

## **DETERMINATION**

**Case reference:** ADA/002304

**Objector:** The Diocese of Carlisle

**Admission Authority:** The Governing Body of St Mary's Voluntary Aided Primary School

**Date of decision:** 31 August 2012

### **Determination**

**In accordance with section 88H (4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the Governing Body of St Mary's Voluntary Aided Primary School.**

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

**By virtue of section 88 K (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 School Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by the Diocese of Carlisle,(the Diocese), the objector, about the admission arrangements (the arrangements) for St Mary's Primary School (the School), a voluntary aided school for pupils aged 3-11 years for September 2013. The objection is to the oversubscription criteria which do not give preference to children of the faith.

### **Jurisdiction**

2. These arrangements were determined under section 88C of the Act by the School's governing body, which is the admission authority for the School. The objector submitted their objection to these determined arrangements on 23 June 2012. 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

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

The documents I have considered in reaching my decision include:

- a. the objector's form of objection dated 23 June 2012 and further documents;
- b. the School's response to the objection and supporting documents;
- c. Cumbria County Council's, the local authority (the LA), composite prospectus for parents seeking admission to schools in the area in September 2013;
- d. maps of the area identifying relevant schools;
- e. guidance from the Diocese following consultation with schools;
- f. copies of the minutes of the meeting of the governing body of 23 February 2012 at which the arrangements were discussed;
- g. a copy of the determined arrangements submitted with the objection; and
- i. a copy of arrangements agreed by the governing body on 2 July 2012.

## The Objection

4. The objector argues that the Diocese requires all its schools to use faith based oversubscription criteria and refers to paragraph 1.36 of the Code. "... Schools designated by the Secretary of State as having a religious character (commonly known as faith schools) may use faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed."
5. It further argues that the School must have regard to its guidance and has not done so. Paragraph 1.38 of the Code: "Admission authorities for schools designated as having a religious character **must** have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based oversubscription criteria, to the extent that the guidance complies with the mandatory provisions and guidelines of this Code. They **must** also consult with the body or person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated. Church of England schools **must**, as required by the Diocesan Boards of Education Measure 1991, consult with their diocese about proposed admission arrangements before any public consultation. "

## Other Matters

6. The first oversubscription criterion does not include “previously looked after children” which contravenes paragraph 1.7 of the Code.
7. The governing body decided on 2 July 2012 to adopt the changes requested by the Diocese without taking into account the processes set out in paragraphs 3.6 and 3.7 of the Code for making a variation to admission arrangements. An email to me dated 7 August 2012 from the head teacher reports that these new arrangements have been adopted and published.

## Background

8. In 2011, the Carlisle Diocesan Board of Education (DBE) updated its guidance on school admission policies in preparation for the new Code and legislation. It consulted with all its schools and relevant local authorities in October 2011. The DBE agreed its policies on 21 November 2011.
9. The DBE has identified five principles by which Church of England (CE) values and beliefs should impact on admissions policies;
  1. A concern for the disadvantaged / vulnerable;
  2. The importance of neighbourhood and communities;
  3. Support for the family;
  4. The importance of the family in Christian nurture;
  5. Regard for the Law.
10. The DBE reports that there were concerns from respondents to the consultation about principle 4.

“Some respondents argued passionately that CE schools benefit from the Christian values and vision that guide their practice and are communicated to all stakeholders but they exist for people of any faith or none. Therefore, they argued, no preference should be given on the basis of a particular faith commitment.”

10 .The DBE’s response was that it “understands the strength of this vision but also recognises that we live in an increasingly secular society. Inappropriate and often hostile values are promoted through many media which can undermine the values and practices of a Christian home. CE schools provide an oasis of support and partnership for Christian families wishing to promote Christian values.

The DBE therefore requires all admission policies to give priority to those parents who regularly attend worship with their children. The

DBE will usually refer to the office of the schools adjudicator any admission policies which do not. “

The example of a required criterion is given:

“Children living within the catchment area who, with a parent, attend at last twice a month, a Church in membership of Churches Together in Britain or the Evangelical Alliance. Attendance may be at more than one Church but should be at least two years prior to the application date.”

11. The DBE required all its schools to include faith criteria in the oversubscription criteria and gave the appropriate wording which it wished to be used.
12. The School’s governing body decided not to include the faith based oversubscription criteria in the arrangements the governors agreed at their meeting on 23 February 2012 and sent to the Diocese for consultation. The Diocese and the School began consultation when the policy was received by the Diocese on 27 February 2011. There was some communication between the School and Diocese which led to a meeting in April. The objector reports that a diocesan consultant for admissions advised the School, having heard their arguments, that they should write asking the DBE that the School should be exempt from the faith requirements.
13. On 14 May 2012 the head teacher and chair of governors of the School wrote to the objector explaining their position on the admission policy. They say that;
  - “The governing body discussed the clauses relating to church attendance in considerable detail before deciding that they should not be included in the admissions policy ;”
  - “It gives the impression that we are more concerned with a policy than with the uniqueness of each school, its context and the community it serves. “;
  - “St Mary’s is a situation where the clauses about church attendance are not necessary. There is no pressure on providing places at a church school; “
  - “Clearly the situation may change in the future and the governors would be very keen to review, and revise the policy in the light of the changing context.”
14. At the DBE meeting on 16 May 2012 exemption was not agreed. The objector wrote back to the School on 23 May 2012 asking that they reconsider their position and offering to visit the School to discuss the matter with the head teacher and the governing body. The DBE received no reply to their letter and objected to the Adjudicator about the 2013/14

admission arrangements on 23 June 2012.

