys’ in the Murree hills which is to become the school’s partner school .



42. The inspection report of December 2011 judged the effectiveness with which the school promotes community cohesion as good.

43. In line with the PSED requirements, the school, as the public authority, must consider and identify the equality implications of their policies and actions as well as to proactively consider how to address equality issues arising. The school should have 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 include race and religion or belief.

44. From the school's published documentation, its inspection report and the reports from the chair of governors and the headteacher, I conclude that the school has been mindful of the requirements of PSED and has acted appropriately in considering the equality implications and has had regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations.

#### Other Matters

45. At the meeting on the 8 July I drew the attention of the school to the additional issues which did not conform with the Code. Criterion 4 of the oversubscription criteria states that "*Children who attend a church primary school whose foundation is in membership of Churches Together in Britain and Ireland.*" This is contrary to paragraph 1.9b of the Code which states that "*arrangements **must not**; ...take into account any previous schools attended, unless it is a named feeder school*" and the requirements set out in paragraph 1.15 if feeder schools are used. Naming a type of schools does not comply with the Code.

46. The arrangements did not include a tie breaker which is contrary to the Code at paragraph 1.8 which states that "*Admission arrangements **must** include an effective, clear and fair tie breaker to decide between two applications that cannot otherwise be separated.*"

47. The objector brought three matters to my attention in the submission of the 19 May 2014. In the letter of the 27 June the objector restates the objection in terms of the suggested indirect discrimination on the grounds of race and the school's lack of regard to PSED and goes on to say that "*It is only these objections that we ask the adjudicator to make a determination*". I have therefore treated the other issues as queries and drew the school's attention to them where relevant at the meeting. There were three issues;

- Whether the school's arrangements define the word "*regularly*" when referring to attending public worship. The arrangements make it clear that "*points are allocated based on information supplied by parents and confirmed by the Church minister/official to enable prioritisation with priority being given to those having the higher attendance.*" This is on page 4 of the arrangements. Page 6 and 7 form the supplementary information form (SIF) where questions are asked about frequency of attendance at worship and there are clear definitions and worked examples of how priority is calculated. The SIF forms part of the

published arrangements. I conclude that the arrangements in this respect are clear and easily understood and that they are accessible to all.

- The SIF asks for the gender of the child which is contrary to paragraph 2.4 of the Code which states that the *“the admission authorities must only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability”*.
- The arrangements for admission to the school for September 2014 have been removed from the website prior to the end of the school year and contrary to paragraph 1.47 of the Code which states that authorities *“must publish a copy of the determined arrangements on their website displaying them for the whole offer year (the academic year in which offers for places are made).”* The chair of governors responded to this by saying that the arrangements for September 2014 were removed from the website *“as all the processing of applications has been completed.... and we did not want to cause any confusion to prospective parents applying for next year’s places”*. While I understand the sentiment of this statement it is a statutory requirement for the school to display the arrangements for the full academic year in which offers for places are made.

**48.** The school is keen to comply with the Code and in a letter dated 16 July 2014 the chair of governors reported that the school and the diocese had agreed some changes to the arrangements in line with our discussions at the meeting. The revised arrangements which the school is keen to publish in time for the September 2015 application process were also sent to me. I can confirm that these arrangements have been amended to take into account the issues raised at the meeting. The school may publish these arrangements in line with paragraph 3.6 of the Code which states that *“Once admission arrangements have been determined for a particular academic year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirements of this Code, admissions law, a determination of the adjudicator or any misprint in the admission arrangements.”*

## **Conclusion**

**49.** I do not uphold the objection that the school contravenes the Equality Act because I am of the view that the admission arrangements are a proportionate means of achieving a legitimate aim. I conclude that as a Church of England School it is justified in its aims to offer a Christian education based on the Anglican tradition which places emphasis on the importance of, and participation in, worship. Applicants who attend worship are legitimately admitted as a priority and the numbers applying indicate the needs of the wide area for which this is the only Church of England secondary school. I therefore conclude that the arrangements are a proportionate means of achieving the legitimate aim.

**50.** I do not uphold the objection that the school has not paid due regard to

the PCED. I acknowledge the school's mission statement, the inspection report and the high profile of local and international links.

51. In summary, the objector suggests that the arrangements do not conform with the Code at paragraph 1.8; "*admission authorities must ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group.*" I have taken into account the fact that children of the Christian faith who apply to the school will be given priority for admission and that this would be unlikely to give priority to the majority of families of South Asian origin, but that if the arrangements do disadvantage children from South Asian families they are both fair and proportionate having regard to the school's legitimate aims. I have also taken into account the Equality Act 2010 and its exemption for faith schools and the school's adherence to the PSED as explained above and I am of the view that the arrangements do not unfairly discriminate either directly or indirectly a child from a particular social or racial group. I have demonstrated that the school has legitimate aims and that the admission arrangements are a proportionate and legitimate means of achieving those aims. I therefore do not uphold the objection.

52. At the time of the objection there were other elements of the arrangements which were not compliant with the Code as outlined above. The arrangements have been revised by the school.

### **Determination**

53. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the governing body for Bury Church of England High School for admissions in September 2015.

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

55. 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: 25 September 2014

Signed:

Schools Adjudicator: Mrs Ann Talboys