

DETERMINATION

Case reference: ADA/002301

Admission Authority: The Governing Body of St Thomas More Catholic School, Haringey

Date of decision: 13 July 2012

Determination

I have considered the arrangements determined by the Governing Body in accordance with section 88I (5) of the School Standards and Framework Act 1998. I determine that the school's arrangements for admissions in September 2013 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. The Acting Headteacher of St Thomas More Catholic School (the school), a Voluntary Aided, mixed school, wrote to the Adjudicator on 25 April 2012, to refer a direction made under section 96 of the Schools Standards and Framework Act 1998 (the Act) by Haringey Council (the council) that the school admit a number of children.
2. As part of the process of considering that objection, the school's admission arrangements (the arrangements) for September 2013 have come to notice of the Adjudicator.

Jurisdiction

3. These arrangements were determined under section 88C of the Act by the school's governing body, which is the admission authority for the school. I am satisfied that in accordance with section 88I (5) of the Act it is within my jurisdiction to consider the arrangements.

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. a copy of the school's admission arrangements for September 2013 (see paragraphs 8 to 12 below);
 - b. the Supplementary Information Form (SIF), Priest's Reference Form, ethnicity form, home to school agreement form, parental consent, medical and emergency contacts form and confidential information form used by the school;
 - c. a letter received from the School's solicitors dated 24 May 2012, and
 - d. the School's response dated 11 June 2012 to points I raised at a meeting I convened at the school on 21 May 2012.

Background

6. At the meeting held at the school on 21 May 2012 concerning the school's referral to the Adjudicator of what it considered were inappropriate directions by the council to direct the admission to it of a number of children, I raised a number of concerns with those present (representatives of the council and the school) which I had about the admission arrangements which had come to my attention as a result of the referral. The Code defines admission arrangements as "The overall procedure, practices and oversubscription criteria used in deciding the allocation of places including any device or means used to determine whether a school place is to be offered".

7. These concerns were as follows:

a. The arrangements posted on the school's website immediately prior to the meeting were described as being those for 2012-13, and although these may have been relevant in the consideration of the direction notices which the council had issued, the arrangements for admissions in September 2013 should have been determined by the school by 15 April 2012 and published by the School on its website immediately thereafter and sent to the council for it to publish on its website by 1 May 2012. I could find no evidence that either requirement had been fulfilled.

b. The arrangements stated that "all applicants are ...expected to give their full, unreserved and positive support for the aims and ethos of the school". In my view, this appeared to be in contravention of the requirement of the Code, paragraph 1.9a, which prohibits any conditions being placed on the consideration of applications other than those in the oversubscription criteria which are part of the admission arrangements.

c. The wording "the area served by the school is the London Borough of Haringey and adjacent areas of the London Boroughs of Enfield, Barnet and Hackney" was unclear.

d. The school's oversubscription criteria included a priority category for "practicing Catholics", immediately followed by "baptised Catholics". The explanatory notes which were provided did not refer to baptism or reception into the Catholic Church as a requirement to be included in the former

category, and I asked whether this definition accorded with any guidance provided by the Diocese and whether the distinction between “baptised and practicing” and “baptised but not practicing” was sufficiently clear as a result. I also stated that it was my view that it should be clear in the admission arrangements how the criterion of “practicing” can be fulfilled if this is to form a clear and objective oversubscription criterion, as required by the Code (Introduction, paragraph 14).

e. The fifth oversubscription criterion simply stated “Eastern Christian Churches” (which should more clearly refer to children of families belonging to such churches), and then “Catechumen”. It was not clear whether both categories were to be given equal priority or whether sequential priority was intended in the event of there being more than one child in each group.

f. The arrangements provided a clear description of how a sibling already at the school would affect priority for admission, and a definition of the term itself. However, they went on to state that “in the case of multiple applications from one family, random allocation will be used to decide whom a single place will be offered to”, and it was not clear that this was not a general rule for multiple applications but that it would only apply if there was only one further place available.

g. I made reference to the information which had been requested by the school from the parents of the children who were the subject of the disputed direction to admit, and which had no bearing on any of the school’s oversubscription criteria (ethnicity, home to school agreement, parental consent, medical and emergency and confidential information forms). I explained that no such information should be sought prior to admission, since the Code requires the application of oversubscription criteria to be clear, objective and procedurally fair (paragraph 1.8).