15. The admission policy submitted by the objector shows the following oversubscription criteria:
- 1) Children who are in public care. A child in public care is defined as a child who is looked after by the Local Authority within the meaning of section 22 of the Children's Act 1989.
  - 2) Children who have physical and or medical needs who would be disadvantaged by travelling to another school. Written evidence from an appropriate professional would be required for the Governors to consider admissions in this category.
  - 3) Children living in the catchment area who have brothers or sisters attending our school at the time of their admission, giving priority, if necessary, to those children with the youngest siblings. Brothers and sisters are those living at the same address including step, adopted and foster children
  - 4) Children living within the catchment area.
  - 5) Children living outside the catchment area who have brothers or sisters in the school at the time of their admission giving priority, if necessary to those children with the youngest siblings. Brothers and sisters are those living at the same address including step, adopted and foster children.
  - 6) Children living outside the catchment area, giving priority to those who live closest to the school, measured in a straight line on the map. This is measured from the appellant's front door to the front door of the school.

### **Consideration of Factors**

16. First I have considered the status of the arrangements. At the time of the objection to the School's admission arrangements for 2013, the objector believed they had been determined as it is only to determined admission arrangements that an objection can be made. The copy of the admission arrangements provided at that time did not indicate that they were a draft. The governors' meeting of 23 February 2012 agreed that "reference to regular church going should not be included ". and that "the amended draft policy would be sent to the diocese and local authority for their comments before approval".
17. Following this consultation the head teacher and the Chair of Governors wrote the letter of 14 May 2012. It says:
- "The governing body discussed the clauses relating to church attendance in considerable detail before deciding that they should not be included in the admissions policy ;"

- “Clearly the situation may change in the future and the governors would be very keen to review, and revise the policy in the light of the changing context.”
18. Taking together the objection from the Diocese with a copy of the arrangements it believed to be the determined arrangements and the wording in the letter of 14 May 2012 from the Chair of Governors of “deciding”, I have concluded that I should consider the arrangements as having been determined and the objection as properly made to me.
  19. The first part of the objection is that the School has behaved contrary to paragraph 1.36 of the Code in not including faith based criteria in the oversubscription priorities. The Code however clearly says ‘may include’ not ‘must include’. Paragraph 1.36 of the Code says faith schools “may use faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed.” The school is not obliged under the Code to use faith based oversubscription criteria if it decides not to do so. I do not uphold this part of the objection.
  20. The second part of the objection relates to paragraph 1.38 of the Code which says that, “Admission authorities for schools designated as having a religious character **must** have regard to any guidance from the body .... when constructing faith based oversubscription criteria..... They **must** also consult with the body or person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated. Church of England schools **must**, as required by the Diocesan Boards of Education Measure 1991, consult with their diocese about proposed admission arrangements before any public consultation.”
  21. The minutes of the governing body meeting on 23 February 2012 indicate consideration of the DBE’s views even though they did not agree. There is evidence of consultation both in writing and in person about these arrangements.
  22. The School had written exchanges and at least one meeting with the Diocese about its admission arrangements. I consider that this satisfies the requirement of the Code in paragraph 1.38. They had regard for the guidance and wrote explaining in the letter 14 May 2012 why they were not following it. The Code says that faith schools may use faith based oversubscription criteria; it does not say **must**. I do note that both the School and the Diocese report that the School is neither oversubscribed nor likely to become so in the near future.
  23. My view is that the School consulted the DBE about the admissions criteria and considered their advice. Within the required timescale they decided not to follow it. This not contrary to the Code.

#### Other Matters

24. The arrangements as provided had not yet been amended to comply with the paragraph 1.7 of the Code in giving first priority if a school is

oversubscribed not only to “looked after children” but also to “previously looked after children”. As this is a mandatory requirement of the Code the arrangements can be amended immediately in accordance with paragraph 3.6 so as to comply with the Code.

