DETERMINATION

Case reference: **ADA2624**

Objector: **A parent representing other parents**

Admission Authority: **The Governing Body of Our Lady of Victories Catholic Primary School, Wandsworth**

Date of decision: **26 June 2014**

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body of Our Lady of Victories Catholic Primary School, Wandsworth.

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

By virtue of section 88K(2) of the Act 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 parent representing other parents (the objector), about the admission arrangements (the arrangements), for Our Lady of Victories Catholic Primary School (the school) a 4 to 11 voluntary aided primary school in the London Borough of Wandsworth, for September 2015. The objection is in three parts.

    - The governing body did not consult on changes to the admissions arrangements as required by paragraphs 15 and 1.42 to 1.45 of the School Admissions Code (the Code);

    - The published admissions arrangements contravene the Code specifically paragraph 14, 1.8 and 2.20 on grounds of fairness, clarity, and compatibility with other schools' admission arrangements.

    - Wandsworth Council, the local authority (the LA), has not fulfilled its obligation under paragraph 1.49 of the Code to publish on their website, by 1 May 2014, details of where determined

arrangements for the school can be viewed and information on how objections can be referred to the Schools Adjudicator.

Jurisdiction

2. These arrangements were determined on 1 April 2014 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 12 May 2014. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and is within my jurisdiction.

3. I have also used my powers under section 88I(5) of the Act to consider the arrangements as a whole.

Procedure

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

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

   a. the objector's form of objection and attachments dated 12 May 2014 and further email of 4 June 2014;

   b. responses to the objection and supporting documents from the school, LA and the Catholic Diocese of Southwark (the diocese);

   c. the LA's composite prospectus for parents seeking admission to schools in the area in September 2014;

   d. maps of the area identifying the schools and the parish boundary;

   e. evidence of the consultation undertaken by the governing body;

   f. copies of the minutes of the meeting of the governing body at which the arrangements were determined;

   g. a copy of the determined arrangements;

   h. other documents provided by the school in response to a request for clarification and further information arising from their initial response; and

   i. guidance for school leaders, school staff, governing bodies and local authorities on the Equalities Act 2010 published by the Department for Education.

The Objection

6. The objection was clearly set out with references to the Code. The first element of the objection was that the governing body did not consult on changes to the admissions arrangements as required by paragraphs 15

and 1.42 to 1.45 of the Code. The objector provided a screenshot and downloads from the school's website to support this view.

7. The objector then argued that the published admissions arrangements contravene the Code specifically paragraphs 14 and 1.8 because the change in the tie-break for criterion 5 was not easily understood by parents. He also argued that there were situations the new tie-break could not resolve. He illustrated these situations with examples.

8. The objector also questioned the need to describe distance measurement for "*all applicants*" in the policy when consideration of distance is only a factor for criterion 5.

9. The objector also argued that as none of the other schools in Wandsworth would be using a ballot as a tie-break the requirements of paragraph 2.20 of the Code would not be met. He considered that if one school used a ballot as the final method of allocating places that would not be compatible with all other schools using distance.

10. Finally the objector provided a screenshot of the LA's website showing that details of where determined arrangements for the school could be viewed were not available. He also said that information was not available on how objections could be referred to the Schools Adjudicator. Consequently he asserted that the LA has not fulfilled its obligation under paragraph 1.49 of the Code which requires these details to be published by 1 May 2014.

11. The jurisdiction of an adjudicator is for admission arrangements determined by an admission authority. The purpose of paragraph 2.20 is to ensure the admission of pupils in different local authorities is compatible with each other through the co-ordination of applications and allocation of places. It does not require different admissions authorities to have the same oversubscription criteria. As it is not part of the determined admission arrangements, the LA's scheme of co-ordination is not a matter on which I can make judgement. For the same reason I cannot make a judgement on the LA's compliance with the requirement for them to publish as specified in paragraph 1.49. I note however that the LA has now put the required information on its website.

Other Matters

12. The eighth of the thirteen oversubscription criteria used by the school is "C*hildren of catechumens*". This comes before non-Catholic looked after and previously looked after children. I have considered whether this is consistent with paragraph 1.37 of the Code which says admissions authorities "***must*** *give priority to looked after children and previously looked after children not of the faith above other children not of the faith*".

