



DETERMINATION

Case reference:	ADA2594
Objector:	The Fair Admissions Campaign
Admission Authority:	The governing body of St Bonaventure's School, Newham
Date of decision:	25 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 St Bonaventure's School, Newham, for admissions in September 2015.

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 in the ways set out in this determination.

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 School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by the Fair Admissions Campaign, (the objector), about the admission arrangements (the arrangements) for St Bonaventure's School (the school), a voluntary aided (VA) Catholic school for boys aged 11 – 18 in the London Borough of Newham, the local authority, (the LA) for September 2015. The objection is to the priority in the school's oversubscription criteria given to children from Christian families; the fact that at 30 April 2014 the admission arrangements for September 2015 had not been published on the school's website; the omission of a reference to previously looked after children in the arrangements; and the fairness and clarity of some aspects of the arrangements.

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 the objection to these determined

arrangements on 17 April 2014. 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. I have also used my powers under section 88I of the Act to consider the arrangements as a whole.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
 - a. the objector's form of objection dated 17 April 2014 and further emails and material (including material from the LA which the objector had earlier secured) submitted on 30 April 2014; 1 and 13 May 2014; 19 June 2014 and 14 July 2014;
 - b. the school's letters and the attachments to those letters dated 29 April 2014; 2, 15 and 18 May 2014 and 23 June 2014 and its email of 11 July 2014 in response to the objection and to points raised by me;
 - c. the letter of 29 April 2014 from the Director of Education of the Catholic Diocese of Brentwood (the diocese) which is the faith body for the school setting out its response to the objection;
 - d. material taken from the website of the diocese including the document "Guidance Notes for Parish Priests on Admission to Catholic Schools" and the associated Priests' Reference form;
 - e. the LA's composite prospectus for parents seeking admission to schools in the area in September 2014;
 - f. the document "School Admissions Documentation Requirements" published by the LA;
 - g. the Department for Education (DfE) publication "The Equality Act 2010 and Schools" ;
 - h. guidance published by the Equality and Human Rights Commission (EHRC) for schools;
 - i. confirmation of when consultation on the arrangements last took place;
 - j. copies of the minutes of the meeting of the governing body held on Monday 2 December 2013 at which the arrangements were determined; and
 - k. copies of the determined arrangements as they appeared on the school's website in May 2014 and in July 2014.
5. I have also taken account of information received during and

subsequent to a meeting I convened on 19 June 2014 at the school which was attended by representatives of the school, LA, diocese and objector.

The Objection

6. The objection concerns a number of aspects of the school's admission arrangements. These can be split into two groups. The first group relates to duties under the Equality Act 2010 (the Equality Act) and the provisions of paragraph 1.8 of the Code. The objector originally considered that the overall extent to which priority in the oversubscription criteria for admission is given to children from Christian families presents difficulty for children from local South Asian families who may wish to secure places at the school. The objector has since revised and narrowed this objection so that it is now concerned with children from local Pakistani, Bangladeshi and North Indian families. I note here that the objector uses the phrase "preference is given to children" in the objection but I have referred to priority in the oversubscription criteria as that is the term used in the Code and as it is a more accurate description of what happens. The objector considers that this amounts to indirect racial discrimination in breach of section 19 of the Equality Act. The objector appeared to argue in the email of 13 May 2014 and letter of 19 June 2014 and at the meeting I held with the parties that the school's approach was not a proportionate means of achieving a legitimate aim and thus amounted to indirect racial discrimination for that reason. The objector's letter of 14 July 2014 states that the objector by then considered that the school's aim itself is not legitimate and thus amounts to indirect discrimination and that no proportionality assessment need be considered. I will address both of these arguments in this determination.
7. The objector also argues that the school is in breach of the requirements of the public sector equality duty (PSED) in section 149 of the Equality Act which requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The objector argues also that the school's arrangements breach paragraph 1.8 of the Code which requires that admission authorities **must** ensure that their arrangements will not disadvantage unfairly, directly or indirectly, a child from a particular social or racial group.
8. The second group of concerns relate to other aspects of the arrangements. First, the objector noted that on 30 April 2014 the school's website did not include the determined arrangements for September 2015 which the objector considered a breach of paragraph 1.46 or 1.47 of the Code. Second, and linked to this, the objector noted that slightly different versions of the arrangements were present on different parts of the school's website and the objector maintained that this meant the arrangements were not clear. Third, the objector stated that the arrangements did not refer to previously looked after children as required by paragraph 1.7 of the Code. Fourth, the objector

considered that that the school's approach of asking the family Priests of those applying to decide whether or not an applicant was a practicing Catholic was unfair as different Priests might treat individuals with the same level of practice differently. Finally, the objector considered that the arrangements were unclear in relation to the need for parents to complete a supplementary information form (SIF) only when they wished their application for a place considered under the faith-based oversubscription criteria.

Other Matters

9. In the course of considering the objection, I reviewed the arrangements as a whole. The arrangements appeared not to conform with the requirements relating to admissions as follows:
 - a. the school admits pupils each year to Year 12 (Y12), but no published admission number (PAN) was set out in the arrangements in breach of paragraph 1.2 of the Code;
 - b. the requirement, set out on the front page of the admissions arrangements as they appeared on the school's website in May 2015, for all applicants to declare their positive support for the aims and ethos of the school did not conform with paragraphs 2.8 and 1.9a of the Code;
 - c. the arrangements lacked clarity in relation to the degree of priority given to brothers of pupils already attending the school relative to the priority given on the basis of distance from the school breaching paragraph 1.8 of the Code;
 - d. the requirement, set out on the SIF, to provide proof of address when this was already covered in the LA's common application form (CAF) breached paragraph 2.4 of the Code;
 - e. the absence of a final tie-breaker to determine between two applicants who cannot otherwise be separated did not meet the requirement of paragraph 1.8 of the Code; and
 - f. the lack of a clear statement that a child with a statement of special educational needs (SEN) that names the school will be admitted in breach of paragraph 1.8 of the Code

Background

10. St Bonaventure's is a Catholic VA school for boys aged 11 – 18 in Newham, London. It has a PAN of 210 for Year 7 (Y7) for September 2015. The corresponding PAN for 2014 was 186. The school's sixth form operates jointly with that of St Angela's Ursuline School which is a nearby Catholic VA school for girls. This collaboration is known as the St Angela's and St Bonaventure's Sixth Form Centre. It has a clear identity of its own including its own website, but I understand that it is not, however, a legal entity separate from the two schools. The school told me that male students are registered at the boys' school and

female students at the girls' school and I understand that there is also some scope for dual registration of sixth form students.

