DETERMINATION

Case reference: **ADA2439**

Objector: **A member of the public**

Admission Authority: **The Governing Body of Hampden Gurney Church of England Primary School, Westminster**

Date of decision: **27 August 2013**

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 Hampden Gurney Church of England Primary School for September 2014.

I have also considered the arrangements for September 2013 in accordance with section 88I(5). I determine that they do not conform with the requirements relating to consultation prior to changes being made by an admission authority to its 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 of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by a member of the public about the admission arrangements (the arrangements) for Hampden Gurney Church of England Primary School (the school), a voluntary aided primary school for September 2014.

2. The objection is to the means used by the school to give priority to applications on the grounds of religious observance, to the requirement that parents are interviewed during the process of obtaining an endorsement by a religious minister of their supplementary application form (SIF), and to a failure by the school to undertake appropriate consultation prior to determining the arrangements.

3. The admission arrangements of the school for September 2013 have also been brought to the attention of the Schools Adjudicator as part of the same referral. The referral is to the failure of the school to consult on changes made to the arrangements prior to their determination.

Jurisdiction

4. The arrangements for September 2014 were determined under section 88C of the Act by the school's governing body, which is the admission authority for the school, on 29 January 2013. Those for September 2013 were also determined under section 88C of the Act by the school's governing body, on 9 May 2012. The objector submitted the objection to these determined arrangements on 20 May 2013. I have been supplied with the name and address of the objector, who has requested that these details should not be revealed to the other parties, as is allowable under Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the regulations). I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that the referral has been properly made to me in accordance with section 88I of the Act and that both are within my jurisdiction to consider them.

Procedure

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

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

a. the objector's email of objection dated 20 May 2013;

b. the school's, the City of Westminster's, the local authority (the LA's) and The Diocese of London Board for School's (on behalf of The Diocese of London) (the diocese's) responses to the objection and supporting documents;

c. the LA's composite prospectus for parents seeking admission to schools in the area in September 2013;

d. a map of the area identifying relevant schools;

e. confirmation of when consultation on the arrangements last took place;

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 for September 2012, 2013 and 2014, and

h. a determination (ADA 2237) issued on 7 February 2012 as a result of local parents drawing the attention of the Schools Adjudicator to the school's admission arrangements for September 2012.

7. I have also taken account of information received during a meeting I convened on 16 July 2013 at the school.

The Objection

8. The objector has lodged the following matters as objections to the school's arrangements:

(i) the use of registration on the electoral roll of the Church of England, or that of a Christian church which is a member of Churches Together in Britain and Ireland, for a minimum of two years as an eligibility criterion for the prioritisation of applications on religious grounds;

(ii) the use of church attendance by the child for a minimum period of two years as an eligibility criterion for the prioritisation of applications on religious grounds;

(iii) the failure of the school to consult appropriately prior to determining its arrangements, and

(iv) the use of interviews involving members of the school's governing body who are members of the clergy of its parish church (the Church of the Annunciation).

9. The objector also raised other matters in the same e-mail, concerning the publication of information by the LA and school admission appeals, which fall outside my jurisdiction since they are not part of the determined admission arrangements for the school as determined under section 88C of the Act.

10. The objector also brought to the attention of the School's Adjudicator the school's admission arrangements for September 2013 complaining that the school had failed to carry out a consultation on changes made to them from those which it had determined for September 2012.

Background

11. A determination (ADA 2237) issued on 7 February 2012 as a result of local parents drawing the attention of the Schools Adjudicator to the school's admission arrangements for September 2012 found that the governing body had altered the arrangements during January 2012 "without proper basis or authority". The adjudicator ruled that the school must revert to its previous arrangements.

12. The change that had been introduced improperly in January 2012 was the substitution of children's church attendance as the principal means for regulating admissions, with priority given for longer attendance, in place of oversubscription criteria favouring siblings and using distance from the home to the school.

13. When the school's admissions committee met on 9 May 2012 to consider the adjudicator's ruling the minutes record that "at no point did the adjudicator rule against taking into account parents' attendance at church" and that the arrangements for September 2013 were changed "in the light of the adjudicator's comments." One of the changes made was that the criterion that

"the family has been involved in the work and worship of the Christian church" as an overall requirement applying to the highest priority categories was changed to a dual criterion requiring the child to have attended their place of worship for a minimum of two years and for at least one parent/guardian to have been a communicant member at the place of worship and/or registered on its electoral roll for the same two year period.