13. Reading the determined arrangements provided by the school I observed that in the notes on the oversubscription criteria, which the

governing body correctly state do form part of the admissions arrangements, note 6 on page 3 says "*The school is unable to accept children who cannot cope with stairs, the governors having been unable to obtain planning approval for a lift to provide disabled access to the upper floors*."

14. Paragraph 1.8 of the Code says that oversubscription criteria must comply with all relevant legislation, including equalities legislation. The Code continues to say that admissions authorities must ensure that their arrangements will not disadvantage unfairly a child with disability.

15. I used my powers under section 88I(5) to investigate whether this statement in the admission arrangements contravenes paragraph 1.8 of the Code through not complying with the Equalities Act 2010.

16. I also noted that in the determined admission arrangements for 2015 the section on appeal arrangements includes a statement that appeals must be lodged within 20 days of parents being notified their child had not been offered a place. Paragraph 2.1a of the School Admission Appeals Code requires parents to be given a minimum of 20 days to lodge an appeal.

17. My final area of concern was the supplementary information form (SIF) provided by the governors asks "*How long have you lived in this parish?"* Length of residency is not part of the oversubscription criteria used by the school so I have considered whether this complies with paragraph 2.4 of the Code. This says admission authorities "***must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria*".

Background

18. The school is a voluntary aided Catholic primary school in the Parish of Our Lady of Pity and St Simon Stock. The school's oversubscription criteria for September 2014 are summarised below:

    1. Looked after and previously looked after Catholic children;

    2. Catholic children with regular worship where there are special circumstances;

    3. Catholic siblings with regular worship;

    4. Catholic children of teachers at the school with regular worship;

    5. Catholic children living in the Parish with regular worship;

    6. Catholic children with regular worship;

    7. Other Catholic children;

    8. Children of catechumens;

9. Other looked after and previously looked after children;

10. Non-Catholic children where there are special circumstances;

11. Non-Catholic children of teachers;

12. Children of other faiths;

13. Other children.

19. The tie-breaker in each category previously was distance from the school as measured by the LA with children living closest being given priority. The school is regularly oversubscribed with oversubscription occurring in the fifth category above. In the last four years the distance the child offered the last place lived from the school was 770m, 676.5m, 508m and 696m.

20. The school has become concerned that practising Catholics who did not live in close proximity to the school were disadvantaged by the oversubscription criteria. The governors say that as housing close to the school is expensive while the social housing in the parish is further away this has affected the profile of pupils attending the school with a falling proportion of pupils eligible for the pupil premium. The governing body began discussions with the LA and the diocese in October and November 2013 on how these concerns might be addressed.

21. In order to address these concerns the governors proposed to increase the published admission number (PAN) from 28 to 30 from September 2015 and to use a ballot instead of distance as a tie-break for all criteria except criterion 5.

22. For criterion 5 the governors proposed to introduce a tie-break using a combination of two geographical zones and a ballot. It was worded as follows:

In the event of over subscription in criterion 5 applicants will be allocated within one of two zones:

- *Zone A – children living within 600m of the school. 60% of the available places;*

- *Zone B – children living further than 600m to the edge of the Parish boundary. 40% of the available places.*

Places will be allocated via a ballot. The ballot will be conducted independently of the school by the Local Authority"

23. The increase in PAN is not a matter requiring consultation; however the change in the tie-break and introduction of zones within the fifth category must be consulted on and must comply with the Code.

Consideration of Factors

Consultation

24. The first matter I considered is whether the consultation conducted by the governing body complied with Part 2, Chapter 3 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) Regulations 2012, (the Regulations). They appear in paragraphs 1.42 to 1.45 of the Code, which set out who should be consulted, when they should be consulted and some requirements on how they should be consulted.