11. The school was last inspected by Ofsted in 2009 and found to be outstanding. The Ofsted inspection report noted that the school's *"highly inclusive nature is successfully removing the barriers to education faced by many of its learners."*
12. When I first reviewed the school's website in May 2014, I found that information about admissions was easy to find via the information tab on the homepage. The admissions page itself set out the oversubscription criteria for Y7 and links were provided to the admissions criteria for Y7 for 2014 and 2015 and for the SIF for 2014 but not for 2015. The school's oversubscription criteria for Y7 are as follows:

"At any time where there are more applications for places than the number of places available, places will be offered according to the following order of priority:

1. *Adopted, "Looked after" and previously "Looked after" children from Catholic families.*
2. *Practising Catholic boys who are resident in the Deanery of Newham for whom St Bonaventure's is the nearest Catholic school.*
3. *Other practising Catholic boys.*
4. *Other baptised Catholic boys.*
5. *Catechumens: members of the catechumenate of the Catholic Church.*
6. *Any other looked after or previously looked after children who are not Catholic.*
7. *Members of an Eastern Christian Church whose application is supported by a minister of religion.*
8. *Christians of other denominations whose parents are in sympathy with the aims and ethos of the school and whose application is supported by a minister of religion.*
9. *Children of parents of other faiths whose parents are in sympathy with the aims and ethos of the school and whose application is supported by a religious leader.*
10. *Other applicants.*

Where the offer of places to all applicants in any of the categories listed above would lead to oversubscription the following provisions will be applied.

“The attendance of a brother at the school who will be on the school roll at St Bonaventure’s in September 2015 in Years 8 – 13 will increase the priority of an application within each category.

Distance from home to the nominated central point of Newham, which has been agreed as the Front Entrance of Our Lady of Compassion Catholic Church, Green Street, London E13 9AX.”

13. There is a statement in the arrangements that the admission of children with statements of SEN is subject to a separate regime.
14. The school is popular and regularly oversubscribed. It usually receives more than 500 applications for its 186 places in Y7 and, for example, for admission in 2013, 209 of those were first preference applications.
15. The arrangements for admission to Y12 are slightly different from those applying to Y7. As noted above, the sixth form centre has its own website and the school’s website directs enquirers to this. The website for the sixth form centre has tabs for admissions and for criteria for entry. The school sets academic entry criteria for admission to the sixth form and applies the same such criteria to internal and external candidates as provided for in paragraph 2.6 of the Code.
16. The oversubscription criteria for Y12 are as follows (the academic requirement is common to all and I have therefore not repeated it for each category):
 - “1. Looked after Catholic children;*
 - 2. Students from the two feeder schools;*
 - 3. Practising Catholics who are resident in the Deanery of Newham;*
 - 4. Catechumens;*
 - 5. Any other Looked After Children;*
 - 6. Children of parents resident in Newham;*
 - 7. Other applicants.”*
17. The Y12 arrangements also say that within each criterion the presence of a sibling at the Sixth Form Centre will increase the priority given to an applicant and that distance from the school will be used to distinguish between applicants.

Consideration of Factors

18. As noted above, the school admits pupils to Y7 and Y12 and has – as it is entitled to – different oversubscription criteria for the two different points of entry. In the following paragraphs I indicate whether the issue under consideration is relevant for one (and if so which one) or both

points of entry. In relation to some of the concerns raised with the school, it has acted with commendable speed to bring its arrangements into line with the requirements relating to admissions using the provisions of Section 88E of the Act which allows arrangements to be varied after determination in order to comply with admissions law or a mandatory provision of the Code. In some instances, however, the variations have at the date of this determination been made in relation only to Y7 and not to Y12. I shall make clear where this is the case. In addition, there are a few areas where some breaches remain in relation to both points of entry and I shall indicate in each section below whether or not the arrangements now conform with the Code.

Publication and clarity of arrangements, including the SIF

19. I shall deal first with the matters relating to publication and clarity of the arrangements, dealing first with Y7 and then with Y12. It is the case that at the time the objection was made the school had not published its arrangements for 2015 for admission to Y7 on its website and was thus in breach of paragraph 1.47 of the Code. It was also the case that slightly different versions of the arrangements were available on the website. The Office of the Schools Adjudicator (OSA) drew the school's attention to the requirements in paragraph 1.47 in relation to publication and by the time I reviewed the arrangements in May 2014 the arrangements for 2015 had been published. At the meeting with the school I emphasised the importance of ensuring that all versions of arrangements were exactly the same in order to meet the tests of clarity and fairness. The school has acted with commendable speed and has made significant changes to its website so that this now shows all the required information including the arrangements and SIFs for 2014 and 2015, along with guidance from the diocese and the Priests Reference form. There is now only one version of the arrangements each for 2014 and 2015 for Y7 so there is no scope for confusion about what the arrangements actually provide for. I uphold this aspect of the objection because the arrangements when first drawn to my attention did not conform with the Code, but I note that they do now so conform and the school need take no further action in this respect.
20. When I first reviewed the SIF for Y7, I noted that it asked for proof of address. At the meeting, I asked the LA whether their CAF asked for proof of address, in the light of the provision in paragraph 2.4 of the Code that admission authorities may only seek additional information that has a direct bearing on decisions about oversubscription criteria. The LA representative explained the authority's approach to seeking proof of address and, subsequent to the meeting, sent me a copy of the LA's publication "School Admissions Documentation Requirements". The revised SIF provided to me by the school does not ask for proof of address and the arrangements in this regard therefore now conform with the Code.
21. For admission to Y12, the situation at the time of writing this determination is slightly different. The oversubscription criteria for Y12 are available on the sixth form website, but no application form is

