

## **DETERMINATION**

<b>Case reference:</b>	<b>ADA2798</b>
<b>Objector:</b>	<b>The Fair Admissions Campaign</b>
<b>Admission Authority:</b>	<b>The governing body of Our Lady and St. John Catholic College, Blackburn</b>
<b>Date of decision:</b>	<b>21 October 2014</b>

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for Our Lady and St. John Catholic College for admissions in September 2015 determined by the governing body of the school.**

**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 Schools Standards and Framework Act 1998 (the Act) an objection has been referred to the adjudicator by the Fair Admissions Campaign (the objector), in an email dated 30 June 2014 concerning the admission arrangements for September 2015 (the arrangements) for Our Lady and St. John Catholic College (the school), for which the local authority (the LA) is Blackburn with Darwen Borough Council. The objection is to the admission authority's failure to publish determined arrangements for 2015/16 on the school's website and to continue to publish the arrangements for 2014; for a lack of clarity over the admission of children with a diagnosis of autism; for not properly designating feeder primary schools and so to disadvantage home schooled children; and for requesting documentation that might reveal personal details of a child's parent.**

### **Jurisdiction**

- 2. These arrangements were determined under section 88C of the Act**

by the school's governing body, which is the admission authority for the school. The objector submitted the objection to these determined arrangements on 30 June 2014. At the time, the objector was unable to locate the determined arrangements for 2015/16 and so referred to the arrangements for 2014/15. A copy of the arrangements for 2015, which are substantially the same as for 2014, was subsequently made available to me; any slight differences are not pertinent to the issues raised by the objection. I am satisfied that the objection to the 2015 arrangements has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

### **Procedure**

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
  - a. the objection, dated 30 June 2014;
  - b. the school's response to the objection, dated 9 September 2014 and subsequent communications, including a report of the meeting of the Interim Executive Board (IEB);
  - c. the school's arrangements for 2015/16;
  - d. the Diocese of Salford (the diocese) education service's response to the objection, and accompanying documentation, dated 18 August 2014;
  - e. the LA's response to the objection, dated 8 October 2014;
  - f. the LA's composite prospectuses for secondary transfers in September 2014 and September 2015 on its website;
  - g. an email from a former chair of governors of the school, dated 9 October 2014; and
  - h. the school's website.

### **The Objection**

5. The objection is first to the admission authority's failure to publish arrangements for 2015/16 on the school's website; and secondly, at the time the objection was made, the arrangements for 2014/15 were no longer available on the website. This is a contravention of paragraphs 1.46 and/or 1.47 and 2.14 of the Code, which relate to annual deadlines for the determination and publication of arrangements, and to applicants' access to information about waiting lists. Third, the arrangements refer to the possible allocation of up to *"five places, in any one year group, to children*

*with a diagnosis of autism, provided that the number on roll does not exceed fifteen in total.*” The objector questions what would happen if there were more than that number of applications and references paragraph 1.7 of the Code in this respect. Furthermore, while naming several feeder schools, the criteria refer also to non Roman Catholic primary schools in general; the objector contends that, by using this “catch all” approach, children in these schools would have priority over those who are home-schooled and that this contravenes paragraph 1.9b) of the Code. Finally, the objector contends that the request for a baptismal certificate from the Catholic parent of a non-Catholic child might reveal personal details about the parent that the school is not entitled to know, thus contravening paragraph 2.4a) of the Code.

### **Other matters**

6. As well as the criterion cited by the objector with reference to the Code’s requirements in respect of feeder schools, there is another criterion that is similarly non-compliant. Although the arrangements include an effective tie-breaker of random allocation for a final place, insufficient detail is given of the method and procedure used to reassure applicants that these are fair and impartial. When I first received the objection I located sixth form arrangements for 2014/15 on the school’s website; these appeared to be non-compliant with the Code in several respects. After receiving responses to the objection from the parties involved, I was no longer able to find any determined sixth form arrangements on the school’s website.

