

DETERMINATION

Case reference:	ADA2671
Referrer:	Dudley Metropolitan Borough Council
Admission Authority:	The Board of Directors of the St. John Bosco Multi Academy Company
Date of decision:	8 July 2014

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for St. Joseph's Catholic Primary School determined by the Board of Directors of St. John Bosco Multi Academy Company, Dudley.

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

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

The referral

1. Under section 88H(2) of the Schools Standards and Framework Act 1998 (the Act) an objection has been referred to the adjudicator by Dudley Metropolitan Council, the local authority (the LA) for the area, in an email dated 11 June 2014 concerning the admission arrangements for September 2015 (the arrangements) for St. Joseph's Catholic Primary School (the school). The objection is to the oversubscription criteria which give, as the eighth criterion, preference for places in the reception class for non-Catholic children who attend the school's nursery.

Jurisdiction

2. The terms of the academy agreement between the St. John Bosco Multi Academy Company (MAC) and the Secretary of State require that the admission policy and arrangements for each academy school are in accordance with admissions law as it applies to maintained schools. The arrangements were determined by the Board of Directors of the MAC, which is the admission authority for the school,

on that basis.

3. The objector submitted the objection to these determined arrangements on 11 June 2014. I am satisfied that the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
 - a. the objection, dated 11 June 2014;
 - b. the school's response to the objection, dated 24 June 2014;
 - c. the school's admission policy, determined at a meeting of the Board of Directors of the St John Bosco MAC on 10 April 2014;
 - d. evidence of the consultation exercise concerning the arrangements;
 - e. minutes of the MAC Board of Directors' meeting held on 10 April 2014;
 - f. the admissions policy for the school's nursery;
 - g. the diocesan education service's response to the objection, dated 24 June 2014;
 - h. the diocesan education service's 2015/16 model admission arrangements for Catholic primary schools in Dudley;
 - i. information on primary school admissions on the LA's website; and
 - j. the school's website.

The Objection

6. The LA has objected to the inclusion, in the oversubscription criteria within the school's arrangements, of a criterion that gives preference, when allocating places in the reception class, to non-Catholic children who have attended the school's nursery. The LA contends that this does not meet the requirement of paragraph 12 of the Introduction to the Code, which refers to school places being "*allocated and offered in an open and fair way.*" The LA draws attention also to paragraph 1.8 of the Code, which again mentions fairness, and paragraph 1.15 which states that "*the selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on*

reasonable grounds.”

7. The LA objection is that *“giving priority to pupils who are in the nursery could be seen as a disadvantage to parents who opt not to send their child to nursery or to a nursery that offers wrap around provision and greater flexibility.”* The LA refers to the annual report of the Office of the Schools Adjudicator published in November 2013, which drew attention to a number of successful objections to arrangements that included oversubscription criteria that gave priority to applications for children in named nursery provision. In summary, the LA’s position was that *“Schools should ensure fair access for all children on reaching compulsory school age in order that children are not disadvantaged by any decisions their parents make about the care of their children prior to compulsory school age or by access to specific child care.”*

Other matters

8. In the course of considering the objection I reviewed the arrangements as a whole and noted that there is a lack of clarity in the section headed ‘Waiting Lists’, where the arrangements contain contradictory information.

Background

9. The school, which is part of the St. John Bosco MAC, is a Catholic primary academy school for 3 – 11 year old pupils. There are about 200 pupils on roll, excluding those in the nursery, and the school is in the archdiocese of Birmingham. The local governing body, known as the academy committee, is represented on the board of directors of the St. John Bosco MAC, which is the admission authority under the articles of the academy trust.
10. The arrangements for 2015 were determined by the St. John Bosco MAC on 10 April 2014 using a common or ‘model’ policy provided by the archdiocese to all Catholic primary schools in Dudley.
11. The school has a planned admission number (PAN) of 30. The arrangements provide, as required, that children with a statement of special educational need in which the school is named will be admitted. Oversubscription criteria are then, in summary:
 1. Catholic looked after or previously looked after children
 2. Catholic siblings living in two named parishes
 3. Other Catholic children living in the two named parishes
 4. Other Catholic siblings
 5. Other Catholic children
 6. Non-Catholic looked after or previously looked after children
 7. Non-Catholic siblings
 8. Non-Catholic children who attend St. Joseph’s nursery
 9. Non-Catholic children
12. Criterion 8 in the above list of oversubscription criteria was

