

## **DETERMINATION**

**Case reference: ADA2388**

**Objector: A Parent**

**Admission Authority: King David Primary School, Liverpool**

**Date of decision: 28 September 2012**

### **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 King David Primary School, Liverpool for admissions in September 2013.**

**I have also considered the arrangements in accordance with section 88I (5) and determine that they do not comply with the requirements relating to admission arrangements because they are not published on the School's web-site.**

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

### **The referral**

1 Under section 88H (2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by a local parent, (the objector), about the admission arrangements (the arrangements) for September 2013 for King David Primary School (the school), a voluntary aided school in Liverpool which is under the religious authority of the Chief Rabbi of the United Hebrew Congregations of the Commonwealth, and which serves pupils aged four to 11. The objection is to the nature of the evidence required to demonstrate religious commitment.

### **Jurisdiction**

2 These arrangements were determined under section 88C of the Act by the school's governing body, which is the admission authority for the school. The objector submitted her objection to these determined arrangements on 31 July 2012. As the objection was received after 30 June, the date specified in Regulation 23 of The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012, I am not required to consider it but I took the view that it is better for objections to be resolved where possible and that no one would be prejudiced by taking it late. 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 to investigating the matters raised by the objector I have also used my power under section 88I (5) of the Act to review the admission arrangements as a whole and considered whether they comply with the requirements relating to admission arrangements imposed by the Act.

### **Procedure**

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

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

- the objector's letter of objection dated 31 July 2012;
- further evidence submitted by the objector which was attached to a letter dated 20 August 2012;
- the school's response to the objection, dated 6 September 2012, and supporting documents;
- the Catholic Archdiocese of Liverpool's (the Archdiocese) response to the objection, dated 14 September 2012, and supporting documents;
- the Liverpool City Council's composite prospectus for parents seeking admission to schools in the area in September 2012;
- the latest Ofsted inspection report on the work of the school dated October 2010; and,
- a copy of the determined arrangements.

### **The Objection**

6 The objection is to the way in which the school requires a parent or carer to provide evidence of regular religious commitment as required by the school's oversubscription criterion category 5. The objector believes that this is unfair and discriminates against Catholics.

### **Background**

7 The school is a voluntary aided school which describes itself as "*under the religious authority of the Chief Rabbi of the United Hebrew Congregations of the Commonwealth with a commitment to the practice of modern Orthodox Judaism and a regard for Israel in Jewish life*".

8 According to the October 2010 Ofsted inspection, which found the school to be satisfactory, the school is located in a relatively advantaged suburb of Liverpool. The admission number is 60, around one quarter of its pupils are Jewish, and the school is significantly oversubscribed. For September 2012, the school planned to admit 11 children of the Jewish faith, 25 children with siblings already on roll and 24 children of other faiths. The

school shares buildings with the King David High School, the King David Kindergarten and a Jewish Community Centre.

9 The school's oversubscription criteria for admission in 2013 are as follows:

- Category 1 Children of the Jewish Faith who are looked after or who were looked after but ceased to be so because they were adopted or became subject to a residence order or special guardianship order.
- Category 2 Jewish Children.
- Category 3 Looked after children, or who were looked after but ceased to be so because they were adopted or became subject to a residence order or special guardianship order.
- Category 4 Siblings.
- Category 5 Children whose families demonstrate regular religious commitment and values.
- Category 6 Other children.

10 For each category, the school provides further and appropriate information about the definition of terms and the relevant evidence which will be required. In relation to category 5, the school states that parents "*must submit a Certificate of Religious Practice and a supporting letter on headed notepaper from the minister of that place of worship confirming that the family worships there on a regular basis.*"

### **The Objection**

11 The objector describes herself as "*a practicing Roman Catholic who attends Mass every week.*" However, she states that, in October 2010, the Roman Catholic Archdiocese of Liverpool informed all priests and deacons in the Archdiocese of its new policy that they must "*not engage in writing in support or signing any Certificate of Religious Practice for school applications.*" She also states that a letter explaining this decision was sent by the Archdiocese to all local schools, including King David's. I have a copy of this letter which is dated 26 October 2010.