provided (as there is no LA wide CAF for Y12 admissions, a form is needed for all applications). In an email of 11 July 2014, the school informed the OSA that it was working with St Angela's school to produce a new form for Y12 and that this would be published as soon as possible. This means that the arrangements for Y12 do not conform with the Code. The Code requires the school to amend the arrangements as quickly as possible.

22. The objector considered that the arrangements were unclear in relation to the need to complete a SIF for Y7 only when applying for a place under faith-based criteria. The new SIF states – as did the old one – that if the SIF is not completed, then the school will not be able to apply their criteria and the applicant will be considered under criterion 10 (any other boys). This is, in fact, not the case. Those applying for consideration under criterion 6 (looked after and previously looked after children who are not Catholic) would not have to complete the SIF as the LA's CAF already asks whether a child is a looked after or previously looked after child. The SIF in this regard could be confusing to parents and is not clear and therefore does not conform with the Code. I uphold this part of the objection and the Code requires the school to amend the SIF as quickly as possible.
23. As noted above, the oversubscription criteria when I first saw them for Y7 and Y12 provided that when the PAN was reached and exceeded in any oversubscription category, the attendance of a brother at the school (for Y7) or a sibling in the sixth form centre (for Y12) would increase the priority given that applicant. I was concerned that this was not completely clear as it did not explain how much the priority would be increased. The revised arrangements for Y7 use a different form of words and are clearer. The arrangements for Y12 have not been changed at the time of writing this determination and are not clear. I uphold this part of the objection. The Code requires the school to revise the arrangements for Y12 as quickly as possible but need take no further action in relation to the arrangements for Y7 in this regard.

Looked after and previously looked after children

24. The objector complained that the arrangements did not refer to previously looked after children as well as to looked after children in contravention of the requirement to give priority to both these groups as set out in paragraph 1.7 of the Code. The school has now amended its arrangements to include previously looked after as well as looked after children for admission to Y7 in its arrangements for 2014 and 2015. However, at the time of writing this determination the arrangements for Y12 still did not refer to previously looked after children. I uphold this part of the objection. The Code requires the school to revise the arrangements for Y12 as quickly as possible but need take no further action in this matter in relation to Y7.
25. There is another aspect of the arrangements relating to looked after and previously looked after children which when I reviewed the arrangements I considered might not conform with the Code. As

outlined above, the school's arrangements give the highest priority to Catholic looked after (and now previously looked after) children. Priority is then given in categories 2 – 4 to other groups of Catholics, then to children who are members of the catechumenate of the Catholic Church and then to other looked after (and now previously looked after) children. It is permitted by virtue of paragraph 1.37 of the Code for schools with a religious character to give priority to members of their faith ahead of looked after and previously looked after children who are not of their faith. However, they must give the highest priority after members of their faith to looked after and previously looked after children not of the faith.

26. At the meeting with the school, I raised with the representative of the school and the diocese whether members of the catechumenate were Catholics or not and accordingly whether it was permitted to give them higher priority for admission than non-Catholic looked after and previously looked after children. Representative of the diocese said that they were classed as Catholics for the purposes of admission to schools. However, the diocese's own guidance states clearly that: "To be a Catholic you must have a Baptism or Reception Certificate from a Catholic Church." Catechumens will not have such a certificate which is awarded on baptism or – for those who become Catholic having earlier been baptised into another Christian denomination – are received into the Catholic Church. When this happens, people are no longer catechumens. The school is not permitted to give higher priority to catechumens than to looked after and previously looked after children who are not Catholics. The arrangements do not conform with the Code and must be revised as soon as possible.

The use of the Priests' Reference Form

27. The objector argued that the school's approach of asking the family Priests of those applying to decide whether or not an applicant was a practicing Catholic would be unfair as different Priests might treat individuals with the same level of practice differently. The arrangements refer to "Practising Catholic children, as determined by a Priest using the Priests' Reference Form". I have seen the guidance provided to priests by the Diocese of Brentwood for them to use in assessing practice along with the forms they and applicants for priority for places under the faith-based criteria are required to complete. The guidance and forms were available for anyone to see on the diocesan website when I first looked in May and are now also included on the school's own website as noted above. The aim of the guidance is clear and it is to provide: "a single, objective test for Catholicity which is either met or not met for each person". It says that "*for the purposes of this Priests' reference form a person is a practising Catholic if they observe the Church's precept of attending Mass on Sundays and holy days of obligation*". There is helpful material which makes clear that there may be reasons why a family are unable to attend every single Sunday (by reasons of illness for example) but makes clear that attendance that was only fortnightly would not meet the test of practising Catholic. I found the sections of the guidance dealing with

the length of time for which practice had to be sustained rather less clear. The guidance says:

*“Priests cannot judge whether a person’s pattern of attendance at Mass corresponds to that required by the Church unless it has continued for a substantial period of time. Priests should enquire very carefully into the circumstances where the pattern of practice has not continued over several years. **A person is certainly not to be regarded as a practising Catholic if that practice has started recently solely in order to fulfil the requirements of entry into a Catholic school.**”*