introduced in the 2015/16 arrangements, having not been included previously. This criterion is not in the model policy circulated by the diocesan education service. The arrangements contain the statement, taken from the model policy, that *“Attendance at a nursery does not automatically guarantee that a place will be offered in main school.”*

13. The school is oversubscribed. In each of the three previous admission years for which there is LA data (2009/10, 2010/11 and 2011/12), there were almost 50 first choice applications for the 30 available places. No looked after or previously looked after children were admitted, but in two of those years 17, and in the other year 11, siblings were allocated places. Between two and five appeals were heard in each of the previous three years, none of which was successful.

Consideration of Factors

14. I have considered the reasons given by the LA for the objection and factors relevant to the position of nursery classes in relation to admissions to reception classes. I have also considered the case presented by the school in defending the introduction of criterion 8 in the 2015 arrangements and the support given to the school’s position by the diocesan education service.
15. The LA’s argument centres on the notion of fairness and equal access, especially for those parents who prefer not to make use of nursery provision for their child, or who prefer to use provision with more flexible terms than those offered by the school’s own nursery, which offers two part time sessions per day. The morning session begins at 9.30 a.m and the afternoon session closes at 3.30 p.m. Although the LA refers to paragraph 1.15 of the Code, which concerns feeder schools, this paragraph mentions only primary and middle schools and is silent on nurseries. Furthermore, since the nursery at St. Joseph’s is not a separate school, it cannot be considered as a feeder school.
16. This silence does not mean that oversubscription criteria relating to nurseries are fair or permitted, but neither does it mean that they are prohibited within the terms of the Code. I have decided therefore to consider the nursery criterion used by the school against the overall principles behind setting admission arrangements, as outlined in paragraph 14 of the Introduction to the Code, and the more detailed provisions found in paragraphs 1.8 and 1.9 of the Code.
17. With regard to paragraph 14, which requires that *“the practices and the criteria used to decide the allocation of school places are fair, clear, and objective”* I have above all to consider ‘fairness’ and ‘objectivity’, since the clarity of the arrangements is not in dispute. Paragraph 1.8 uses similar terminology but introduces also the idea that arrangements should not *“disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group”*

I believe that, although choices regarding nursery education may not place parents in formal 'social groups', it would nevertheless be a legitimate reading of that statement in the Code to consider that this prohibition should apply in such circumstances.

18. The school's response to the objection also invokes the notion of fairness in arguing that *"we felt it was fairer to allow children already in the setting and familiar with the routines and environment to continue at our school ..."*. However, the school then goes on to say that they considered *"it was fairer to allow children who have started their EYFS [early years and foundation stage] education in the school to remain with us for Reception class rather than deny them a place in preference of a non Catholic child who may live nearer, but has been in another setting and so would not be familiar with routines, environment and staff."* Having said this, the school acknowledges that it has been aware of the LA's objection to this criterion throughout the consultation process, that it has an excellent relationship with the LA, and that it is happy to accept and act upon the outcome of this determination. My view is that, whatever the undoubted benefits of continuity and familiarity, it would seem unfair on a child living very close to the school to be denied a place in favour of another who might live at some distance, but happened to have attended the nursery. While the educational arguments around continuity and familiarity may sound compelling, there are always likely to be some children admitted to the reception class who have not attended the nursery, and who would therefore need to be acquainted with a new environment and fresh expectations.
19. Another point that I have considered is the placing of this criterion in the order of priorities. It is very low down the list and applies only to non-Catholic children. Given the level of oversubscription to the school, which would require a thorough working-through of the higher ranking priorities, it is likely to affect only a very small number of children. That in itself is not a reason either to support or to reject the criterion but, taken with my comments regarding fairness and objectivity, means that it would be better not to include it.
20. The diocese, in its response to the objection, provides tacit support for the school in stating correctly that *"The 2012 School Admissions Code does not specifically preclude giving priority to children who are already attending the nursery stage at the school ..."*. The diocesan response goes on to say that *"many parents opt for a faith education from an early age and want their children to continue through to full time education within the school."* This latter point, while undoubtedly true, loses some force when it is remembered that the criterion under scrutiny relates to non-Catholic children only. This is not to deny that some non-Catholic families consciously make applications to Catholic schools, or to suggest that the children of such families are less welcome than those baptised in the faith, but merely to point out that the impact of the religious dimension is perhaps less fundamental in respect of the criterion under