25. It is clear from both the Regulations and the Code that admission authorities must consult for a minimum of eight weeks and complete that consultation between 1 November and 1 March in the determination year. To achieve this timescale for the relevant determination year, consultation must have begun at the latest on 4 January 2014. For a voluntary aided school, required consultees are the local authority, the diocese, other schools and academies, neighbouring local authorities and parents of children between the age of two and 18.

26. Admission authorities are required to publish a copy of their full proposed admission arrangements on their website for the duration of the consultation period together with details of how responses can be made to the consultation.

27. The governing body has provided email correspondence showing discussion of possible new oversubscription criteria took place with the local authority in October 2013 and with the diocese in November 2013. The school also provided both the LA and the diocese with copies of their proposed oversubscription criteria on 17 December 2013. I am satisfied that the governors did consult with the LA and the diocese adequately.

28. The governing body relied on the LA to distribute their proposals to other schools, academies and neighbouring authorities. The governors provided the LA with the documents to enable this to happen on 17 December 2013. The email from the LA to other schools, academies and neighbouring authorities was not sent until 9 January 2014 less than eight weeks before 1 March. This same email says that the proposed arrangements would appear on the LA's website "*shortly*". I therefore have to conclude that consultation with other schools, academies and neighbouring authorities technically failed to meet the requirements of the Code as they were available to them for less than eight weeks.

29. The Code requires consultation with parents of children aged two to 18. Other than in paragraph 1.45 saying the proposed arrangements should appear on the school's website for the duration of the consultation period, the Code does not specify how admission authorities should consult parents.

30. The school maintains that it began consultation with parents at open mornings for prospective parents on 11 September, 2 October and 6 November 2013. These meetings were advertised on the school's website and in its newsletter. I do not doubt that admission arrangements were discussed at these meetings, but I cannot accept that they were the start of the consultation period. I cannot accept this because, not only were two of the meetings outside the consultation window of 1 November to 1 March, but the meetings were only advertised to parents who received the school newsletter or looked at the school's website. Had the consultation period begun on the 6 November to be consistent with the consultation window, then that is the date on which the full proposal should have appeared on the school's website. As the Personnel and Admission Committee did not finalise their proposals until their 6 December 2013 meeting, any discussion with parents during these open mornings can only be considered as helping to formulate the governors' proposals.

31. The school has provided evidence that it uploaded a copy of the proposed new arrangements to its website on 7 February 2014. The school says this was a modified version of the original proposal, but has not provided me with evidence of the original proposal being placed on the website for the required period of time. The objector's evidence included a copy of the proposed arrangements which he downloaded from the school's website. The metadata indicates this document was created on 2 February 2014; this would be consistent with date of publication on the school's website of 7 February.

32. As well as requiring the full proposals to be published on the school's website, the Code requires details of to whom comments may be sent. The screenshots of the school's website which I have been provided with do not show this.

33. The LA also undertook to put the proposals on its website. In its response to the objection, the LA confirms it posted the proposals on its website and updated them on 31 January 2014 when a revised version was provided by the school. Email correspondence between the school and the LA shows the LA was provided with the revised version on 10 January. These dates mean that the version on the LA's website could have been different to that published on the school's website. Indeed further corrections were sent to the LA by the school on 20 March.

34. The version originally supplied to the LA on 17 December and published by them sometime between 9 January and 31 January differs from the version sent to the LA on 10 January in the wording around the tie-break. In the first version the tie-break appears under the heading "***All Applicants – Distance Measurements***" and begins "*Tie break for all categories – Proximity of home to school*" before setting out the proposed new tie-break using a ballot and zones within the parish and continuing to set out how distances would be measured. In the second version the wording is the same as in the determined

arrangements. Other changes were of a minor nature and do not affect the key issue of the tie-break.

35. While it is entirely appropriate for the school to ask the LA to publish the proposed arrangements on the LA's website, in this case it could have led to some confusion and it did not cover eight weeks before 1 March. Nor is this a substitute for the requirement that the proposals be published on the admission authority's, that is the school's, website for the duration of the consultation period. I have therefore concluded that this consultation was in breach of paragraph 1.45 of the Code.

