

DETERMINATION

Case reference: ADA/002615

Objector: A parent

Admission Authority: The governing body of Notre Dame High School,
Norwich

Date of decision: 22 July 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 Notre Dame High School.

I have also considered the arrangements as a whole in accordance with section 88I(5) of the Act and I determine that these 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 objection

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Office of the Schools Adjudicator by a parent, (the objector) about the admission arrangements (the arrangements) for September 2015, for Notre Dame High School (the school), in Norwich, an academy school for pupils aged 11 to 18 years. The objection has two aspects, the first is that the school has determined an arbitrary qualification date to determine whether or not an applicant is Catholic for the purpose of admission to the school and that this is unfair and contravenes paragraph 1.8 of the School Admissions Code (the Code). The second is that there was no way of knowing that a qualification date had been introduced, which contravenes the requirement in paragraph 15b) for consultation before any changes are made to arrangements.

Jurisdiction

2. The terms of the academy agreement between the proprietor and the Secretary of State for Education require that the admissions policy and

arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing body of Notre Dame High School, which is the admission authority for the school, on 11 March 2014, on that basis.

3. The arrangements for 2015 were determined under section 88C of the Act by the governing body. In this case, the objector submitted the objection to these determined arrangements for 2015, on 7 May 2014 and 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.

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:

- the referral form from the objector received on 7 May 2014 and subsequent correspondence;
- the school's response dated 21 May 2014 and subsequent correspondence;
- comments from Norfolk County Council, the local authority, (the LA) dated 20 May 2014;
- comments from the Diocese of East Anglia (the diocese) dated 17 June 2014 and subsequent correspondence;
- the minutes of the meeting of the governing body held on 12 February 2013 at which the arrangements for admissions in 2014 were determined;
- a copy of the determined arrangements agreed by the governing body for 2014;
- the minutes of the meeting of the governing body held on 11 March 2014 at which the arrangements for admissions in 2015 were determined; and
- a copy of the determined arrangements agreed by the governing body for 2015.

The objection

6. The objection is that an arbitrary qualification date, of Easter Sunday in the year before admission to the school, has been determined by the governing body in order to determine whether or not a prospective applicant is recognised as Catholic for the purposes of admission to the school and that this is unfair and contravenes paragraph 1.8 of the School Admissions Code (the Code), which says,

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

7. The objector contends that there was no way of knowing that a qualification date had been introduced, implying that consultation has not been adequate and this therefore contravenes paragraph 15b) of the Code, *“Admission authorities must set (determine) admission arrangements annually. Where changes are proposed to admission arrangements the admission authority **must** first publically consult on those arrangements.....”*

Other matters

8. Having reviewed the arrangements as a whole for admission to the school in September 2015, I considered several issues which may contravene the Code. These include:

- the requirement to admit students with a statement of special educational needs that names the school;
- the definition of looked-after and previously looked-after children in criteria 1 and 7 of the admissions policy for entry to year 7 and in priority 2 of the sixth form arrangements;
- the requirement for clarity about which schools are ‘supported by the Diocese of East Anglia’ referred to in criterion 2;
- information about the waiting list; and
- the reference to “parents/carers” on the supplementary information form (SIF).

Background

9. The school was founded in 1864 by the Sisters of Notre Dame. It is a Roman Catholic academy school in Norwich in the Diocese of East Anglia. The school converted to academy status on 1 March 2012. Information on the school’s website advises parents that the school is primarily for the education of Roman Catholic students between the ages of 11 and 18 years of age, who have attended a primary or middle school supported by the Diocese of East Anglia.

10. The school which has a published admission number of 200 and approximately 1385 students on roll has been oversubscribed in each of the last three years. Arrangements provide information for parents about the outcome of applications in the previous academic year. In the arrangements for 2015, prospective applicants are advised that all applications up to and including criterion 12 were successful. There were 132 applications under criterion 13, “Other non-Catholic students” and of these 5 were successful.

11. The objection has been made after the objector’s daughter not being allocated a place at the school for admission in September 2014. I have no jurisdiction to

consider the circumstances of an individual child and will limit my consideration to the compliance or otherwise of the school's admission arrangements with the Code.