28. The words “substantial” and “several” are capable of being interpreted in different ways. In addition, there is no indication of what responses to enquiries about practice which has not continued over several years would mean a child could be considered a practising Catholic and what responses would not mean this. At the meeting I held at the school I raised this issue with the representative of the diocese who agreed to consider if it could be made clearer. However, this section of the form has not been changed. The form is part of the admission arrangements for the school (and, indeed, of all Catholic schools in the Diocese of Brentwood) by virtue of footnote 4 to paragraph 5 of the Code which defines admission arrangements as: *“the overall procedures, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered.”* The purpose of this form is to enable an application to be assessed against the school’s faith-based oversubscription criteria. Without the form no such assessment can be made. The form must accordingly meet the Code requirements for admission arrangements. I find that the guidance and definition of practising Catholic are not clear and hence do not conform with paragraphs 14 and 1.8 of the Code. In addition, I consider that parents looking at the guidance would not easily be able to understand whether their own practice did or did not meet the requirements as required by paragraph 1.37 of the Code which provides that *“admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied”*. I uphold this part of the objection. The arrangements do not conform with the Code and must be revised as quickly as possible.

29. I have set out above the reasons why the form and its guidance are part of the admission arrangements for Catholic schools in the diocese. I now turn to the inclusion on the form of a number of questions which are not related to the oversubscription criteria of the school. The form comprises two parts: Part A - which has a heading which explains that it is to be kept by the Priest and not sent to the school - is described as “Your [the parents’] Self-Assessment”. It asks for information about the parents and the child. In relation to the parents, the form asks for details of both mother and father and – separately – their parish of residence, whether each is a Catholic and their frequency of attendance at Mass and for how long this practice has been sustained. Parents who do not attend Mass regularly are invited to say why and

they are also invited to *“give any other details which may be relevant or useful”*. In relation to the child it asks about baptism, Holy Communion and First Confession and then says: *“If you or your child participate or contribute to parish activities, you may wish to indicate below.”* It then asks why the parents wish the child to attend a Catholic school and for both parents to sign the form. Part B of the form – which is the part returned to the school – asks the Priest to confirm whether the parents and child are known to him and whether or not he considers the child to be a member of a practising Catholic family.

30. The guidance to Priests explains that Part A *“is designed to give you a good, all round picture of the family’s pattern of practice and pastoral circumstance, so that you are able to fill in Part B of the Form consistently”*. The annexe to the guidance explains that *“for the purposes of this Priests’ reference form, a person is a practising Catholic is they observe the Church’s precept of attending Mass on Sundays and holy days of Obligation.”* Given that this is the definition of practicing Catholic, whether a child or his or her parent takes part in parish activities (other than attendance at Mass) is not relevant to the definition and neither are the reasons parents may have for wishing their child to attend a Catholic school nor are any reasons they may have for not attending mass frequently.
31. As noted above, Part A requires the signatures of both parents and the parish in which each is resident. Paragraph 2.4 of the Code is clear that admission authorities when using a SIF **must not** require both parents to sign the form. While the Priests’ Reference Form is not the SIF itself, I think that the same principles which apply to the SIF apply equally here. A single parent may – rightly or wrongly – consider that because he or she can provide only one signature, his or her application may be given less weight than those of other parents. I consider that this is unfair. Moreover, both this question and the question asking for the parish in which each parent is resident, could (especially in the case of parents who are not married or are separated) give information about marital status in contravention of paragraph 2.4a of the Code. The footnote to this question also requests the same information about any other person who has parental responsibility for the child. Again, this asks for information which could indicate the marital status of the parents (if, for example, details of a step parent were given) and is not, in any case, relevant to the oversubscription criteria.
32. At the meeting, the representative of the diocese explained that Part A was really intended as a tool to support the pastoral relationship between Priests and families and seemed to accept that it should not be linked to the consideration of admission to schools in the diocese and suggested that it would be removed from the admission arrangements. However, this part of the form has not been changed in the material sent to me since the meeting and at the time of writing this determination the material on the diocesan website continues to include Part A under the admissions tab. The use of this form in its current format with Part A included means that the admission

arrangements for the school do not conform with the Code and the Code requires that the arrangements are revised as quickly as possible.

The requirement that applicants declare their positive support for the ethos of the school

33. The arrangements for admission to Y7 and Y12 when I first saw them in May 2014 included a statement that “*All applicants are required to declare their positive support for the aims and ethos of the school*”. I had two concerns about this statement. First, I could not find any explanation as to the form such a declaration had to take which I considered made the requirement unclear in contravention of paragraphs 1.4 and 1.4 of the Code. Second, I considered that it breached paragraph 2.8 of the Code, which states that: “*With the exception of designated schools, all maintained schools, including faith schools, that have enough places available **must** offer a place to every child who has applied for one, without condition or the use of any oversubscription criteria.*” as I considered that such a requirement amounted to setting a condition.

34. I raised my concerns with the school at the meeting. The school explained that in its view any applicant who met the test of being a practicing Catholic would also meet the test of declaring their support for the aims and ethos of the school. For other applicants, the fact that they had chosen to apply to the school would similarly meet the requirement. They confirmed that there was in fact no separate declaration to be made. The new arrangements for Y7 provided to me since the meeting do not refer to any requirement to support the aims and ethos of the school. The school thus acted quickly to remove any possible confusion and to meet the concerns I had expressed and is to be commended for doing so. At the time of writing this determination, the requirement remained in the arrangements for admission to Y12 which continue therefore not to conform with the Code in this regard. The Code requires the school to revise its arrangements as quickly as possible.

Inclusion of a final tie-breaker

35. The arrangements for Y7 and Y12 when I first saw them did not include a final tie-breaker as required by paragraph 1.8 of the Code in order to separate two applicants who qualified equally for the final available place. Again, the school has remedied this and the new arrangements for Y7 provide for random allocation to be used for this purpose. The arrangements for Y12 at the time of writing this determination did not include a tie-breaker and continue therefore not to conform with the Code in this regard. The Code requires the school to revise its arrangements as quickly as possible.