36. While publication on the website is necessary it may not be sufficient in terms of parental consultation. The Code requires all parents of children aged two or more living in the area to be consulted. I do not think admissions authorities can rely on parents searching out their website throughout the designated consultation period to check whether a school is consulting on changing its arrangements. The admission authority needs to be proactive in bringing proposed changes in admission arrangements to parents' attention.

37. The school has a weekly newsletter and back copies of the newsletter can be found on the school's website. I have read the newsletters covering 1 November to 1 March. The only reference in the newsletter to consultation was on 28 February 2014, this indicated that the proposed arrangements had been available on the school website for a "*number of weeks*" and requested feedback by email to the chair of governors; no deadline was given for feedback.

38. The school is also able to communicate with parents through the church newsletter. I have been provided with copies of this newsletter dated 16, 23 and 30 March 2014 all of which include a notice inviting readers to look at the school's website and to send feedback by email to the chair of governors. There is no evidence of this channel of communication being used before these dates although it would have been an effective way to draw the consultation to the attention of parents of children meeting the fifth criterion who would not have received the school newsletter because they may not yet have children at the school.

39. No other methods of notifying parents about the consultation seem to have been considered, for example through local playgroups. One parent who described herself as "*a Catholic mother and regular worshipper*" wrote to the governors "*I learnt* (about the proposals) *only by pure chance and after the original consultation period had expired. It seemed strange to me that such a significant change had not been more widely advertised within the community*". This sentiment was echoed in other responses to the governors.

40. Minutes of the school governors' Personnel and Admissions Committee of 18 March 2014 noted that five responses had been received to the consultation and that the consultation period had been extended to 31 March. While I would commend the governors for being prepared to be

flexible in considering responses to consultation that arrived after the statutory deadline and before their decision making meeting, a governing body cannot extend the deadline of 1 March as it is set in Regulations.

41. Comments on the proposed arrangements from parents date from 10 to 27 March 2014. This is after attention had been drawn to the consultation in the school and church newsletters. This convinces me that parents were not aware of the consultation until the end of February.

42. While the governing body extended the consultation period beyond the statutory deadline and considered the responses received during March before determining their arrangements on 1 April 2014, I am not convinced that parents were properly consulted on the governors' proposals.

43. I have therefore concluded that although the school did undertake some consultation it did not did not comply fully with the requirements of the Code.

Fairness, Clarity and Compatibility and of the Proposals

44. After considering the consultation undertaken by the governing body I then considered the second part of the objection, whether the published admissions arrangements contravene the Code specifically paragraphs 14 and 1.8. These require parents to be able to understand easily how places will be allocated and that arrangements must be clear fair, objective and include an effective tie-break.

45. The tie-break as set out in the arrangements determined by the governing body on 1 April 2014 says:

*"**Tie break for all categories***

In the event of oversubscription within a category after the above criteria have been applied and it is necessary to decide between applications of equal ranking, priority will be determined by ballot allocation for each category with the exception of criterion 5.

In the event of over subscription in criterion 5 applicants will be allocated within one of two zones:

- *Zone A – children living within 600m of the school. 60% of the available places;*

- *Zone B – children living further than 600m to the edge of the Parish boundary. 40% of the available places.*

Places will be allocated via a ballot. The ballot will be conducted independently of the school by the Local Authority"

46. The objector questions the fairness of this tie-break for children

meeting criterion 5 and argues that it is not clear exactly what happens to criterion 5 applicants in the event of oversubscription. He then questions the need for the following section in the approved arrangements:

*"**All Applicants – Distance Measurements***

Distances will be measured from the home to school using Wandsworth Council's approved method. The straight-line measurement which commences in all cases at the location of the property determined by the National Land Planning Gazetteer and terminates at the central point of the school site as determined by Wandsworth Council's Geographical Information System. Measurements by alternative systems and/or to other points will not be taken into account under any circumstances.

Where applicants have identical distance measurements, priority amongst them will be determined at random."

47. Paragraph 14 of the Code says that criteria must be clear, fair and objective and that parents should be able to understand easily how places will be allocated. Paragraph 1.8 adds to this a requirement to have a clear and effective tie-break.