25. As part of my consideration of all the papers submitted to me I considered that the requirements concerning consultation and determination of arrangements may not have been met and sought clarification from the School.
26. Following my enquiries to the School, the head teacher wrote to say that the governing body had met on 2 July 2012 and had decided change the arrangements and include the faith based oversubscription criteria in its admission arrangements for 2013 also that School then submitted the policy to the Diocese and the LA. The head teacher said the 2013/14 arrangements had not been determined until the governors’ meeting on 2 July 2012 when it was decided to include the requested oversubscription criteria. These new arrangements are:
  - i. Children who are in public care. A child in public care is defined as a child who is looked after by the Local Authority within the meaning of section 22 of the Children’s Act 1989.
  - ii. Children who have physical and or medical needs who would be disadvantaged by travelling to another school. Written evidence from an appropriate professional would be required for the Governors to consider admissions in this category.
  - iii. Children living in the catchment area who have brothers or sisters attending our school at the time of their admission, giving priority, if necessary, to those children with the youngest siblings. Brothers and sisters are those living at the same address including step, adopted and foster children
  - iv. Children living within the catchment area, who, with a parent, attend at least twice a month, a church in membership of Churches together in Britain or the Evangelical alliance. Attendance may be at more than one church, but should be for at least two years prior to the application date
  - v. Children living within the catchment area who, with a parent worship in a non-Christian faith which is in membership of the UK interfaith Network
  - vi. Children living outside the catchment area who have brothers or sisters in the school at the time of their admission giving priority, if necessary to those children with the youngest siblings. Brothers and sisters are those living at the same address including step, adopted and foster children.
  - vii. Children living outside the catchment area, who, with a parent, attend at least twice a month, a church in

membership of Churches together in irritation or the Evangelical alliance. Attendance may be at more than one church, but should be for at least two years prior to the application date

- viii. Children living outside the catchment area who, with a parent worship in a non-Christian faith which is in membership of the UK interfaith Network
- ix. Children living outside the catchment area, giving priority to those who live closest to the school, measured in a straight line on the map. This is measured from the appellant's front door to the front door of the school.

27. The Code is clear about the processes to be followed prior to determination if changes from the previous year's arrangements are being considered by the admission authority. Paragraphs 1.42, 1.43 and 1.44 of the Code set out when consultation must take place and who must be consulted. ▲

1.42 **Consultation** - When changes are proposed to admission arrangements, all admission authorities **must** consult by **1 March** on their admission arrangements (including any supplementary information form) that will apply for admission applications the following academic year. Where the admission arrangements have not changed from the previous year there is no requirement to consult, subject to the requirement that admission authorities **must** consult on their admission arrangements at least once every 7 years, even if there have been no changes during that period.

1.43 Consultation **must** last for a minimum of 8 weeks and **must** take place between **1 November** and **1 March** in the determination year.

1.44 Admission authorities **must** consult with:

- a. parents of children between the ages of two and eighteen;
- b. other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions;
- c. all other admission authorities within the relevant area (except that primary schools need not consult secondary schools);
- d. whichever of the governing body and the local authority who are not the admission authority;
- e. any adjoining neighbouring local authorities where the admission authority is the local authority; and
- f. in the case of faith schools, the body or person representing the religion or religious denomination.

30. Prior to 2 July 2012, which is the day the new arrangements are now said to have been determined, the requirements for consultation on these arrangements were not met. As the arrangements differ from those for admissions in 2012, full consultation as set out in the Code



should have been undertaken for a full eight weeks prior to 1 March 2012.

31. The arrangements that are the subject of the objection were, I have concluded, the determined arrangements determined within the timescale set out by the Code and as they were not different from those of 2012 were not required to be subject to full consultation. The changes in the new arrangements as shown above are not changes to comply with the Code and therefore could not be made other than by seeking a variation as set out in paragraphs 3.6 and 3.7 of the Code.

## **Conclusion**

32. It has proved difficult to scrutinise the process followed by the School in determining its arrangements for 2013. I am satisfied, however, from the evidence I do have, that the governing body's decision was not to change its arrangements and not to include faith based oversubscription criteria in the determined arrangements. The Diocese was entitled to object to the arrangements at that point and it is those arrangements that I have considered.
33. When considering its admissions policies the Diocese decided it would require all its schools to include faith priorities in its oversubscription criteria. This is the wish of the DBE; it is not a requirement in the Code. The School consulted the DBE about its admissions criteria and considered the advice of the Diocese. The School decided not to follow it and this is not contrary to the Code. The Code says only that faith schools may include such criteria. It further says that schools must have regard to the advice and guidance of the Diocese when constructing faith based oversubscription criteria, but there is no requirement to have such criteria.
34. I do not uphold the objection to the admission arrangements for admissions in September 2013 which are those that were originally submitted to me.
35. While investigating the objection the School has said it has changed its arrangements to incorporate the elements that the Diocese required to be included. This action contravenes the Code in respect of not consulting on changes to admission arrangements and varying determined arrangements. The Code and relevant legislation cannot be ignored.
36. The determined arrangements do not comply with the requirement to give equal highest priority to looked after and previously looked after children. The first oversubscription criterion needs to be amended accordingly.

## **Determination**

37. In accordance with section 88H (4) of the School Standards and

Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the governing body of St Mary's Voluntary Aided Primary School.

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

39. By virtue of section 88 K (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: 31 August 2012

Signed:

Schools Adjudicator: Miss Jill Pullen