Consideration of Factors

12. The objector contends that the arrangements are unfair in that the school has determined an arbitrary qualification date of Easter Sunday in the year before admission to the school, in order to determine whether or not an applicant is recognised as Catholic for the purposes of admission to the school. This contravenes paragraph 1.8 of the Code which says, "*Oversubscription criteria **must be reasonable clear and objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.....***"

13. I see from the oversubscription criteria that applicants are divided into two groupings, Roman Catholic applicants and 'non-Catholic' applicants, as follows:

1. Roman Catholic students who are defined in the appropriate Government guidelines as 'looked after', or who have previously been 'looked after'.
2. Roman Catholic students who have attended Roman Catholic Schools which are supported by the Diocese of East Anglia.
3. Roman Catholic students of staff at Notre Dame High School who have been employed by the school for at least two years or are in a position where there is a demonstrable skills shortage.
4. Roman Catholic students with a brother or sister already attending and who will continue to attend Notre Dame High School during the following school year.
5. Other Roman Catholic students in Norfolk and North Suffolk.
6. Other Roman Catholic students.
7. Non-Catholic students who are defined in the appropriate Government guidelines as 'looked after', or who have previously been 'looked after'.
8. Non-Catholic students of staff at Notre Dame High School who have been employed by the school for at least two years or are in a position where there is a demonstrable skills shortage.
9. Non-Catholic students in a Roman Catholic School, supported by the Diocese of East Anglia, with a brother or sister already attending and who will continue to attend Notre Dame High School during the following school year.
10. Non-Catholic students in a Roman Catholic school supported by the Diocese of East Anglia.

11. Non-Catholic students who apply for admission on the grounds of significant medical or psychological reasons which are supported by appropriate written medical or psychological evidence from a health professional.

12. Non-Catholic students in a non-Catholic school with a brother or sister already attending who will continue to attend Notre Dame High School during the following school year.

13. Other non-Catholic students.

14. In practice any applicant baptised after Easter Sunday in the academic year before the application year is considered by the school to be 'non-Catholic'. The objector argues that the decision of the governing body "to exclude late converters" is based on assumptions about the reasons why this is so as most children take instruction for many months in order to be received into the Church. If a first communion is delayed by circumstances beyond the control of a family such that the qualification date is missed, it is unfair for such children to be considered by the school as 'non-Catholic' for the purposes of admission and for their applications to be placed in the same oversubscription category with children who are not Catholic.

15. The school responded saying that arrangements explain clearly that for the sole purpose of placing applicants into the appropriate category for consideration for admission under the oversubscription criteria, the school recognises children as being Catholic provided they were baptised (or received into the Catholic Church by means of first holy communion for those baptised in other Christian traditions), no later than Easter Sunday of the year preceding admission.

16. Taking account of the objector's point that it is possible occasionally that there may be circumstances beyond the control of a family which causes a delay to the date when a child is 'received into the Church' so that the qualification date is missed, I enquired whether any flexibility exists to take such exceptional circumstances into account. The school said, "*Unfortunately there is no flexibility in this process – the school requires sight of a Roman Catholic Baptismal certificate or First Holy Communion certificate produced by the Easter Sunday of the year preceding admission to recognise children as being Catholic for admissions purposes to the common entry point at Year 7. Anyone not offered a place is offered an independent appeal, where they may make their case for their child, and where the panel make their decision.*"

17. In its initial response the diocese advised me that there is no specific written guidance for secondary schools, other than the general advice to ensure arrangements as straightforward as possible in line with the Code. "*Our schools must give priority to Catholic students but most of our schools also have a small number of places for other students wishing a faith based education. A student is deemed Catholic if they are baptised Catholic or have been received into the*

Church. Most Catholics are baptised as babies or young children. However, sometimes older children are 'received' into the Church and recognised as Catholics.” Commenting on the objection the diocese said, “As many of our schools have more applicants for places than places available it is very important that the admission criteria are very clear. Notre Dame is a very successful school and the diocese was keen to support the school in putting in place fair and clear criteria. Unfortunately, there have been cases where parents have put their children forward to become Catholic right up to the final application date. This puts the priest in an impossible position to assess whether this is borne out of genuine commitment or rather to secure a place in a successful and oversubscribed school.”