48. I have noted that the governors' aim in making a change to the admission arrangements is to provide greater opportunity for practising Catholics from across the whole parish to get places at the school, not just those whose families can afford to live closest to the school.

49. The objector did not question the use of a ballot as a tie-break in principle, although it was a matter of concern for some of the people who responded to the governors' consultation. Paragraphs 1.34 and 1.35 of the Code cover the use of random allocation of places. The governing body's evidence shows they have taken advice on this matter from the LA and the diocese. The governors and diocese also drew my attention to other schools where random allocation is used as a tie-break. I have no concern with the principle of a ballot being used as a tie-break; however in this case how it is combined with two geographical zones for criterion 5 requires further consideration.

50. The objector argues unfairness because under the new tie-break a child living 599m from the school has a chance of getting one of 60 per cent of the places still available while a child living 601m from the school has just 40 per cent of the available places open to them in the ballot.

51. In considering this argument I have looked at the point at which oversubscription occurred in previous years. Using distance as a tie-break in 2014 led to any child meeting criterion 5 who lived within 696m of the school being certain of a place, but a child living more than 697m away would have no chance of being offered a place. In 2013, the cut-off distance was 508m a difference of 188m between the two years. In

my view this creates a degree of uncertainty for parents living between 500m and 700m from the school from year to year, whereas under the governors' proposal all parents of children meeting criterion 5 know they have a chance of getting one of the variable number of places available.

52. The objector also argues unfairness because applicants living in Zone A are disadvantaged as places are being reserved for children living farther away from the school in Zone B. He suggests that as all other schools in the area use distance based criteria, children in Zone A have less chance of places at other schools than children in Zone B as they live farther from them. He suggests this is a situation that paragraph 2.20 of the Code tries to prevent. The objector goes on to argue that Zone A children would have longer journeys to other schools than Zone B children.

53. I have already addressed the objector's comments about paragraph 2.20 and dismissed them as misinterpretation of the aim of the paragraph and being outside my jurisdiction.

54. The LA provided me with a map showing the location of primary schools in the borough and the oversubscription criteria for each school. I have used this to consider the other local schools available to children living in Zones A and B. In responding to one of the consultees the chair of governors also comments on the location of other schools in the area.

55. The map provided by the LA shows three other primary schools close to Our Lady of Victories and one other primary school in the south west of the parish. For children living in the extreme south east of the parish, for example in Lytton Grove, Our Lady of Victories appears to be the closest school. The governors' proposal would give criterion 5 children living in this area a greater probability of getting a place at the school.

56. These proposals do not reduce the number of places in the area. If children living in Zone B take up places at Our Lady of Victories which would have previously been taken by children living closer to the school, this would create places at other schools. As proximity to the school is a major factor in those other schools' oversubscription criteria the displaced Zone A children would have priority for them ahead of children from outside the area.

57. The governing body's aim in changing the oversubscription criteria is to provide for a more even distribution of children from practising Catholic families from across the parish. The governors have looked carefully at previous patterns of admissions and attempted to devise a tie-break that addresses their concerns by identifying a proportion of places for children who live farther from the school.

58. The governors' intention of giving Catholic families from across the parish a chance of a place at the school seems to me to be an attempt

to make the admission arrangements fairer. While children living close to the school will be less likely to get a place at the school, those from the outskirts of the parish, who currently have a very small chance of a place, will have a greater one. I do not think children from Zone A who may not get a place at the school because of the proposed changes will be at a disadvantage in getting places at other nearby schools.

59. The objector also sets out a number of possible situations where the operation of the tie-break in criterion 5 is unclear. The cases illustrate that if the number of places available for children meeting criterion 5 is not a multiple of five, then the determined arrangements do not say how the 60 per cent and 40 per cent will be interpreted. For example, if there are 15 places available then it is clear there are nine places available for Zone A and six for Zone B, however if there were 14 places available the governors have not made it clear in the published arrangements how it would allocate the 8.4 and 5.6 places to Zones A and B respectively.

60. Another anomaly arises if there were fewer applicants than places in either zone. For example say, nine places were available for Zone A and six for Zone B, with eight applicants living in Zone A and 16 living in Zone B. Would the spare place from Zone A become available to a child in Zone B? The tie-break should be able to deal with all possible situations, as worded in the determined arrangements it does not.