14. The objector wrote on 20 May 2013 complaining that the school had at that time not published its admission arrangements for September 2014 on its website, and raising objections based on the arrangements for September 2013 "on the assumption that the school intends to use its existing 2013-14 admissions as the admissions for 2014-15." One of the matters raised by the objector was the lack of consultation by the school on changes made to the arrangements for September 2013 from those which had applied for September 2012.

15. On 23 May 2013 the objector wrote again saying that the school's arrangements for September 2014 were to be found on the LA's website (but still not on the school's website), and he withdrew his complaint about the arrangements not having been published but reaffirmed the remaining objections which he had raised, including that of a lack of consultation prior to the determination of the arrangements for September 2013.

16. The school's arrangements for September 2014 are identical to those for September 2013, except for a change made to the way distances between the school and parental homes are measured. The objector has pointed out in subsequent correspondence that since the changes introduced into the arrangements for September 2013 concerning church attendance and registration on the electoral roll had not been the subject of consultation, there should have been consultation on these matters prior to the determination of the school's arrangements for September 2014 which also contains them.

Consideration of Factors

(i) consultation on changes to the school's arrangements

17. The first matter I have considered is that raised by the objector concerning consultation on proposed changes to the school's arrangements. The objection on these grounds to the arrangements for September 2013 was not made within the deadline of 30 June 2012 and I am not able to consider it under section 88H of the Act. However, in view of the background set out above, and the fact that the school's arrangements for September 2013 and September 2014 are in the relevant aspects identical, I have decided that I should use my power to consider this matter concerning the 2013 arrangements under section 88I(5) of the Act. The determination dated 7 February 2012 was made under the same section of the Act, and although the matter I am considering is effectively that dealt with in this earlier determination, I am able to do so since there is no prohibition concerning referrals considered under section 88(I) comparable to that which prevents repeat objections being lodged under section 88(H) of the Act.

18. The Code at paragraph 3.6 allows admission arrangements to be changed by an admission authority "to give effect to….a determination of the Adjudicator", amongst other things. I have read the determination issued on 7 February 2012 and have found there nothing directly requiring the school to introduce the changes made on 9 May 2012 described above. However, the adjudicator did advise the school of the need to consider both whether criteria involving church attendance are fair to families in all circumstances, and if they were then employed how any such matters could be objectively quantified, when constructing its arrangements for September 2013. The school did not re-introduce the changes which had been improperly made in January 2012, and had clearly borne in mind the final advice given by the adjudicator concerning quantification. The date of the determination did not permit there to be the eight weeks of consultation prior to 1 March 2012 required by the Code (paragraph 1.43). Nevertheless, the school was late in determining its arrangements for September 2013 and could have consulted on its proposals in the time that elapsed prior to it doing so. It was certainly not unaware of the importance of doing so, given the reason for the determination which had been made on 7 February 2012.

19. At the meeting which I held, I asked both the school and the LA if they could confirm when the school's arrangements were last the subject of consultation. Both wrote to me subsequently. The LA stated that the school's arrangements for September 2014 were sent to it on 5 February 2013, and posted on the LA's website on 8 February 2013. A link to them was circulated to all LA schools, neighbouring authorities and the relevant diocesan authorities on 15 February 2013, clearly stating that the school was consulting on their contents but also saying that there had been only minor changes from those for the previous year. Consultees were asked to respond to the school governors by 1 March 2013.

20. The school has repeatedly stated to me that its arrangements for September 2014 were determined on 29 January 2013, and that is what the minutes of its governing body say. It has also stated that it carried out consultation "at Governors meetings" on 17 July, 25 September and 15 November 2012 and on 29 January 2013. Following the meeting which I held, the school wrote to me saying that its consultation with parents had taken place through the governing body which contains two elected parent governors, and one foundation governor who has to be a parent of a child at the school. This letter also told me that the policy had been discussed at Parent Teacher Association meetings.

21. Paragraph 1.44 of the Code provides a list of those whom admission authorities **must** consult when changes are proposed to their arrangements, and this list includes "parents of children between the age of two and eighteen", and "any other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions". The relevant area for this purpose is the area of the LA.