18. The governing body’s view is that that a number of applicants have converted very late to the faith and this was in order to gain priority for admission to the school which is generally oversubscribed. The Diocesan Bishop was consulted about the issue and suggested that Easter Sunday in the year before admission might be an appropriate date to include within the school’s arrangements. After consulting about the proposed change in 2010 the school changed its arrangements in 2012.

19. The Code refers to faith based oversubscription criteria in schools with a religious character in paragraph 1.36 and says that in common with all maintained schools, ‘faith’ schools are required to offer places to every child who applies if places are available, regardless of whether they are of the faith, another faith or no faith. Paragraph 1.37 states, “*Admission authorities **must** ensure that parents can easily understand how faith-based criteria will be reasonably satisfied...*”. The qualification date has been included in the arrangements for the last three years. In my opinion the school has set a clear cut-off date of Easter Sunday each year and it has taken the extra step of including the actual date that Easter Sunday falls on each year so parents can refer to an actual date. Many schools expect baptism to take place while children are very young. The decision by the school to set a cut-off date after discussion with the Diocesan Bishop is therefore in my opinion reasonable.

20. The objector accepts that the school might be concerned about applicants who were late comers to the faith trying to get a place unfairly. However, there remains an issue of concern to me, which reflects a further comment by the objector about the need for the school to include a criterion, such as that used by one of the feeder schools, which enables “late converters” to be considered as a separate group of Catholic children. In defining ‘Roman Catholic’ children in terms of a qualifying cut-off date, some children are excluded from consideration for admission under criterion 6 “Other Roman Catholic children” yet it is entirely possible that that such children may for example, have attended a Catholic school that is supported by the diocese and may have attended church regularly with their families. In my view regardless of the lateness of conversion, this group of children will be deemed ‘Catholic’ in the eyes of the Church. Following this line of reasoning then it seems to me that it would be neither fair nor reasonable for an individual admission authority to deny that this is the case by electing to classify these applicants as ‘non-Catholic’,

thus denying them the right to apply under criterion 6 with 'Other Roman Catholic children'.

21. The current arrangements are unclear. Parents of Catholic children baptised after the school's qualifying date may reasonably conclude that they were not eligible to apply to the school under any criterion, since they are neither 'Roman Catholic' by the school's definition, nor 'non-Catholic' applicants. An additional criterion which could for example state, "Catholic children baptised later than Easter Sunday in the year prior to admission", would ensure that this group of Catholic children were not at risk of failing to gain admission to a Catholic secondary school.

22. In my view it cannot be procedurally fair to completely deny the Catholic faith of children who convert later to the faith, than the date which an individual admission authority has elected to set for the purposes of admission to a school. At present there is no oversubscription criterion which allows such applications to be considered for admission and the practice of considering such applicants within the second grouping of oversubscription criteria for 'non-Catholic' applicants is not in my opinion reasonable. I therefore determine that for the reasons given above the arrangements do not conform to the requirements of paragraph 1.8 of the School Admissions Code (the Code), "*Oversubscription criteria must be reasonable clear and objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.....*"

23. The second aspect of the objection is the objector's assertion that there was no way of knowing about a specific date by which a child had to be baptised or received into the Church, for the purposes of admission. I have considered this aspect of the objection in relation to paragraph 15b), "*Admission authorities must set (determine) admission arrangements annually. Where changes are proposed to admission arrangements the admission authority must first publically consult on those arrangements.....*"

24. The school said that the Easter Sunday 'cut off' date was first used for admissions to the school in September 2012 and the change was subject to a full consultation prior to that which included a letter to local head teachers in September 2011 about proposed change to arrangements for 2012, "*For admission to Year 7 Governors recognise children as being Catholic if they have been Baptised or received First Holy Communion by the preceding Easter Sunday*". Information about the proposed introduction of the deadline was displayed on the rolling news-bar of the school's previous website for eight weeks as required between December 2010 and February 2011, with comments invited.