The admission of children with a statement of SEN

36. The arrangements when I first saw them explained that the admission

to school of pupils with statements of SEN were subject to a completely separate procedure. This is true, but I was concerned that the arrangements did not say clearly that the school would admit any child who had a statement of SEN that named the school. The revised arrangements for Y7 now state very clearly that such a pupil will be admitted to the school and, again, the school is to be commended for making the necessary change so quickly.

Requirement to set a PAN for Y12

37. When I first reviewed the arrangements, I could not find a PAN for Y12. The school is required set a PAN for each year group to which it regularly admits pupils by virtue of paragraph 1.2 of the Code. The revised arrangements include a PAN of 20 for Y12. This is included in the admission arrangements on the main school's website. It would be helpful to students and parents if the Y12 PAN were also displayed on the website of the sixth form centre.

The compliance of the arrangements with the Equality Act and paragraph 1.8 of the Code

38. I now turn to the questions the provisions of the Equality Act and paragraph 1.8 of the Code quoted in the objection and noted above.

39. St Bonaventure's is a school with a Catholic religious character designated as such by the Secretary of State under section 69(3) of the Act. The school's website says that it was:

"founded by the Catholic Church to provide education for boys of Catholic families....Where there are more applications than places available, priority will always be given to Catholic applicants in accordance with the oversubscription criteria stated."

40. Schedule 11 to the Equality Act exempts schools designated with a religious character from the requirement in section 85 of the Equality Act not to discriminate on the grounds of religion in terms of the admission of pupils to the school and this is the provision the school (and other schools with a religious character) rely on when oversubscribed and wishing to give priority to children on the basis of religion.

41. The guidance to schools from the Equality and Human Rights Commission says:

"If you are designated as a school with a religious character you are exempt from the requirement not to discriminate on grounds of religion or belief in relation to admissions.....In practice this might mean that you are unable to impose religious criteria, if you are not oversubscribed, or you might be able to select all of your pupils on religious grounds if you are heavily oversubscribed."

This exception does not allow you to discriminate on any other of the prohibited grounds, such as sex, race or sexual orientation.

For example:

A Muslim school may give priority to Muslim pupils when choosing between applicants for admission. However, the school may not discriminate between pupils based on other protected characteristics, such as by refusing to admit a child of the school's own faith because she is of African origin or a lesbian."

42. The guidance from the DfE says in relation to admissions:

"Schools with a religious character may give priority in admissions to members of their own religion. The Admissions Code provides that this may only be done when a school is oversubscribed – schools subject to the Code are not permitted to refuse admission to pupils not of their faith if they have unfilled places.

For example, a Muslim school may lawfully give priority to Muslim pupils when choosing between applicants for admission. However, the Admissions Code will not allow it to refuse to accept pupils of another or no religion unless it is oversubscribed.

The exception is not in fact confined to preferring children of the school's own faith. It would, for example, allow a Church of England school to allocate some places to children from Hindu or Muslim families if it wanted to ensure a mixed intake reflecting the diversity of the local population. It would not, however, allow the school to base this selection on ethnic background rather than faith."

43. The DfE guidance also addresses the question of indirect discrimination, albeit not in the specific context of admissions. It states that:

"Indirect discrimination occurs when a "provision, criterion or practice" is applied generally but has the effect of putting people with a particular characteristic at a disadvantage when compared to people without that characteristic. An example might be holding a parents' meeting on a Friday evening, which could make it difficult for observant Jewish parents to attend. It is a defence against a claim of indirect discrimination if it can be shown to be "a proportionate means of achieving a legitimate aim". This means both that the reason for the rule or practice is legitimate, and that it could not reasonably be achieved in a different way which did not discriminate."

44. The objector argues that the exemption in the Equality Act is not a blanket exemption. As noted above, the objector has argued – in different pieces of correspondence and at different times - that:

- a. the school's arrangements do not comply with the provisions of Equality Act as they result in indirect discrimination on the basis of race because they cannot be justified as a proportionate means of achieving a legitimate aim; and
 - b. the aim of the school is not a legitimate aim for the purposes of the Equality Act.
45. The objector claims that the faith-based criteria for the school put those who are of South Asian origin at a particular disadvantage compared to those other children who are not of South Asian origin (for example those who describe their ethnic origin as White, mixed race, African or Caribbean). The objector has provided a large amount of material – drawn from census data - which:
- a. show that in the area where the school is located a very significant proportion of the population is of South Asian heritage, in particular, Bangladeshi, Pakistani and Indian heritage; and
 - b. compare the ethnic profile of children at the closest state funded and independent schools with that of the school and which show that relatively few Indian, Pakistani or Bangladeshi pupils attend the school.
46. The objector argues that it is right to compare the characteristics of the school's population with that of the census middle super output area in which it is located and those adjacent to that area. The school and diocese argue that if consideration is to be given to the characteristics of the school's intake against those of the local area, it would be more appropriate to look at the population of Newham as a whole given that the school exists to serve the whole area.
47. I have considered these arguments carefully. Newham is a densely populated urban area as is demonstrated by the facts that there are three state-funded secondary schools which cater for boys within one mile of St Bonaventure's and all 15 state-funded secondary schools within the borough are within three miles of St Bonaventure's. I have, therefore, thought it appropriate to consider the characteristics of the borough as a whole as well as the area identified by the objector.
48. The objector and the school have both provided material about the ethnic profile of pupils at the school. In correspondence sent to the OSA by the school and by the objector and in discussion at the meeting at the school, there has been some debate about the precise ethnic mix of the school population relative to that of the area surrounding the school. As a result of the exchanges of information, the objector has revised and narrowed the objection so that rather than relating to those with South Asian heritage it is now concerned with pupils of Pakistani, Bangladeshi and North Indian heritage. However, I do not have any data which breaks down information about those of Indian heritage into

those of North Indian and South Indian heritage (neither DfE statistics nor the census data are thus disaggregated) and the objector has not provided any. I can therefore sensibly look only at those of Indian heritage as well as those of Bangladeshi and Pakistani in considering the objection.