### **Background**

7. The school is a voluntary aided Catholic mixed secondary school for pupils aged 11 to 18, in the Diocese of Salford. There are about 850 pupils on roll, including those in the sixth form, known as the post 16 vocational centre. An Ofsted inspection in October 2011 reported the school, overall, to be satisfactory but a subsequent inspection in February 2014 judged that the school required special measures. An interim head teacher took up post on 1 September 2014.
8. As a consequence of the school being subject to special measures, the governing body was replaced by an IEB. The clerk to the disbanded governing body has been on a long-term absence throughout this period; one of the school’s senior managers, who has been the school’s contact in responding to the objection, has been unable to locate any governing body minutes that relate to the arrangements for admission in September 2015. Following the first meeting of the IEB, on 9 September 2014, arrangements for 2015 were published on the school’s website
9. When the arrangements for 2015 should have been determined and published, the former governing body was the admission authority for the school. Following enquiries, I received an email from the chair of governors at that time in which he stated that *“every year the full*

*Governing Body gives time to discussing the Admission criteria in conjunction with Salford Diocesan policy and advice from the Local Education Authority ... I can confirm that the published arrangements are agreed by the school and are now on the school website.”* I am therefore making this determination on the basis of the former chair of governor’s assurance that the arrangements were properly determined and are those, mentioned above, that have been recently published on the school’s website.

10. The school has a planned admission number (PAN) of 190. The arrangements provide, as required, that children with a statement of special educational needs, an Education, Health Care Plan or an individual pupil resourcing agreement (IPRA) in which the school is named will be given priority, within the PAN, when places are allocated. The statement is also made that the school *“is additionally resourced to offer no more than five places, in any one year group, to children with a diagnosis of autism, provided that the number on roll does not exceed fifteen in total.”* Oversubscription criteria are then, in summary:

- a) Baptised Roman Catholic pupils who are looked after or previously looked after children
- b) Baptised Roman Catholic pupils attending an associated Roman Catholic primary school (six are listed)
- c) Baptised Roman Catholic pupils who are resident in a designated parish (five are listed) and would have a sibling attending the school at the time the admission would take effect
- d) Baptised Roman Catholic pupils who are resident in a designated parish
- e) Baptised Roman Catholic pupils who would have a sibling attending the school at the time the admission would take effect
- f) Baptised Roman Catholic pupils in other Roman Catholic primary schools
- g) Baptised Roman Catholic pupils in other primary schools
- h) Non Roman Catholic pupils who are looked after or previously looked after children
- i) Non Roman Catholic pupils attending an associated Roman Catholic primary school
- j) Non Roman Catholic pupils who would have a sibling attending the school at the time the admission would take effect
- k) Non Roman Catholic pupils who have a baptised Roman Catholic parent
- l) Children with proven and exceptional medical/social needs where these needs can only be met at this school
- m) Other children

A distance tie-breaker is used, with random selection by the LA if necessary to allocate a final place.

There is no requirement for applicants to complete a supplementary information form (SIF), but applicants wishing to be considered under

criteria (a) to (g) or (k) are required to submit a copy of the relevant baptismal certificate.

11. In the 2013/14 admissions round, the governing body offered admission to all first preferences and to second and third preferences if a higher preference could not be offered. In the last admissions round for which full data is available (2012/13), 190 places were offered including 48 under the final oversubscription category listed above, with the distance tie-break being used and the last child to be offered a place living at 1.338 miles from the school.

### **Consideration of Factors**

12. I shall first consider the two aspects of the objection concerning the admission authority's alleged failure to publish admission arrangements, as required by the Code, on the school's website. I confirmed that, at the time of the objection, the arrangements for September 2015 were not to be found on the school's website and that the arrangements for September 2014 were no longer available there; the latter could be downloaded, however, from the LA's composite prospectus for secondary transfer in September 2014. Paragraphs 1.46 and 1.47 of the Code require an admission authority to determine and then publish arrangements on their website, "*displaying them for the whole offer year*". The determined arrangements for admissions in both September 2014 and September 2015 should therefore have been accessible on the school's website at the time the objection was made. The objector refers also to paragraph 2.14 of the Code which, in discussing additions to waiting lists, emphasises the need for applicants to be able to refer to arrangements during the course of the whole offer year. Although the 2014 arrangements were still available on the LA's website, and although I was assured – as explained above – that the 2015 arrangements had been properly determined by the admission authority, I uphold this aspect of the objection as the Code's requirements regarding publication for both offer years were not met.
13. The third element of the objection draws attention to the reference in the arrangements to the possibility of admitting up to "*five places, in any one year group, to children with a diagnosis of autism, provided that the number on roll does not exceed fifteen in total.*" The objector questions what would happen if there were more than that number of applications for children with statements naming the school and with autism and cites paragraph 1.7 in the Code, which states that, after giving the highest priority to looked after and previously looked after children in allocating places, "*Oversubscription criteria **must then be applied to all other applicants in the order set out in the arrangements.***" Following the first meeting of the IEB for the school, at which this objection was considered, I was informed in an email that this reference to additional resourcing for children with autism would be removed and that the question of numbers would therefore no longer be an issue. The LA commented that "*The vast majority of*