25. I enquired whether or not in addition to the websites of the school and the LA, the consultation about the arrangements that introduced the deadline of Easter Sunday was advertised more widely. The school said it had, also consulted with the diocese and the Bishop in particular, and had spoken with the Head teachers of

Catholic primary and junior schools at meetings organised with local Catholic schools, so they were aware of the proposals. The consultation was advertised on the scrolling news-bar of the school's (old) website so that people might be aware of the proposals.

26. The LA confirmed that the school's proposed arrangements were published on the LA's website during the statutory consultation period and that no objections were received. Having reviewed the arrangements for the school, the LA was satisfied that the proposed arrangements, including the amendment concerning the cut-off date, were compliant. The LA later acknowledged that parents of children attending an independent school would not have been sent a response sheet as such a school would not be deemed to be a feeder school. The objectors says, *"Announcing those changes on an RSS feed on the school website is not a good form of communication for parents who don't have children at that school, and no one I have spoken with thought to check their future choice school website 18 months in advance of admission."* In his view the process of changing arrangements was not sufficiently publicised, making the online the consultation 'worthless'.

27. Own admission authorities must meet all the requirements set out in paragraph 1.44 of the Code. It is not sufficient in my view to say the arrangements were displayed on the LA's website and/or the school's website unless there is also evidence of how the school drew attention of parents to the consultation document. This may involve notices in a local paper, at local supermarkets or in local health centre, depending on the local facilities

28. Given that consultation can take place for eight weeks at any time between 1 November and 1 March it is not reasonable to expect that a parent will check all the websites of schools that they may consider including as a preference when it is time to apply, just in case there is a consultation that particular year. It remains the responsibility of the admission authority to ensure that any consultation is compliant with the Code. It would seem that the school relied on a belief that future applicants would monitor the websites of the LA or a prospective school. There appears to be a case for concluding that the school may have failed to take sufficient steps to ensure that all parents and members of the wider community were genuinely consulted, by drawing attention to the consultation.

29. However, evidently the consultation about the introduction of a qualifying date took place in 2010 and the change was introduced in 2012. This objection is to the 2014 and 2015 arrangements. I note that there is a clear statement of the actual date in each set of arrangements, that is, for admission in September 2014 it was 31 March 2013 and in the arrangements for 2015 it is 20 April 2014. There has been no change to the 2015 arrangements that would have required consultation before the arrangements for 2015 were determined. For this reason I do not uphold this aspect of the objection.

Other matters

30. Having reviewed the arrangements as a whole I found that there were several matters of concern.

The admission of students with a statement of special educational needs

31. Before setting out oversubscription criteria that might be used in the event that a school is oversubscribed, it is good practice to include information about the admission of any children with a statement of special educational needs. Parents need to be aware that the admission of such children will take priority in the admissions process before the school applies its oversubscription criteria. There is a mandatory requirement referred to in paragraph 1.6 of the Code that states, "All children whose statement of special educational needs (SEN) names the school **must** be admitted."

The definition of looked-after and previously looked-after children

32. The current definitions of looked-after and previously looked-after children contained in criteria 1 and 7 of the admissions policy for entry to year 7 and in priority 2 of the sixth form arrangements are insufficiently clear. For example criterion 1, states, "Roman Catholic students who are defined in the appropriate Government guidelines as 'looked after', or who have previously been 'looked after'." In effect the school is referring parents to a set of government guidelines. There is a requirement in paragraph 14 for parents to be able to access all the information they need within the arrangements. It is not acceptable to refer them to other documents or guidance.

Clarity about feeder schools

33. The arrangements include priority for pupils attending feeder primary schools. Criterion 2 states, "Roman Catholic students who have attended Roman Catholic Schools which are supported by the Diocese of East Anglia" but the feeder schools are not listed in the arrangements themselves.

34. I found that there were two separate routes on the school's website that parents might follow to access the arrangements. If parents follow the route - Parents, Policies, and Admissions - it will take them to the four page document "Admission Policy 2015 Intake". In these arrangements there is no guidance for parents about which schools are supported by the diocese. In my view it is possible therefore, that a family new to the area, seeking information about a place in year 7 for admission in September 2015, might not be aware of which schools the diocese supports. When I searched the diocesan website I found that the diocese actually supports 30 schools including both maintained and independent schools. In the context of the school's arrangements this could be misleading, as the listed schools are all supported by the diocese but they are not all feeder schools.