49. Newham is – as both objector and school note – extremely diverse. Census data from 2011 provided by the objector show that 13,729 (43%) children aged between 10 and 17 living in Newham were of Asian heritage. The same census data show that the comparable figures for other groups were 8,322 (26%) black children; 5,839 (18%) white children and 2,504 (8%) children of mixed ethnic heritage. There were also smaller numbers from other ethnic groups.
50. Within the overall diversity across Newham, different parts of the borough have concentrations of people of different ethnic heritages. The objector looked also at the census data middle super output area in which the school is located and those immediately adjacent to that area which showed 57% of the population of that part of the borough aged between 10 and 17 were described as Indian, Pakistani or Bangladeshi.
51. It is accepted by all that the ethnic profile of the school is mixed but compared to the immediate local area it has relatively few pupils from Pakistani and Bangladeshi and to a lesser extent Indian backgrounds. The objector goes on to make the point that people of South Asian heritage are less likely than the general population to be Catholics or from other Christian backgrounds. People of South Asian heritage are therefore less likely than those of other some other racial backgrounds to meet the school’s faith-based oversubscription criteria and so gain places at the school because of the correlation between faith and race. The school has not admitted any children who were not Christian in the past three years.
52. The objector accepts that some people of South Asian heritage are Catholic. The objector does not dispute the argument put by the school that a Catholic boy of South Asian heritage would have as much chance as any other Catholic boy of gaining a place at the school.
53. I have also investigated the ethnic mix of the school by reference to the DfE Statistical First Release for 2014 and compared the figures for the main groups represented in the school with the figures for Newham state funded secondary schools as a whole and the table below sets out some of the key figures.

Ethnic origin/heritage	% St Bonaventure’s	% Newham state-funded secondary pupils
African	34.8	17.8
Any other ethnic group	12.5	5.2

Caribbean	11.0	4.8
Indian	7.8	9.2
Other White	5.1	9.7
White British	4.9	7.7
Other Black	4.1	3.4
Unclassified	4.1	1.1

54. There are a further eight ethnic groups/categories represented in the school's population. Each of these accounts for less than 4% of its population. It is clear that the school is ethnically diverse. It is also clear that it has relatively few pupils compared to the LA as a whole of Pakistani (12.4% in Newham) and Bangladeshi (18.3% in Newham) origin and to a lesser extent relatively few White pupils. It has a relatively high number of Black pupils and of pupils from any other ethnic group and pupils whose ethnic origin is not classified.
55. The objector is of the view that many South Asian families would actually like to send their children to such a successful school. He points to the fact that 26 applications were made for places in Y7 in 2014 under the school's criterion 9 which concerns applicants of faiths other than Christianity.
56. The objector cites (and gives figures for) the large number of schools in England which are designated as Catholic and have large proportions of non-Catholic pupils. The objector states that: *"[schools with a Catholic character] can and do operate successfully with a substantial non-Catholic population. We believe that this has an important bearing on a consideration of the proportionality of St Bonaventure's approach, particularly given that St Bonaventure's is located in one of the UK's most ethnically diverse boroughs."*
57. Against this background, the question I must resolve is whether the school's arrangements are lawful because they represent a proportionate means of achieving a legitimate aim or whether they are unlawful because they do not represent a proportionate means of achieving a legitimate aim and so amount to indirect discrimination on the basis of race. I must consider also whether the arrangements conform with the requirement in paragraph 1.8 of the Code that they *"will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group."* I consider separately the question of the PSED.
58. First, I have considered the school's aim and the legitimacy of that. As noted above, the school's website states prominently that the school exists to provide education to boys of Catholic families. At the meeting, the school and the diocese confirmed that this was indeed its aim, making clear that should the demand from Catholics be satisfied, the school was, of course, happy to cater for other children. The representative of the diocese said that its aim was to meet Catholic demand; it would not seek to provide more places than is necessary for this purpose, although non-Catholics are welcome in its schools when

the natural fluctuation year on year in Catholic demand means that places are available. In fact, the PAN for 2015 for Y7 has been increased from 186 for 2014 to 210 for 2015 because the school and diocese consider that there is increased Catholic demand in the area. Moreover, turning away a Catholic child in favour of a non-Catholic child would in the eyes of the diocese and the school amount to a failure to meet the aims of the school. The diocese explained that the school existed to cater for Catholic boys from across the Newham deanery (which covers the borough of Newham and extends into parts of the adjacent borough of Waltham Forest). It is for this reason that in applying its distance criterion, the point used is not the school's address but a Catholic church which is at the geographical centre of the deanery. For the school not always to give priority to Catholics would mean that some Catholic boys resident in the area would not be able to receive a Catholic education in their local area as the school is the only Catholic secondary school in Newham which caters for boys. I am satisfied that the aim of the school is clear and understood by all the parties.

59. The objector in his letter of 14 July 2014 says about the school's aim: *"If prioritising Catholic children in the admissions criteria has an effect that disadvantages children from a particular racial group (which it does in Newham), to then argue the legitimate aim being sought is to prioritise Catholic children is a circular one. As the aim is (in Newham which is what we are concerned with here) linked to ethnicity, it is incapable of constituting or forming part of a legitimate aim.....An aim of which the inevitable effect is to make and enforce distinctions based on race or ethnicity cannot be legitimate."*
60. Faith-based oversubscription criteria do not, adopting the phrasing used by the objector, make and enforce distinctions based on race or ethnicity; they make and enforce distinctions based on religion or belief which apply equally those to those of all races. In my view, the circularity is in the objector's argument that the fact that a criterion is potentially indirectly discriminatory means that it cannot be designed to fulfil a legitimate aim. I do not think that this point of view is well founded for the following reasons.
61. The Equality Act gives a specific exemption to the requirement not to discriminate on the basis of religion in order to allow schools designated with a religious character to give priority for admission to those of their faith. Neither the EHRC guidance nor the DfE guidance addresses directly the situation where giving priority to people of the school's faith leads to a situation where people living in the vicinity of the school are unlikely to gain a place because they are predominantly of a race or races from which relatively few people practise the faith in question. The DfE guidance is to my mind relevant, however. As noted above, it says: *"The exception is not in fact confined to preferring children of the school's own faith. It would, for example, allow a Church of England school to allocate some places to children from Hindu or*

Muslim families if it wanted to ensure a mixed intake reflecting the diversity of the local population.”