12 The objector applied for a place, under category 5, for her daughter at the school for September 2012 but was unsuccessful. She was aware of the Archdiocesan policy so submitted several pieces of alternative evidence to support her contention that she regularly attends Mass. The school explained its decision not to offer a place to the objector's daughter in the following way.

*"The family was able to provide a range of references from people involved in the parish and a baptismal certificate. However, they were unable to provide a Certificate of Religious Practice signed by the minister or a letter from the Parish Priest. The governors read the information explaining the situation.*

*However, the governors have specified this form of evidence and only considered under Category 5 children who were able to provide it. The governors concluded that that the application did not meet the criteria.”*

13 The objector believes that the Archdiocesan policy means that Catholics are now unable to present evidence of commitment to worship in the form required by the school. She has therefore concluded that the admission arrangements are unfair as it is *“impossible for a Catholic to be admitted to this school”*, that therefore *“Catholics are being discriminated against”*, and that the requirements of paragraph 1.8 of the Code have not been met.

### **The Response of the School**

14 The school’s governing body discussed the implications of the Archdiocesan policy and concluded that *“it would neither be appropriate nor fair to have separate rules for different religions.”* The school’s oversubscription criterion 5 requires evidence of regular religious commitment and it believes this can only be demonstrated by a Certificate of Religious Practice (CRP) signed by a religious leader. The school states it has considered other evidence, for example baptismal certificates, but believes this is evidence of faith membership rather than religious commitment. The school believes its approach is reasonable and notes that this issue was not commented on during the consultation on its admission arrangements. It also notes that some Catholic priests continue to sign the school’s CRP.

15 The school considered the objector’s application for a place for her daughter at the school and acknowledges that the objector provided a range of evidence. However, the school concluded that the evidence presented did not meet the requirement of criterion 5 as it did not include a completed CRP as specified in its admission arrangements. .

### **The Response of the Catholic Archdiocese**

16 The Archdiocese confirms that the policy it introduced in autumn 2010 prohibits priests from completing CRPs and that they are restricted to providing evidence of baptism. A letter from the Diocesan director of schools to local own school admission authorities dated 26 October 2010 ends by stating *“I am sure you will wish to seek legal advice on whether in these circumstances in the future you may be faced with a legal challenge from parents on the possible grounds that your policy (if unamended) may be discriminating against certain applicants.”* In a letter to the Blackburn Church of England Diocesan Board of Education on the same subject, dated 18 May 2012, the director states *“it is our view that there is no discrimination on our part in the Archdiocese’s position”*. The director’s email to OSA dated 13 September 2012 reiterates his view that *“admission bodies may need to look closely at their own policies.”*

### **Consideration of Factors**

17 Paragraph 1.36 of the Code permits a school designated by the Secretary of State as having a religious character to use faith-based oversubscription criteria. The school is so designated and, along with its

linked secondary school, has properly agreed an oversubscription criterion which requires evidence, in the form of a CRP, of regular religious commitment. This approach is consistent with that of other schools under the authority of the Chief Rabbi of the United Hebrew Congregations of the British Commonwealth.

18 Paragraph 1.37 of the Code requires that parents can easily understand how any faith based oversubscription criteria will be reasonably satisfied. The school's oversubscription criterion 5 requires families to demonstrate regular religious commitment and clearly states what evidence, a completed CRP and a "*supporting letter on headed notepaper from the lead minister confirming that the family worships on a regular basis. Family refers to the child and their parent/s or guardian,*" is required. The CRP form itself contains clear instructions and is of straightforward design. I believe that oversubscription criterion 5 meets the requirements of paragraphs 1.36 and 1.37 of the Code.