*children diagnosed with Autism have either a Statement of Special Educational Needs, an IPRA or will have an Education, Health and Care Plan. If the school is named in either of the above, the child would automatically be offered a place”* and went on to say that the statement regarding children with autism *“has been removed from the 2015 admissions policy by the school. The Local Authority is satisfied that children diagnosed with Autistic Spectrum Disorder are not disadvantaged in this admissions process.”* In fact, the statement has not been removed from the policy as sent to me on 9 September and as currently published on the school’s website although, as noted above, the IEB has expressed the intention of removing it. The order and structure of references to children with special educational needs and those with autism renders the arrangements ambiguous; it is not clear whether the places available for those children with a statement or care plan that names the school and those children with a diagnosis of autism would be allocated within the PAN, whether they would be admitted above the PAN, or whether there are different approaches to the two groups. I believe, with the LA, that it would be unlikely for children with a significant degree of autism not to have a statement or some other care plan that would name the school felt to be the most appropriate learning environment for them. Nevertheless, the arrangements are not clear in this respect regarding priorities; and the potential effect on the oversubscription criteria of there being more than 15 applicants at any time with a diagnosis of autism is not considered. I therefore uphold this part of the objection, while noting the intention of the IEB to remove from the arrangements the section referring to children with autism, and the fact that the LA does not regard this intended change as likely to disadvantage any such children.

14. The next part of the objection is to the way in which named feeder schools and other schools are treated within the oversubscription criteria. The arrangements list six *“associated Roman Catholic primary schools”* and five *“nominated parishes”*. Applications are then prioritised according to sibling links and the combination of the school attended by the child and his or her place of residence. Further oversubscription criteria prioritise applicants’ children who have attended other Roman Catholic primary schools and non Roman Catholic primary schools in general, that is, without naming any. The objector contends that, by using a ‘catch all’ approach that mentions Catholic children who have attended *“other primary schools”*, in addition to (but given lower priority than) those who have attended the *“associated”* schools and/or who live in the *“nominated parishes”*, any Catholic child who had attended any school would get priority over those who had been home schooled and that this contravenes paragraph 1.9b) of the Code, which states that admission arrangements **“must not ... take into account any previous schools attended, unless it is a named feeder school”**. The objector’s argument is that by implying that any primary school anywhere is, in effect, a feeder school, a child who had not attended a school – any school – during his or her primary years would

automatically fall into the lowest category of oversubscription criteria, that is, "*Other children*".

15. I do not believe that the school's oversubscription criteria were constructed with the overt intention of preventing home schooled children from being offered a place. Indeed, within the current criteria, both Catholic and non Catholic home schooled children might be offered a place under criterion m ("*Other children*"). Places were allocated within this criterion in the recent admission round and so home schooled children of any faith, or none at all, would have had some chance of being offered a place at the school. The fact remains, however, that the prohibition in paragraph 1.9b) of the Code quoted above renders the school's oversubscription criterion g non-compliant, as it refers simply to "*other primary schools*". I am confident that the intended reference of this criterion is to other Catholic children rather than to all other schools, and this interpretation is supported by the email to me from the IEB, confirmed by the LA, which states its intention to change the wording of the criterion to "*Other baptised RC children*". However, that is not what the criterion currently says and so I uphold this part of the objection in respect of paragraph 1.9b) of the Code, concerning the requirement to name feeder schools, while noting that the Code makes no explicit reference to the admission of previously home schooled children.
16. Finally, the objector queries whether the requirement for the submission of a baptismal certificate for the Catholic parent of a non-Catholic child applying under criterion k might reveal personal details, such as a maiden name, that the school is not entitled to know, thus contravening paragraph 2.4a) in the Code. The IEB's response mentioned above suggests amending this requirement to say "*Evidence of baptism required*" but in my view that would introduce a vague phrase that would not satisfy the Code's various requirements for clarity, transparency and ease of understanding. In its response to the objection the diocese submitted a copy of its "*Briefing Notes*" for admission authorities of diocesan schools, in which this matter is addressed. I uphold this part of the objection.
17. I turn now to the other matters mentioned above. I have considered the issue of feeder schools as raised by the objector, who cited criterion g in the arrangements. However, the same issue arises in respect of criterion f, which nominates, in effect, all Catholic primary schools as feeder schools. This criterion, therefore, also contravenes the requirements of the Code in paragraphs 1.9b) and 1.15 that only a "*named feeder school*" may be taken into account in arrangements and that the selection and naming of feeder schools "*must be transparent and made on reasonable grounds.*"
18. Although the arrangements include an effective tie-breaker of random allocation when offering a final place, insufficient detail is given about the method used, or the impartiality of the process, to reassure