62. The guidance is non-statutory and its purpose is in part to set out for schools and others what it is that the law (and Code in the case of admissions) requires them to do, allows them to do or prohibits them from doing. The sections of the guidance quoted above fall within the category of things which schools are allowed to do. The guidance does not suggest that schools with a religious character which give priority for all places to children from their faith would be in breach of the Equality Act if this results in an intake which does not reflect the diversity of the local population. The fact that the guidance says that schools are allowed to give some priority to other faiths if they wish to in order to reflect the diversity of the local area is a clear – if implicit – acknowledgement that schools may legitimately choose not to.
63. I consider it is a legitimate aim for a Catholic school to seek to provide education for children from Catholic families. I do not think that the legitimacy of the aim is constrained by the circumstances of the individual school. In other words, I do not agree that because there are significant numbers of people in the local area who are unlikely by virtue of race to be Catholic this renders the aim itself not legitimate.
64. The objector also draws attention to the large number of Catholic and other schools with a religious character which contain significant proportions of children who are not of that faith and which operate successfully. The objector’s arguments here were mainly I believe connected to the question of the proportionality of the school’s approach but they are relevant also to the legitimacy of its aim.
65. It is the case that there are schools with a religious character which have chosen not give priority for all or, indeed, any of their places on the basis of faith. These schools may well have different aims from the aim of St Bonaventure’s; for example, they may wish to provide faith based education to those who live in a particular area or they may simply wish to provide faith-based education to any child. The fact that their aims are different and are legitimate does not, of itself, make St Bonaventure’s different aim any less legitimate.
66. It is also the case that there are schools with a religious character who do give priority on the basis of faith - and whose aim may well be to provide education to those of their faith - which do not reach their capacity from applicants of the faith. Paragraphs 15.d and 1.36 of the Code require such schools (in common with all state-funded schools other than grammar schools) to offer their places to other children. The requirement that schools cannot keep places empty if there are children who would like those places does not to my mind mean that an aim of providing education for children of a particular faith is not legitimate.

67. I am, of course, concerned here with St Bonaventure's School. All schools must comply with the law and conform with the Code. However, there are different ways to do so and the way chosen by one admission authority does not set a precedent or impose requirements on others. I note the arguments put by the objector, but in judging whether this school's aim is legitimate I do not think that the practice of other schools which quite lawfully and reasonably have different aims is of great significance. I find that the school's aim is legitimate and I do not uphold this aspect of the objection.
68. I turn now to the aspect of the objection concerned with the proportionality of the school's approach. As the DfE guidance recognises, an aim may be legitimate but the means of achieving it may not be proportionate. In such cases, indirect discrimination may arise. The objector said that, in this context, the fact that "*while Catholic schools may prefer to educate Catholic children, they can and do operate successfully with a substantial non-Catholic population. We believe that this has an important bearing on a consideration of the proportionality of St Bonaventure's approach, particularly given that St Bonaventure is located in one of the UK's most ethnically diverse boroughs.*"
69. The objector says that Catholic schools may prefer to educate Catholic children. There are other ways of looking at the situation in Catholic schools with significant numbers of pupils who are not Catholic. Where such schools are meeting the demand from Catholics for places and then have capacity remaining, places remain available for children who are not Catholics. In that sense, their aim and approach in pursuit of that aim are no different from that of St Bonaventure's; the difference is that most of the available places at St Bonaventure's are taken by Catholics. In the years when St Bonaventure's has not been fully subscribed with Catholics it has admitted other children.
70. The objector also draws attention to the establishment of two Catholic Free Schools in which priority for no more than 50 per cent places will be allocated on the basis of faith. This is in line with the Government's wider policy in relation to Free Schools. That is not, however, the basis on which St Bonaventure's was set up. I note in this context also that section 11A3 of the Education and Inspections Act 2006 makes provision for the establishment of new VA schools which if designated with a religious character may give priority for all places on the basis of faith.
71. The objector drew attention to the fact that the population in the area around the school had changed over recent years and that more people of South Asian heritage now live in the area. This is true. The school drew attention to the fact that the nature and location of the Catholic population also had changed. Over the years the school had catered to varying numbers of those from Irish and British backgrounds and from African and African Caribbean backgrounds. The school had in recent years had more applications from Catholics from East

European countries. Moreover, while there had been consistent (now somewhat increasing) demand from Catholic families living in the Deanery of Newham, the population had at different times been concentrated in different parts of the Deanery. For the school, what mattered was that it continued to meet the need and demand from Catholic boys in the area.

72. In order to ensure that it can meet the need and demand from Catholic boys in the area, the school argues that it is proportionate for it to give priority for all of its places to Catholics. The EHRC guidance explains that proportionate for the purposes of Equality Act means:

“‘appropriate and necessary’ but ‘necessary’ does not mean that the provision, criterion or practice is the only way of achieving the legitimate aim”.