19 The objector contends that the requirement for a CRP does not meet the general requirement of paragraph 1.8 of the Code that oversubscription criteria are fair nor the requirement of the Equality Act 2010 which prohibits discrimination on the grounds of religion or belief. However, Schedule 11 to the Equality Act permits schools designated by the Secretary of State as having a religious character to use faith based oversubscription criteria as part of their admission arrangements.

20 The school states it wishes to use a faith based oversubscription criterion which emphasises regular religious commitment rather than membership of a faith and believes it is fair to have the same rules for all religions. The nature of a faith based oversubscription criterion is a matter for the school and the representative religious body. In this case, I believe that the relevant oversubscription criterion (criterion 5) is reasonable (the requirement for evidence of religious commitment), clear (the evidence required to demonstrate such commitment) and objective (the approach is clearly stated and applied to all religions).

21 In recent years, between a third and a half of the school's intake has been offered places under criterion 5. During the four year period 2009-2012 the school admitted 48 pupils described as Anglican/Church of England, 21 Roman Catholics, 13 pupils from other Christian groups, six Muslims, five Hindus, one Buddhist and three children of other faiths. Given the faith diversity of the intake and the popularity of the school with parents, it is understandable that the school requires the same form of evidence of religious commitment from parents of all faiths although this approach may present difficulties for applicants from particular faiths. However, I have no evidence that, until the introduction of the new Archdiocesan policy, Catholic pupils, or pupils from any other faith, were unable to obtain a place at the school.

22 In 2009, 2010 and 2011 the school admitted eight, five and seven Catholic pupils respectively under oversubscription criterion 5. In September 2012, this figure had dropped to one. The evidence shows that it is the new Archdiocesan policy which has had the effect of reducing the number of

Catholic children who obtain a place at the school. The new policy was designed to apply to Catholic schools and is to be commended for its simplicity, clarity and objectivity when used for this purpose. However, when applied to Catholic children seeking places in schools of other faiths it can be problematic as these faiths can, and do, define their faith oversubscription criteria on a different basis. In this case, it is the school which can decide how faith will be defined and evidenced within its admission arrangements. It considered the new Archdiocesan policy and paid due regard to its obligations under the Equality Act. In light of the considerations set out in paragraphs 20-22 above I conclude that oversubscription criterion 5 meets the requirements of the Code.

23 The school and the Archdiocese have both concluded that the resolution of this issue lies with the other party. The school is permitted to define its faith related oversubscription criteria in terms of religious commitment and to take the view that evidence of membership of a faith through baptism is insufficient for this purpose. The Archdiocese has decided, as it is able to do, to change its policy to prevent priests from signing CRPs. This has made it very difficult for Catholic parents to obtain places for their children at the school and possibly at other schools with a similar approach to faith based oversubscription criteria. For the school and the Archdiocese to meet the public sector equality duties set out in the Equality Act to advance equality of opportunity, foster good relations and promote understanding, it would be helpful if both parties met to discuss how Catholic parents can provide evidence of religious commitment which meets the school's requirements and so thereby remove the disadvantage they now face. However, I am satisfied that the school has had due regard to its obligations under the Equality Act when determining its oversubscription criteria.

### **Other Matters**

24 Paragraph 1.47 Code requires an admission authority to publish, when agreed, its admission arrangements on its web site. On 16 September 2012 I was unable to find the school's admission arrangements for 2013/14 on its website. They must be so published as soon as is practically possible.

### **Conclusion**

25 For the reasons set out above I do not uphold the objection. I have considered the new arrangements as a whole and have concluded that the school must publish its admission arrangements on its web-site.

### **Determination**

26 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 King David Primary School, Liverpool.

27 I have also considered the arrangements in accordance with section 88I (5) and determine that they do not conform with the School Admissions Code because they are not published on the School's web-site.

28 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: 28 September 2012

Signed:

Schools Adjudicator: John Simpson