35. When I asked the school where I might find the list of feeder schools I was advised that they were listed on the admission pages of the school's website. Following the same route, on re-checking I found a list of feeder school under the heading, "*Admissions to other Year Groups.*" However, I also noted that there was a further route that parents could follow -'How to apply'- where parents will find both the arrangements for 2015 and the supplementary information form. Here again the list of six primary Catholic feeder schools is placed under the heading "*Admissions to other Year Groups.*" I question whether or not parents would read the paragraph about admission to other year groups when applying for a place in year 7.

36. Feeder schools must be named as such, within the arrangements themselves. Paragraph 1.15 states, "*Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion must be transparent and made on reasonable grounds.*" It is in my view reasonable for the school to name six feeder schools that are supported by the diocese and I believe this will be transparent to parents. However, in order for the arrangements to be compliant with the Code these feeder schools must be named within the arrangements themselves.

Information about the waiting list

37. Information in the arrangements states, "The school does not hold a Waiting List for unsuccessful applicants beyond the end of the autumn term of Year 7." The Code says in paragraph 2.14, "Each admission authority **must** maintain a clear fair and objective waiting list for at least the first term of the academic year of admission stating in their arrangements that each added child will require the list to be ranked again in line with the published admission criteria. Priority **must not** be given to children based on the date their application was received or their name was added to the list....." The school must amend its arrangements to include the required information.

Reference to on the supplementary information form

38. The current SIF refers to 'parents/carers'. This contravenes paragraph 1.9f which states that admission authorities **must not** "give priority to children according to the occupational, marital, financial or educational status of parents applying....." Only one parent is required to complete an application and information should not be sought about or from parents.

39. I am also concerned that the arrangements say that all applicants "must" complete the school's application form. The SIF is not an application form itself. It is designed to supplement the common application form that all parents are required to complete. Schools do not have application forms, but if necessary they may have a SIF. This enables applicants to submit information if it is necessary, in order to be given priority under one of the oversubscription criteria.

Conclusion

40. I have considered the evidence available to me about the timing of and the rationale for inclusion of the qualifying date of Easter Sunday in the arrangements. The decision was taken in the academic year 2010 – 2011 after consultation with the Diocesan Bishop and after consultation about a proposed change to arrangements as required. The objection cites paragraph 1.8 of the Code which requires that, “Oversubscription criteria **must** be reasonable, clear, objective and procedurally fair....” The governing body has decided that any applicant who is baptised or received into the Church after Easter Sunday of the year preceding the admission year does not qualify as a Roman Catholic. While I accept that the school may wish to give a lesser priority to this group of children, than to applicants who have met the qualifying date, at present the school also denies the right of this group of children to be recognised as Catholic and to apply under criterion 6, the last category of Catholic applicants. Instead these applications are considered as if they have been submitted by ‘non-Catholic’ children. In my opinion this practice is not clear, objective or procedurally fair and thus contravenes the mandatory requirement of the Code. I therefore uphold this aspect of the objection.

41. The second aspect of the objection relates to consultation. Although I have concluded that the scope of the consultation with the wider community might have been more inclusive in 2010, the introduction of the qualifying date was to the arrangements for 2012. The fact that the school uses a qualifying date is therefore not a new practice and it is reasonable to expect that the wider community of Catholic schools would be aware of the requirement. There was no change to the arrangements for 2015 and therefore no requirement for a consultation. For this reason I do not uphold this aspect of the arrangements.

42. I have also considered the arrangements as a whole for admission to the school in September 2015 and have concluded that several aspects of the arrangements detailed above, do not comply with the Code. With regard to these other issues of non-compliance the Code requires the admission authority to revise its admission arrangements as quickly as possible.

Determination

43. 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 Notre Dame High School, the admission authority for the school, for admissions in September 2015.

44. I have also considered the arrangements as a whole in accordance with section 88I(5) of the Act and I determine that these do not conform with the requirements relating to admission arrangements.

45. 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.

Date: 22 July 2014

Signed:

Schools Adjudicator: Mrs Carol Parsons