73. The figures for admission to Y7 at the school for 2014 show that all but five of those offered places were Catholics living in the Deanery of Newham. If the school’s aim were to run a successful school or even to run a school with a Catholic ethos then it might be possible for it to do this without giving priority for all its places on the basis of faith. However, the school’s aim is to provide Catholic education for Catholic families. The objector argued in its letter of 19 June 2014 that: *“the school must revise its policy so that it follows the least discriminatory way of meeting its aim”*. I leave aside the implicit acceptance here that the aim itself was legitimate which on 14 July 2014 the objector argued it was not. I note there was demand from within the Deanery of Newham from Catholic boys for more or less the number of places available. I note also that the diocese and school consider that demand to be rising and that the school has accordingly increased its PAN for 2015 so that it can continue to meet that demand. I find that the school’s approach is a proportionate means of achieving a legitimate aim and I do not uphold this aspect of the objection.

74. The initial objection referred to the school’s giving priority to Christian families rather than to giving priority to Catholic children although the objector’s more detailed submissions refer in the main to giving priority to Catholics. It is the case that once all Catholics and non-Catholic looked after and previously looked after applicants have been offered places, the school’s admission criteria then prioritise other Christians. Within this group, the higher priority is for those from an Eastern Christian church and then other Christian denominations. The notes to the school’s arrangements make clear the links between the Catholic church and the Eastern church. Christian denominations have differences but also share key aspects of their faith. In this context, I think it is reasonable for the school to give higher priority to other Christians than to those of other or no faith for the few places that may remain once all Catholics who seek a place have been admitted. I find that the arrangements are in this regard fair. I do not consider that they amount to indirect discrimination on the grounds of race and I do not uphold this aspect of the objection.

75. The objector refers to fact that the nearest alternative secondary school was most recently rated by Ofsted as good whereas St Bonaventure's is outstanding. However, I do not consider that this is relevant to the proportionality of St Bonaventure's approach to achieving its aim. St Bonaventure's School is not responsible for the quality of provision in other schools in the area.
76. I turn now to the aspect of the objection which concerns the requirement in paragraph 1.8 of the Code that: "Admissions authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular ...racial group." It is accepted by the school and the diocese that children from some racial backgrounds are less likely to be Catholic and thus that some racial groups are less likely to be represented in the school. However, I do not consider that this means that the arrangements unfairly disadvantage (directly or indirectly) a pupil from a particular racial group. An individual Catholic boy who meets the school's test of practice has the same chance of securing a place at the school as any other Catholic boy living in the area irrespective of the race of the boy.
77. Finally, I have considered the objector's points about the PSED set out in section 149 of the Equality Act. This requires public authorities (which include the governing bodies of VA schools) to consider and identify the equality implications of their policies and actions, as well as proactively to consider how to address equality issues arising. The duty includes having due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who do and do not share a relevant protected characteristic, which includes race and religion or belief.
78. The objector argues that there is no indication that the school has had due (or any) regard to eliminating discrimination, removing or minimising the disadvantage to people of a protected characteristic and encouraging participation within school life of those who share a protected characteristic and whose participation is disproportionately low, namely local children of South Asian origin. Attention is drawn to changes in the demography of the geographical area in which the school is located since its establishment and the argument made that the school should have changed its approach in response to these changes.
79. I begin by making the point that the PSED placed on the governing body of the school goes wider than the arrangements it makes for the admission of pupils and covers matters such as the way pupils are educated within the school, the links the school may have with other schools and organisations and the way the school works with other organisations. Those wider aspects of the duty are outside my jurisdiction and outside the scope of objections to admission arrangements and I have not therefor considered them. The two protected characteristics which I consider relevant in this case are race and religion or belief and I shall deal first with religion or belief.

80. So far as admissions and the PSED are concerned, I consider that a school with a religious character can be considered to be in a similar position to a single sex school. Single sex schools have an exemption from the requirements of the Equality Act relating to gender so that they can educate only boys or girls as the case may be. Of course, St Bonaventure's is a single sex school as well as being a school with a religious character. It has to have due regard to those matters covered in the PSED in relation to gender but this does not mean that it must admit girls to Y7. Similarly, I do not believe that the school must give priority for any of its places to boys who are not Catholic in order to meet the PSED in relation to religion or belief.
81. I turn now to the question of race. As shown above, the school's intake is diverse in terms of race, reflecting both the spread of the Catholic faith across the world and the characteristics of the Catholic population currently living in Newham. There is no suggestion that the school in its admission arrangements disadvantages Catholics from one racial background compared to another. If the school admitted pupils on the basis of distance rather than giving priority to those of its faith, it is the case that its racial profile would be different. However, I have seen no suggestion that it would be more diverse. Indeed, it is possible that the school would be less racially mixed overall.
82. The school is in my view well aware of the effects of its policies (that it admits relatively few pupils who are not Catholic and it understands that its intake is racially diverse but some races are represented in higher numbers than others and that this mix does not reflect the mix in the area immediately around the school). I have already found that the criteria are not indirectly discriminatory as they are a proportionate means of achieving a legitimate aim. I do not accordingly find that the school has failed – in its admission arrangements - to have due regard to the need to eliminate discrimination and the other components of the PSED. I do not uphold this aspect of the objection.

Conclusion

83. I have concluded that at the time the objection was first made, the school's admission arrangements did not conform with the requirements relating to admissions in a number of ways in relation to admission to Y7 and to Y12. The school has revised its arrangements in accordance with the provision of Section 88E of the Act to make a number of changes to its arrangements. However, the arrangements continue not to conform fully with the requirements relating to admissions in particular in relation to admission to Y12 in the ways set out in this determination.
84. I have considered carefully the arguments made by the objector that the school's arrangements breached the requirements of the Equality Act in that they resulted in indirect discrimination on the grounds of race and paragraph 1.8 of the Code in that they disadvantaged unfairly

a child from a particular racial group and that the school had not met the requirements of the PSED in relation to admissions. I have not upheld those aspects of the objection for the reasons given in this determination.

Determination

85. 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 St Bonaventure's School, Newham, for admissions in September 2015.
86. 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 in the ways set out in this determination.
87. 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: 25 July 2014

Signed:

Schools Adjudicator: Shan Scott