22. The objector has complained that the school did not consult on the changes it made to its arrangements for September 2013 and that it did not do so again concerning the arrangements for September 2014. At the meeting which I held, both the school and the LA spoke about the difficulty of

consulting all parents and “other persons” in an area like central London, and said that the circulation of state-funded schools in the way the LA has described to me is the most that can be achieved. However, I have seen the communication which the LA sent to schools and it makes no reference to bringing the matter to the attention of parents, as might be expected if this approach were intended as a means of fulfilling the requirements of the Code.

23. The admission authority, the school, clearly did not carry out any consultation prior to introducing significant changes into the arrangements for September 2013 when it might reasonably have done so given the date on which these were determined. Although the changes which were introduced at this time were referred to in the determination of 7 February 2012, they were not changes that were required by it. The school as the admission authority must ensure that consultation is carried out as required by the Code. For admissions to the reception year of a school it is especially important that parents of children from the age of two years are consulted. The school had the opportunity to consult on its proposed changes, and should not have made them without doing so. I therefore conclude that the school’s admission arrangements for September 2013 which have been referred to me do not conform with the requirements relating to admission arrangements concerning consultation on proposed changes to them.

24. I am also surprised that the school and the LA tell me that the last time the school consulted on its admission arrangements was in respect of those for September 2014, but that they say this consultation took place for only three weeks between dates that were after the date on which the school tells me that the arrangements were determined. Neither can give me any evidence of any meaningful attempt to bring the consultation to the attention of parents or other interested parties. The school has not met the requirement to consult for either the length of time or with the full list of persons or bodies specified as a mandatory requirement in the Code. I therefore up hold this part of the objection to the school’s arrangements for September 2014.

(**ii) electoral roll membership**

25. The objector asks me to agree that giving priority on the basis of a parent’s registration on an electoral roll for a minimum of two years offends against the requirements for admission arrangements:

> a. because the Church of England’s website says that guidance offered nationally and by dioceses to its schools stresses “the importance of simple, clear criteria which focus solely on attendance at worship, either on Sunday or another day of the week”, and because admission authorities of schools with a religious character are required by paragraph 1.38 of the Code to have regard to advice from the person representing the faith body, whom they must consult concerning the means by which membership or practice of the faith is to be demonstrated in faith-based oversubscription criteria.

26. The diocese has correctly pointed out that the relevant body for Church of England schools is, under regulation 34 and schedule 3 of the regulations, “the appropriate diocesan body for the diocese in which the school is

situated", that is to say, itself. The advice which it has given is that it does not recommend the use of additional factors (to church attendance) but accepts that for heavily oversubscribed schools, such additional means of discriminating between applicants are necessary and that in its view registration on the electoral roll is "adding to the church commitment".

27. As was also pointed out at the meeting which I held, the school's arrangements do not require registration on an electoral roll, but that at least one parent or guardian has been so registered and/or has been a communicant member of the place of worship for this period, which is very different.

28. It is also pertinent that a school of this character would not be bound to follow the advice of the relevant body, only "to have regard to" it, in the words of paragraph 1.38. The onus is therefore on the admission authority, where advice is given, to have considered it and to have good reason if choosing to depart from it. I cannot see that the school's arrangements mean that it has fallen foul of this requirement.

> b. because it is unlawful for schools to discriminate on the grounds of the religious belief of a parent. The objector believes that while relevant schools are exempt from the general prohibition against discriminating on the grounds of religious belief provided by the Equality Act 2010, that this exemption extends only to the pupils who they might admit.

29. Section 85(1) of the Equality Act 2010 prohibits the responsible body of a school from discriminating against "a person …..in the arrangements it makes for deciding who is offered admission as a pupil". Section 89(12) of and Part 2 of Schedule 11 to that Act disapplies this provision to voluntary schools "so far as relating to religion or belief" is concerned, in relation to a school designated under section 69(3) of the Act (a foundation or voluntary school with a religious character). There is nothing in this disapplication which restricts such voluntary schools to the use of oversubscription criteria which allow for the allocation of places based on the religious belief of the pupil. They may discriminate against any person on the grounds of religion or belief in any aspect of the arrangements they make for deciding who is offered admission. I am therefore unable to agree with the objector that the school is acting unlawfully by taking into account the religious belief of parents when deciding which pupils to admit.

> c. because this is contrary to the Code, paragraph 1.9(i), which says that schools must not "prioritise children on the basis of their own or their parents' past or current hobbies or activities".