applicants that it is fair. Paragraph 1.8 in the Code requires a tie-breaker to be “*effective, clear and fair*”; to state in the arrangements merely that the LA “*will ... use random allocation to decide which of the children can be offered a place*” does not describe how this is done, by whom, or under what conditions.

19. When I first received this objection I found on the school’s website sixth form arrangements for 2014/15 that appeared to be non-compliant with the Code in several respects. I was no longer able to find any sixth form arrangements on the school’s website when making this determination. The LA’s composite prospectus lists the school as one that provides sixth form facilities and advises interested parties, “*For ... the admissions criteria, please contact [the school] directly.*” Potential applicants and others should be able to find determined sixth form arrangements on the school’s website, together with any application form that may be required, as part of the complete arrangements. Paragraph 1.2 of the Code requires admission authorities to set a PAN for “*each ‘relevant age group’*” which, in the case of this school, includes those applying to join the sixth form. The arrangements for the sixth form must also comply with the general requirements of the Code. Paragraphs 1.46 and 1.47 then set out the timetable for determining and publishing the arrangements, with which the school has clearly not complied in respect of sixth form applications.

## **Conclusion**

20. The objection is to the admission authority’s failure to retain a set of determined arrangements on the school’s website for the entire offer year of 2014/15, thereby contravening paragraphs 1.47 and 2.14 of the Code, and its failure to publish determined arrangements for 2015/16 in accordance with the procedures and timescales laid down in paragraphs 1.46 and 1.47 of the Code. Although I found both sets of arrangements to be available on the LA’s website, and the admission authority has now published the arrangements for September 2015 on the school’s website, neither was published by the admission authority as required by the Code and so I uphold this part of the objection.
21. The objector then questions the reference in the arrangements to the possible admission of up to 15 children with autism, querying what would happen if there were more than this number of applications for such places and raising the issue of how the offer of these places would fit with the requirements of paragraph 1.7 in applying the oversubscription criteria. I uphold this part of the objection, while noting that the admission authority, supported by the LA, intends to remove this section of the arrangements.
22. The objection contends that the arrangements do not meet the requirements of the Code in respect of choosing and naming feeder schools and that this potentially disadvantages home schooled



children. I do not believe this was the intention of the criterion identified and the IEB intends to change it. Nevertheless, I uphold this part of the objection since, as it stands, the criterion in question does not comply with paragraph 1.9b) of the Code.

23. Finally, the objector raises a concern that the criterion requiring a baptismal certificate from the Catholic parent of a non Catholic child contravenes paragraph 2.4a) of the Code in obtaining personal details that are irrelevant to the application of the oversubscription criteria. I also uphold this part of the objection.

24. I therefore uphold the objection in full.

25. In considering the arrangements as a whole I find that a second criterion was non-compliant with the requirements of the Code concerning feeder schools. While including an effective final tie-breaker, insufficient detail is provided about the method used, or the impartiality of the process, to reassure applicants that it is fair; the requirements of paragraph 1.8 in the Code are therefore not met. When making this determination, I was unable to find determined sixth form arrangements on the school's website. Potential applicants should be able to find these, together with any application form that may be required, as part of the school's complete published arrangements. The arrangements must also comply with the Code's general requirements for admission arrangements.

26. It is for these reasons that I conclude that the arrangements are not compliant with the Code and must be revised as soon as possible.

### **Determination**

27. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for Our Lady and St. John Catholic College for September 2015 as determined by the governing body.

28. 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.

29. 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: 21 October 2014

Signed:

Schools Adjudicator: Andrew Bennett