consideration than in some of the higher ranking oversubscription criteria, thus strengthening the argument that the nursery criterion should be removed from the arrangements in the interests of fairness and objectivity.

21. In considering the fairness and objectivity of the nursery criterion within the school's arrangements, therefore, I am of the opinion that it is both unfair and lacks objectivity. It is unfair because, as previously suggested, parents might wish not to send their child to a nursery at all, or to a nursery offering different provision. Parents might prefer another nursery to that at St. Joseph's for many reasons, and in my view it would fail the 'fairness' test to say that attendance at one nursery rather than any number of others, or indeed at any nursery at all, should give priority in the allocation of places for the reception class. It is also possible, of course, that parents might have been unsuccessful in gaining a place for their child in St. Joseph's nursery, which would become a double penalty if that then became the reason for them also missing out on a place in the reception class.
22. I determine, therefore, that the school's oversubscription criterion 8, giving priority to non Catholic children who attend St Joseph's nursery, does not comply with the requirements of the Code and that it should be removed from the arrangements in order to conform with paragraphs 14, 1.8 and 1.9 of the Code.
23. I turn now to the other matter mentioned above. The 'Waiting Lists' section of the school's arrangements opens with the statement "*Applicants who are refused places will automatically have their names placed on a waiting list/Applicants who are refused places must request to have their names placed on a waiting list.*" These two contradictory statements are included in the diocesan model guidance, with the implicit intention that the school chooses one and deletes the other. As it stands, this aspect of the school's arrangements is confusing and meaningless to parents and the school's arrangements need to be corrected to conform with whichever way of compiling waiting lists the school prefers. Although not in explicit contravention of paragraph 2.14 of the Code which governs the operation of waiting lists, it nevertheless is unhelpful and lacks transparency.

Conclusion

24. The objection draws attention to what the LA believes is an unfair oversubscription criterion in the school's arrangements, giving preference to non-Catholic children who have attended the school's nursery. While accepting that the admission authority chose to add this criterion to its 2015 arrangements for the school, contrary to the advice of the LA, in good faith and for plausible educational reasons, I found that the criterion is unfair. To enrol children for a nursery of their choice, or for none at all, is a decision parents are perfectly entitled to make and for which it would be unfair to 'penalise' them, in

effect, through the application of the oversubscription criterion here under scrutiny. Moreover, in the context of its ranking within the oversubscription criteria, and the level of oversubscription to the school, it is unlikely to affect many children if the criterion were removed from the arrangements. Indeed, it might benefit some children living near to the school who would otherwise not have been allocated a place.

25. I therefore uphold the objection. Although the criterion does not contravene any explicit requirements of the Code, its removal would mean that the arrangements comply better with the spirit of paragraphs 14, 1.8 and 1.9 of the Code.

26. In considering the arrangements as a whole, I also found that they include a statement that would confuse applicants in respect of the way in which children are to be added to a waiting list in the event of oversubscription.

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

Determination

28. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for St. Joseph's Catholic Primary School determined by the Board of Directors of St. John Bosco Multi Academy Company, Dudley.

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

30. 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: 8 July 2014

Signed:

Schools Adjudicator: Andrew Bennett