30. In my judgement, registration on an electoral roll does not constitute a hobby or activity, and so I do not agree with the objector that the practice offends against this provision.

(iii) requirement of child's church attendance

31. The arrangements require parent/guardians wishing their children to be given priority on religious grounds to have attended their place of worship with

their child on at least 26 weeks per year for a full two years prior to the closing date for applications in January 2014. The objector considers this requirement excessive, and points out that it means that children will have had to be attending church when they are two years old, and will unfairly disadvantage families which have moved recently to the UK. The objector queries whether the school has sought the advice of the diocese on this matter.

32. The Code (paragraph 1.8) states that "oversubscription criteria **must** be reasonable, clear, objective, procedurally fair and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly a child from a particular social or racial group…."

33. The diocese has told me that it has been consulted, and that it has said that it considers church attendance once or twice a month for two years a reasonable period in general for demonstrating a commitment to the Church. While the school expects attendance on the part of the child, this is together with the parent, and the diocese does not consider the requirement excessive. The school says that it sees church attendance as a natural part of the pattern of life of a Christian family, and that a large number of young children happily attend its parish church where there are activities for children under the age of three. The school is heavily oversubscribed with applicants from Church of England and other Christian Churches who can evidence attendance of two years. While I do not regard such evidence as definitive in proving that admission arrangements contain requirements that are reasonable, overall I find the comments of the school and diocese convincing on the question of whether very young children might reasonably meet the school's requirements.

34. Both the school and the diocese have confirmed that attendance at previous churches is taken into account. However, the arrangements refer to attendance at a "second" place of worship, evidence for which can be presented on the SIF. It do not think it would be clear to a family who have recently arrived in the area that the word "second" might allow church attendance at a previous address to be recorded. The school should ensure that the wording of the arrangements and of the SIF make it clear that such applicants are invited to evidence church attendance at their previous address, and how they should do so.

(iv) the use of interviews

35. The objector has complained that the school's parish church requests an interview with parents in order to produce a reference and sign the school's SIF, and that since members of the church's clergy are also members of the governing body of the school, this practice is in breach of the prohibition placed on interviews by the Code, paragraph 1.9m.

36. The school has confirmed that the Parish Priest is a member of the governing body and has adopted the practice of asking to see parents wishing to have the SIF signed.

37. Whilst the parish church is not the school, all parts of the procedure

relating to admissions to the school are subject to the Code, and any form of interview is forbidden under paragraph 1.9m. The church must not require parents to meet any person, whether or not they have a connection with the school, for this or any other purpose which is part of the school's arrangements.

Conclusion

38. Having considered the difficulties set out above concerning consultation by the school on changes which have been made to its admission arrangements, I have concluded that there has been a repeated failure on its part to appreciate the importance of this matter and of the measures required of it by legislation and the Code. I therefore conclude that the school's arrangements determined for admissions in 2013 do not conform with the requirements relating to admission arrangements. I uphold the objection made concerning the arrangements for September 2014. The school may consider that it would be advisable to ensure that it engages in a consultation that will meet in full the requirements set out in paragraphs 1.42 to 1.45 of the Code, prior to determining its arrangements for admissions in September 2015, whatever their contents.

39. For the reasons given above, I have not accepted any of the arguments put forward by the objector for the school's practice concerning the registration of a parent or guardian of a child seeking a place at the school on an electoral roll being in breach of the requirements concerning admission arrangements. I do not uphold this part of the objection.

40. Also for reasons set out above, I do not agree with the objector that the requirement of church attendance on the part of a child for whom a place is being sought is contrary to the Code, since it introduces neither unreasonableness nor unfairness into the school's arrangements. However, although I do not uphold this part of the objection, I am of the view that the school should improve the wording of its arrangements and its SIF in order to ensure that families moving into the area are not disadvantaged.

41. I have also given my reasons for concluding that the practice of applicants for school places being required to meet the Parish Priest or anyone else as part of the process of application is in breach of paragraph 1.9m of the Code. I uphold this part of the objection.

Determination

42. 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 Hampden Gurney Church of England Primary School for September 2014.

43. I have also considered the arrangements for September 2013 in accordance with section 88I(5). I determine that they do not conform with the requirements relating to consultation prior to changes being made by an

admission authority to its admission arrangements.

44. 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: 27 August 2013

Signed:

Schools Adjudicator: Dr Bryan Slater