61. These anomalies were pointed out to the governors in one of the consultation responses received after 1 March 2014 and before the governing body determined the arrangements on 1 April 2014. In her reply to the consultee, the chair of governors stated that if required the number of places in each zone would be rounded to the nearest integer. This clarification does not however appear in the determined arrangements and does not address how any unused places in Zones A or B would be allocated.

62. The diocese's view is that the proposed arrangements address the problem of a substantial number of children from the parish not having a realistic chance of getting a place at the school in a clear, fair and objective manner. The LA also considers that the policy is clear, fair and compliant with the Code. However, the LA does agree that the objector has highlighted issues with the operation of criterion 5 in some circumstances and this needs to be clarified. The LA also agrees that some of the wording about distance should be deleted, although it is necessary to say how distance will be measured to establish which zone a property is in.

63. In attempting to address a legitimate concern about the opportunity for all practising Catholic families in the parish to have a chance of getting places at the school, the governors have devised a more complex tie-break for criterion 5 than for other criteria. The number of places available for children meeting criterion 5 is variable and not known from year to year. I think the principle of using a ballot to distribute these places between the two zones in a predetermined ratio is fair in this

case. The map which the school and LA have agreed to produce will help make it clear which zone a family lives in.

64. I conclude that the new tie-break for criterion 5 is fair and would be compliant with the Code if it contained additional wording to enable it to resolve all possible situations, no matter how unlikely. This could be achieved by adding two clauses to the tie-break. The first saying how the number of places would be distributed between Zone A and Zone B if the 60:40 split did not produce whole numbers of places. The second should say what would happen if there were more places available than children applying in either zone.

65. The section headed "***All Applicants – Distance Measurements*** " is confusing as distance is only a factor in criterion 5. To establish whether a child lives in Zone A or B, the Code requires an explanation of how the distance from each applicant's home to school will be measured which this section gives. Parents may think distance is still a factor for other criteria because of the words "***All Applicants***" in the heading. The last sentence about using a ballot if distance measurements were identical is now redundant.

Other Matters

66. Paragraph 1.37 of the Code says "*Where any element of priority is given in relation to children not of the faith they must give priority to looked after children and previously looked after children not of the faith above other children not of the faith."* Children of catechumens is the eighth criterion in the determined arrangements, above looked after children and previously looked after children not of the faith who appear as criterion 9.

67. A catechumen is a person being instructed preparatory to receiving baptism and being admitted to the Church. They are not yet a Catholic, if their child was a baptised Catholic, then they would meet criterion 7, other baptised Catholic children. Therefore I conclude that children of catechumens would not be of the faith and cannot be given higher priority than non-Catholic looked after and previously looked after children.

68. In response to my concerns that the admission arrangements did not comply with the Equalities Act 2010 as required by paragraph 1.8 of the Code the governors supplied plans of the school and correspondence illustrating their efforts to give people with physical disabilities access to the upper floors of the building. This correspondence dates from 2008, before the Equalities Act, and shows the school's intentions were frustrated by planning and financial issues.

69. In May 2014 the Department for Education published guidance for school leaders, school staff, governing bodies and local authorities on the Equalities Act. Chapter 4 of this guidance focuses on disability and explains differences with the former Disability Discrimination Act. Paragraph 4.7 of this guidance says "*A school must not treat a disabled*

pupil less favourably simply because that pupil is disabled – for example by having an admissions bar on disabled applicants."

70. The school has a single ground floor classroom. This classroom is currently used for the reception class. It would seem to me that in the unfortunate event that an existing pupil or member of staff suffered an accident or illness that left them temporarily or permanently unable to use stairs, the school would have to consider changing the use of this room. I see no reason why a similar adjustment should not be considered should a physically disabled child be successful in obtaining a place at the school.

71. While paragraph 3.58 of the Statutory Framework for the Early Years Foundation Stage says children of reception age must have access to an outdoor play area, it recognises that this is not always possible and that providers must follow their legal responsibilities under the Equality Act 2010 for example provisions on reasonable adjustments.

