

DETERMINATION

Case reference: ADA002260 and ADA002261

Objector: Two parents

Admission Authorities: St Edward's Royal Free Ecumenical Middle School, Windsor and St Peter's Church of England Middle School, Windsor

Date of decision: 10 August 2012

Determination

In accordance with section 88 H (4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by St Edward's Royal Free Ecumenical Middle School, Windsor and St Peter's Church of England Middle School, Windsor.

The referral

1. Under section 88 H (2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by two parents (the objectors), about the admission arrangements (the arrangements) for St Edward's Royal Free Ecumenical Middle School, Windsor (St Edward's RF) and St Peter's Church of England Middle School, Windsor (St Peter's) for September 2013. St Edward's is a joint Roman Catholic and Church of England Voluntary Aided Middle School serving children age 9-13. St Peter's is a Church of England Voluntary Aided Middle School serving children age 9-13.

2. The objection is to the combined impact of the two schools' arrangements on children living in Eton Wick whose parents choose a Catholic first school for their child. The assertion is that this is contrary to the Admissions Code (the Code) and to the Equality Act 2011.

Jurisdiction

3. Each set of arrangements was determined under section 88 C of the Act by the appropriate School's governing body, which is the admission authority for its respective school. The objectors submitted their objections to these determined arrangements on 19 May 2012. I am satisfied the objections have been properly referred to me in accordance with section 88 H of the Act and they are within my jurisdiction.

Procedure

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

The documents I have considered in reaching my decision include:

- a. the objector's form of objection dated 19 May 2012;
- b. the response of St Edward's RF to the objection dated 17 June 2012 and supporting documents;
- c. the responses of St Peter's to the objection dated 31 May and 19 July 2012 and supporting documents;
- d. the responses of the Catholic Diocese of Portsmouth and the Anglican Diocese of Oxford
- e. the composite prospectus from the borough of Windsor & Maidenhead, the local authority (the LA) for parents seeking admission to schools in the area in September 2013;
- f. maps of the area identifying relevant schools;
- g. confirmation of when consultation on each of the arrangements last took place;
- h. copies of the minutes of the meeting of each governing body at which the arrangements were determined; and
- i. a copy of each school's determined arrangements.

The Objection

5. Education in the Windsor is organised on a three tier basis: first schools which teach children up to age 9; middle schools (9-13) and upper schools (13-18). The objectors have a daughter who is due to move to middle school in September 2012. They recognise that the adjudicator cannot deal with their personal situation nor change matters for the 2012 intake. They do believe that by objecting to the current situation they can help avoid other children from the locality receiving what they perceive to be unlawful discrimination in 2013 and beyond.

6. The family live in Eton Wick, which is on the edge of the LA area. There is a Church of England primary school in the village which most of the local children attend. The members of this family are practising Roman Catholics, and so they chose to send their daughter to St Edward's Roman Catholic First School (St Edward's) just over a mile from the village and on the same site as St Edward's RF.

7. There are two Voluntary Aided middle schools in the locality and the family hoped and expected that their daughter would be accepted for one or other. They were disappointed when she was not, even on appeal.

8. The problem as they perceive it is not with either school's arrangements, each of which they acknowledge is lawful and accords with the Code and other legislation. The problem comes with the combined effect of each set of arrangements.

9. St Edward's Royal Free shares a site and part of its name with St Edward's First School – a matter of significance to people's perceptions. But whilst St Edward's First School is a Roman Catholic Aided School, St Edward's RF is a joint Church of England and Roman Catholic Voluntary Aided middle school. The arrangements seek to reflect the different emphases of the two churches regarding admissions. In broad terms, Church of England schools seek to prioritise local children, whilst Roman Catholic schools give priority to Catholic children. The Governors, who are the admissions authority, work closely with the two dioceses, as school and dioceses confirm, to be true to both traditions in a situation where the school is regularly oversubscribed. The oversubscription criteria give priority to looked after children, to siblings, to children with strong medical or social reasons for needing this school, and, a new category for 2013, to children of staff. The next category (5) is for children or the parents of children who are baptised within either the Anglican or the Roman Catholic Church. This is a category that will include both practising and non-practising members of the two churches and so will always attract a large number of the applicants. It is therefore a category where a tie-breaker is needed, and the school has determined that straight line distance shall be the determining factor. Given the number of children applying each year and the distance from the school, the chances of a child from Eton Wick being offered a place in this category are very slim.