h. The SIF currently employed would also only be needed if it provided information that was of direct relevance to the application of an oversubscription criterion that was not already provided through the council’s common application form (Code 2.4). It appeared to me that the current form did not meet this test.

h. Similarly, the use of interviews prior to admission, which appeared from the cases under consideration to be part of the school’s practice, was forbidden by the Code (paragraph 1.9 m).

i. The requirement of clarity regarding the use of social or medical need is set out in the Code in paragraph 1.16, and the same test would need to be applied to any other identified need which it was intended should confer additional priority to an applicant. The school’s arrangements did not state what need was being met by evidence which it stated could be provided by a priest of a need to attend the school. Any “Priest’s reference form” used to evidence this need should meet the same test as that required of the SIF, in my view.

j. The arrangements included “modified” oversubscription criteria for in-year admissions in which children without a school place were given next priority to

looked after children (both Catholic and non-Catholic). My concern was that the Code does not provide for a school to have more than one set of admission arrangements.

8. At the meeting, I asked to be sent a copy of the 2013-14 arrangements, and the school's solicitor wrote on 24 May 2012 enclosing a copy of the arrangements which was entitled 2012-3, and referred to in her letter as such. The Adjudicator replied on 28 May 2012 seeking confirmation that these arrangements were those that were in place for September 2013, but received no reply to that query.

9. The main content of the letter sent by the school's solicitor dated 24 May 2012 was a request for detailed confirmation of the points listed above in order that the school and the Diocese could be consulted prior to a response being sent concerning each of them. The Diocese has not commented directly to me. Following my reply on 28 May 2012, which provided the confirmation which had been sought, the school itself responded on 11 June 2012. That letter enclosed what was referred to as an "amended draft policy", under the heading "Admission Policy 2013-14", and which stated that it had been "reviewed" on 5 March 2012.

10. A set of admission arrangements with this same heading, and which had also been reviewed on 5 March 2012 is currently obtainable from the council's website, but this is identical in every respect to the 2012-13 arrangements referred to in paragraph 8 above.

11. The "amended draft" 2013-14 arrangements enclosed with the school's letter of 11 June 2012 contained changes which took account of some of the comments listed in paragraph 7 above, but not all of them. It also helpfully amended references to looked after children to include previously looked after children, as required by paragraph 1.7 of the Code.

12. I am left with the understanding that the school's determined arrangements for 2013-14 were unchanged from those for 2012-13, and although I could seek to confirm this by asking to see the minutes of the Governors' meeting which apparently took place on 5 March 2012 that confirmed this, I can see no practical purpose in doing so in view of the absence of any dissent from any of the parties that the arrangements we are discussing are in any case identical to those which the school has repeatedly provided as the 2012-13 arrangements. The substantive issue is the school's response to the points raised, to which I shall now turn my consideration.

13. I note in passing that in spite of its own stated desire to establish a clearer relationship with the school concerning admissions that the council has not commented on my concerns about the school's lack of compliance with the Code, although it has been given every opportunity to do so.

Consideration of Factors

14. The school has responded to most of the concerns set out above, and where this is the case, I set out below my view as to whether, and to what extent, that response is sufficient to meet the concern expressed.

- The school believes that it is in order to include a statement about its ethos and to ask applicants to give their full, unreserved support for the aims and ethos of the school.

15. It is of course appropriate that schools should have a clear character and ethos and that they should want parents to support them in its day to day application. It is however another matter if parents considering which school to express a preference for are given the impression that it is a precondition of such a preference being considered that they express a willingness to support a school's ethos. The wording employed by the school in my view runs a considerable risk of that being the case, and therefore of being in contravention of the Code, paragraph 1.9a. It would avoid this risk if alternative wording which asked applicants to be aware of and to respect the school's ethos were used.

- Alternative wording which indicates the location of the school is suggested: "Pupils generally come from the London Borough of Hackney and adjacent boroughs. However, applications are welcome from all."

16. This would in my view be a clearer statement of the area from which pupils are drawn, which does not give an impression of there being a defined catchment area, as the school does not have a catchment area.