72. It is clear from the floor plans of the school that the building has many constraints. In my view, while making adjustments to the organisation of the classrooms could be inconvenient and may carry some cost these do not justify the blanket statement "*The school is unable to accept children who cannot cope with stairs*". Any cases would need to be considered on their merits and a consideration of reasonable adjustments undertaken on each one.

73. I therefore conclude that the statement *"The school is unable to accept children who cannot cope with stairs*" in the admissions arrangements contravenes paragraph 1.8 of the Code as it does not comply with equalities legislation.

74. The school was offered the opportunity to comment on my observation that in the determined admission arrangements for 2015 the section on appeal arrangements includes a statement that appeals must be lodged <u>within</u> 20 days of parents being notified their child had not been offered a place. This appears to me to contradict paragraph 2.1a of the School Admission Appeals Code which requires parents to be given a <u>minimum</u> of 20 days to lodge an appeal. The school chose not to comment on this observation.

75. Paragraph 2.4 of the Code says admission authorities "*must only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria*". The SIF for the school includes the question "*How long have you lived in this parish?*" Length of residency is not part of any of the oversubscription criteria.

76. I have considered whether it is necessary to know how long a child has lived in the parish for the governors to decide whether their three-year test of regular worship is met. This test does not require residency in the parish so I have concluded that this question does not have a direct bearing on decisions about oversubscription criteria and therefore

should not appear on the SIF.

Conclusion

77. I recognise the governors' good intentions in reviewing their admission arrangements in order to be fairer to all members of the parish. However, the Code paragraphs 1.42 to 1.45 and the Regulations are clear on the consultation requirements which must be followed before changes can be introduced.

78. In my view these consultation requirements have not been met. Consultation with parents was especially lacking with the first documented notice of consultation sent to parents on 28 February 2014, the day before Regulations say consultation must end. Given no comments were sent to the governors until March 2014, I am sure that parents were not aware of the proposals before the notice appeared in the school and church newsletters.

79. In addressing their concerns about the fairness of their admission arrangements, the governors took advice from the LA and the diocese. The tie-break which was developed for the fifth criterion, is more complex and not as straight forward as the former tie-break or that for other criteria. The complexity arises from using a combination of geographical and random allocation. On balance I think this tie-break is clear and fair and only fails to be compliant with the Code because there are situations which could arise that this tie-break will not resolve. A revision of the wording is required to address this.

80. Had consultation with parents been undertaken as required by the Code, governors would have had more time to consider in detail the issues raised by parents over the wording and operation of the new tie-break. They would then have been able to rectify the problems with the tie-break that were pointed out to them by parents and add the necessary clarification.

81. In considering this objection I identified four other points in the determined arrangements that appeared to me to require investigation.

82. The first of these concerns giving priority to children of catechumens above looked after and previously looked after non-Catholic children. I have concluded that this is not consistent with paragraph 1.37 of the Code.

83. My second concern was the statement in the admission arrangements that "*The school is unable to accept children who cannot cope with stairs*". Paragraph 1.8 of the Code says that oversubscription criteria must comply with equalities legislation. In my view this statement does not comply with current equalities legislation as reasonable adjustments should be considered should a child with disabilities secure a place at the school.

84. The third point is that the admission arrangements state that the school

requires parents to lodge an appeal against the refusal of a place within 20 days of notification. The School Admission Appeals Code is clear in paragraph 2.1.a that at least 20 days should be allowed for parents to lodge their appeal. The school's policy is not consistent with that code.

85. Finally the school's SIF requires parents to say how long they have lived in a parish. This is not required to decide if any of the school's oversubscription criteria are met and so does not comply with paragraph 2.4 of the Code.

Determination

86. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body for Our Lady of Victories Catholic Primary School, Wandsworth.

87. I have also considered the arrangements in accordance with section 88I(5). I determine that there are matters as set out in this determination that do not conform with the requirements relating to admission arramgements.

88. 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.

Date: 26 June 2014

Signed:

Schools Adjudicator: Mr Phil Whiffing