10. The school asserts that catholic children living in Eton Wick and attending St Edward's would probably still not be successful in their application were the governors to designate the four nearest schools, those from whom their pupils primarily come, as feeder schools. In the current situation, due to the popularity of the school and the large number of children applying under category 5, a child living in Eton Wick, just over a mile from the school, is unlikely to be offered a place because the cut-off point comes each year at under one mile. Were the nearest four schools to be named as feeder schools, their combined published admissions numbers (PANs) for 2013 are 180 (150 for 2012), while St Edward's RF has a PAN of 120 (93 in 2012). Therefore distance would once again become an issue and the result would probably be the same for children living in Eton Wick.

11. The governors also consider that designating feeder schools would result in greater unfairness for local children who fulfil the faith criteria, and greater imbalance between children of the two churches. Both dioceses agree.

12. St Peter's Church of England Middle School is, as its name suggests, a Church of England Voluntary Aided school. In accordance with the Church of England's educational policy, St Peter's seeks to be distinctively a faith school that is open to local children of the faith and also to other local children. As the school affirms: "We are both a community school and a faith school that welcomes children from many different faiths ... while reflecting our Christian

vision.” Therefore, after the necessary priority given to looked after children, children are admitted who live in the parish of Old Windsor followed by siblings of current pupils who do not live in the parish. Governors agreed after consultation that they would then designate four first schools that serve the local community and are Church of England schools as feeder schools. Eton Wick first school is included in this group because St Peter’s recognizes that although it is not particularly close, it shares an ethos with St Peter’s. Also, were St Peter’s to rely solely on distance as an oversubscription criterion, children from Eton Wick might find it difficult to gain admission to St Peter’s. Within each criterion priority is given to children of parents who are practising Christians, and then in each category straight line distance from the school is the tie breaker. The school is always heavily oversubscribed.

13. The objectors do not object to either set of arrangements, but rather to the unintended but real impact on a particular group of children of putting the two together. If a child living in Eton Wick, particularly one from a practising Christian family, goes to the village school, which is a Church of England school, then that child will probably be admitted to St Peter’s because, as mentioned above, Eton Wick is designated as a feeder school. However, the only Roman Catholic first school in the area, St Edward’s, is further away from St Peter’s and is not one of the feeder schools. A child attending that school is unlikely to gain a place, even when the distance tie break is used.

14. Similarly, as I outlined before, because St Edward’s RF has a very broad definition of faith, namely baptism, and uses distance as the primary oversubscription criterion, then if the school continues to be heavily oversubscribed a child from Eton Wick will almost certainly not be offered a place, even if that child attends the first school on the same site.

15. The objectors argue that the combined impact of these two lawful sets of arrangements is unlawful. They point to paragraph 1.8 of the Code:

Oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.

16. The Equalities Act 2011 states:

Indirect discrimination

A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

A applies, or would apply, it to persons with whom B does not share the characteristic, it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it, it puts, or would put, B at that disadvantage, and A cannot show it to be a proportionate means of achieving a legitimate aim.

The relevant protected characteristics are—

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- race;
- religion or belief;
- sex;
- sexual orientation.

And with specific reference to schools admissions

Pupils: admission and treatment, etc.

The responsible body of a school to which this section applies must not discriminate against a person—

- in the arrangements it makes for deciding who is offered admission as a pupil;
- as to the terms on which it offers to admit the person as a pupil;
- by not admitting the person as a pupil.

17. In support of their submission, the objectors point to the determinations of another adjudicator regarding Wimbledon College (ADA 001980) and Richard Challoner School (ADA001981). I agree that the Wimbledon situation was similar in some ways. Both schools were faith schools. One school used feeder schools as the major oversubscription criterion. The other had recently moved from the use of feeder schools to the definition of a catchment area – essentially a distance criterion. In summary, the adjudicator accepted that putting these two different arrangements together did create some unfairness. In that particular locality, he also accepted that the use of feeder schools led to unfairness. Because both the Wimbledon schools are Roman Catholic schools, the adjudicator felt that there was a responsibility for their policies to reflect a common approach.

18. The situation in Windsor is different. As mentioned above, one school seeks to be true to its Church of England heritage. The other tries to honour its ecumenical character, both Church of England and Roman Catholic. Also, the objectors do not argue that any one policy is unfair, which they did in Wimbledon.

19. What these objectors allege is that the combined effect of the two policies is discriminatory against children from Eton Wick who choose to attend the only Roman Catholic first school in the borough.

20. One legal definition of discrimination is “*The act of denying rights, benefits, justice, equitable treatment, or access to facilities available to all others, to an individual or group of people because of their race, age, gender, handicap or other defining characteristic.*” Other definitions are remarkably similar.