- Alternative wording for the definition of "Catholic" is suggested: "Catholic' means a baptised member of a church in full communion with the See of Rome or a member 'received into' a church in full communion with the See of Rome"

17. It is for the religious authority to decide how to advise the school on such a matter, but since I was told that the school would be consulting the Diocese of Westminster before making its response, I must assume that this revised definition, which would in my view be a full and clear one, has benefitted from that guidance.

- The definition of 'practicing Catholic' is considered to be appropriate.

18. The wording used is: "Practicing Catholic' means a Catholic child from a practicing Catholic family where this practice is verified by a reference from a Catholic priest in the standard format laid down by the Diocese." It is an essential requirement of the Code that oversubscription criteria are "clear, objective" and "procedurally fair" (paragraph 1.8). For that to be the case, it must be readily understood from reading the admission arrangements how a given criterion is to be satisfied. That is also the view of the Code at paragraph 1.37 which states that "admission authorities must ensure that parents can easily understand how any faith-based criteria will be reasonably

satisfied”. This means that in relation to the issue of religious practice, the admission arrangements should enable a reader to know whether or not their own level or nature of practice would or would not result in them being considered as “practicing”, and therefore to qualify under the criterion.

- The school has suggested in response to my concerns about this aspect of the arrangements, that the wording of the arrangements themselves should be amended to read: “For those applying as practicing Catholics, Priests’ Reference forms are available from the school together with guidance notes for parents.”

19. The first part of this statement is helpful, as it makes clear to applicants the procedure that those wishing to be given priority as practicing Catholics must follow. However, the second part is not, if it is intended that the guidance notes would explain how the criterion of “practicing” is to be met, since the clarity which I believe is required of admission arrangements themselves (as set out in paragraph 1.37 of the Code (see above)) is not thereby improved.

20. The school currently asks parents who seek admission as practicing Catholics to provide a Priest with a self-assessment form detailing their practice of the faith, and also (for example) whether they participate in parish activities. The Priest uses this information to decide whether to certify that the child is a practicing Catholic, or not. No indication is available as to what level, or type of practice would result in a positive certification, and I am of that the view that the arrangements do not comply with the requirements of paragraph 1.37 as a result.

21. The religious authority must be consulted on the matter of religious practice and any guidance which it gives must be considered by the admission authority (paragraph 1.38). In this case it would be for the Diocese of Westminster to give the school guidance as to how an objective means for distinguishing between practicing and non-practicing applicants could be established, which could then be set out in the admission arrangements. The Priest’s Reference Form used by the school to allow parents to provide evidence that they satisfy the requirement of practice should also be amended so that it is clear that the requirement given as part of the arrangements is what is being attested to.

- The circumstances in which random allocation would apply have been clarified in the “amended draft” of the arrangements for 2013-14.

22. The wording provided makes it clear that random allocation would only be employed when only one further place remained to be allocated.

- In response to concerns expressed about the way in which priority within an oversubscription category would be given based on a need evidenced by a Priest, the school has replied that it believes that this is currently clear.

23. For this to be so, I believe that a parent would, again, need to be able to see how the criterion would be fulfilled. In the case of social need (evidenced by a social worker), or medical need (evidenced by a medical practitioner),

this would readily be understood. The arrangements do not say what need a Priest would be attesting to, and so are in my view unclear, since the Code requires (paragraph 1.16) arrangements to say how any such need is defined. It may be that a Priest could provide evidence of social need, for example, and if this is the intention, the arrangements should say so. The arrangements appropriately say that any evidence should say why the need can be met by attendance at the school. Any form which seeks evidence from a doctor, a social worker or a Priest should therefore make it clear that this analysis is required.

- The school has responded to concerns about its SIF by offering a revision of the wording that refers to it in the published admission arrangements. The suggestion is that the sentence “If an applicant does not complete both forms (the CAF and the SIF) the Governors may not be able to consider the application fully and your child is unlikely to gain a place at this school” with “All applicants should complete a Supplementary Information Form and return it to the school. Failure to do so may result in an application receiving a lower ranking and perhaps therefore, not being allocated a place.”