21. The effect of the two middle schools' arrangements on children from Eton Wick who attend St Edward's is not in fact because of their religion or belief but because of the choice that was made for a Catholic first school. Neither St Edward's nor St Edward's RF suggest in their literature that there is any automatic transfer from one to the other, even though they are on the same site. (I shall return later to the wording used by St Edward's in this regard.) All parents from the area who make choices on behalf of their children on the grounds of their faith, should do so in the knowledge that, as in many other parts of the country, there are not enough places in secondary schools designated as having a religious character to accommodate all children attending primary or first schools that are similarly designated. In this situation, parents who choose to send their child to the only Roman Catholic first school in the borough will do so knowing that there is no specifically Roman Catholic secondary school, and that the two faith-based secondary schools have their own admissions criteria.

22. So I cannot accept that there is discrimination against children living in Eton Wick who attend St Edward's and seek a place at either St Edward's RF or St Peter's. Such children may be disadvantaged, but they are disadvantaged by their freely made and deliberate choice of a first school. Providing all the schools involved are clear both in their literature and in their discussions with parents, then that is all that can be expected of them.

23. The objector's state that they had assumed that their daughter would probably go from St Edward's to St Edward's RF, and were pleased that she would make a transition from First to Middle school in familiar surroundings. Given that these two schools share much of their name, that they inhabit the same site, and that both have some Roman Catholic identity, I can see how the assumption could easily if erroneously be made. Looking through the literature of both schools there is nothing to support that assumption. However, greater clarity might be helpful to parents in the future.

- a. A note to St Edward's RF admissions policy document for 2013 lists the first schools within the Windsor system. The school has agreed to add the sentence "We do not give priority to children on the grounds of which school they currently attend."
- b. St Edward's have agreed to raise the matter with the full governing body at its meeting in September to see how it can be made clearer to parents applying for a place for their child that there should be no presumption that their child will be offered a place at St Edward's RF.

Other Matters

24. The objectors are unhappy with the LA. They point to paragraph 3.2 of the Code

Local authorities **must** refer an objection to the Schools Adjudicator if they are of the view or suspect that the admission arrangements that have been determined by other admission authorities are unlawful

They raised the matter with the LA who took the view, rightly I think, that neither of the two sets of arrangements is unlawful and that there was therefore no need for it to object to the Adjudicator. As discussions progressed the LA pointed to the Wimbledon adjudications mentioned above and the possibility of the objectors raising an objection themselves with the Adjudicator.

Conclusion

25. For practising Catholic families living in Eton Wick there are difficult choices to be made which have an impact further along the educational line. If the child first enters school at the local village school which is Church of England, then this would very probably lead to a place being offered at St Peter's Church of England Middle School, some five miles away. If the choice is for the only Catholic first school in the borough, then the child will receive a Catholic education, but may well not be offered a place at a faith-based middle school.

26. In order to fulfil its vision as a school offering education within a distinctively Christian ethos to all children from the local community, St Peter's designating local feeder schools is a reasonable way of achieving that. This ensures that children from outlying areas like Eton Wick have the opportunity to be offered a place.

27. St Edward's RF is similarly concerned to offer education within a distinctively Christian ethos, but because of its joint Church of England and Catholic foundation seeks to give priority to those of the faith. Because they define 'of the faith' in very broad terms, a tie break becomes particularly important, and the school has determined that distance is the fairest determinant. This has meant that Catholic children attending St Edward's from Eton Wick will probably not be offered a place.

28. St Edward's RF could name the nearest four schools, those from which most children currently come, as feeder schools but there would still be a need for a tie-break, which would probably need to be distance, and which would again lead to a Catholic child from Eton Wick not being offered a place.

29. As St Edward's and St Edward's RF share a site, St Edward's could be named alone as a feeder school. The middle school is clear that this would be unacceptable, as it might well unbalance the intake, which the school and its dioceses believe should reflect both church communities equally. However, given the natural assumption that children will transfer, it behoves both of these schools to be absolutely clear and explicit that there is no such automatic right. I am pleased that both schools have agreed to see how they can clarify the position in each of their school's documentation as stated above.

30. I am clear that both schools have arrangements that are in accordance with the Code and with Equalities legislation. I am also clear that, when put together, there may be perceived to be a disadvantage to some individuals but that this does not amount to discrimination.

Determination

31. In accordance with section 88 H (4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by St Edward's Royal Free Ecumenical Middle School, Windsor and St Peter's Church of England Middle School, Windsor.

Dated: 10 August 2012

Signed:

Schools Adjudicator: Dr Stephen Venner