24. While this revision improves the arrangements by removing the suggestion that some applications would not receive the same consideration as others, it does not address the issue that almost all the information which the school’s SIF asks for is not necessary for the process of applying the oversubscription criteria in the admission arrangements, in the way required by paragraph 2.4 of the Code. Specifically, the following elements of the SIF;

(i) the child’s gender

(ii) their religion

(iii) their previous school

(iv) the date the child arrived in the UK or was enrolled in an educational setting in the UK

(v) details of both parents

(vi) the child’s mode of travel to school

(vii) emergency contact details

(viii) the name of the medical practitioner, and

(ix) whether the child has a statement of special educational needs

are all included in the form, but none has any bearing on an oversubscription criterion. A child for whom a statement of special educational needs names the school is not subject to the school’s oversubscription criteria, since the Code requires that they be admitted (paragraph 1.6). If the child held a statement that did not name the school, the information would not be material to the consideration of their application, since the Code forbids discrimination against children with special educational needs (paragraph 1.9 h), and the

school's oversubscription criteria do not give priority to such children. In order for it to apply its oversubscription criteria the school needs only to know, in addition to the information which it will have from the council's CAF, whether the applicant wishes to be considered under one of the faith categories, and if so, which one. That is therefore the only information which it may ask applicants to provide, if the arrangements are to comply with the requirements of the Code.

25. Two matters which I raised with the school have not been responded to. First, the confusing fifth admission criterion which refers to both children of families belong to Eastern Christian Churches and to Catechumens, but without saying which would have priority if this were necessary, remains in the "amended draft" arrangements provided with the school's letter of 11 June 2012. It may be that the school intends to consider applications from both groups together, on the basis of other oversubscription criteria (whether there is a sibling in the school, or based on distance of the home from the school). It would be helpful on the grounds of clarity if the arrangements made that clear.

26. Secondly, no response has been made concerning the modified admission arrangements for in-year admissions (see paragraph 8 j, above). In year admissions are co-ordinated by the local authority. The position of children without still without a school place during the school year is set out in paragraph 3.9 of the Code, which requires their admission to school to take place through the agreed Fair Access Protocol for the local authority area.

27. Paragraph 2.14 of the Code further requires that children allocated a place at a school under a Fair Access Protocol are given precedence over all others on any waiting list, other than looked after or previously looked after children. The school's arrangements currently say that priority would be given to Catholic children without a school place ahead of looked after children who were not Catholics, and I believe that this contravenes this provision of the Code. It also says that Catholic children without a school place would have precedence over non-Catholic children in the same position, and this would have the effect of by-passing the operation of the Fair Access Protocol, the purpose of which is to ensure that the neediest children are offered a place at a suitable school as quickly as possible. It would be for the Fair Access Protocol, agreed in the manner set out in the Code, to state whether or not faith issues should play a part in the allocation of suitable school places when children are without a school place. It is therefore my view that the school's modified in-year admission arrangements are inadmissible and also unnecessary.

Conclusion

28. For the reasons set out in paragraphs 14 to 26 above, I conclude that the school's admission arrangements for September 2013 as currently drafted do not comply with the requirements of the Code, in the following ways:

- (i) having an unclear description of the area served by the school;
- (ii) giving no definition that would enable a parent to know whether they would be given priority as a practicing Catholic;

(iii) being unclear how priority is to be given within the priority group consisting of children of families belonging to Eastern Christian Church and Catechumens;

(iv) lacking clarity concerning the circumstances in which random allocation is used;

(v) asking parents to provide information through its Supplementary Information Form and others which has no bearing on its application of oversubscription criteria;

(vi) interviewing parents;

(vii) being unclear concerning the need about which a Priest can provide supporting evidence in order to afford a child a higher priority within the oversubscription criteria;

(viii) employing modified oversubscription criteria for in-year admissions;

29. In spite of amendments which the school has offered, there remain ways in which the arrangements contravene the Code.

30. Helpful amendments to the arrangements concerning the matters (i), (ii) (in part), (iii) (in part), and (iv) have been suggested by the school. Nevertheless, even with these changes, the school's arrangements remain non-compliant in respect of the matters listed above under (ii), (iii), (v), (vi) and (vii). I have indicated above how these can be rectified, together with other improvements that might be made.

31. It is for the Governing Body now to make the necessary changes to their admission arrangements, as they are required to do by the Code, paragraph 3.1.

Determination

32. I have considered the arrangements determined by the Governing Body in accordance with section 88I (5) of the School Standards and Framework Act 1998. I determine that the school's arrangements for admissions in 2013 do not conform with the requirements relating to admission arrangements.

33. 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: 13 July 2012

Signed:

Schools Adjudicator: Dr Bryan Slater