

DETERMINATION

Case reference:	ADA2672
Referrer:	Dudley Metropolitan Borough Council
Admission Authority:	The Board of Directors of the St. John Bosco Multi Academy Company
Date of decision:	8 July 2014

Determination

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

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

The referral

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

Jurisdiction

2. The terms of the academy agreement between the St. John Bosco Multi Academy Company (MAC) and the Secretary of State require that the admission policy and arrangements for each academy school are in accordance with admissions law as it applies to maintained schools. The arrangements were determined by the Board of Directors of the MAC, which is the admission authority for the school, on that basis.
3. The objector submitted the objection to these determined arrangements on 11 June 2014. I am satisfied that the objection has

been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
 - a. the objection, dated 11 June 2014;
 - b. the school's response to the objection, dated 20 June 2014;
 - c. the school's admission policy, determined at a meeting of the Board of Directors of the St John Bosco MAC on 10 April 2014;
 - d. evidence of the consultation exercise concerning the arrangements;
 - e. minutes of the Board of Directors' meeting held on 10 April 2014;
 - f. the admissions policy for the school's nursery (Sedgley Kids Club, St. Chad's Pre-School);
 - g. the diocesan education service's response to the objection, dated 24 June 2014;
 - h. the diocesan education service's 2015/16 model admission arrangements for primary schools in Dudley;
 - i. information on primary school admissions on the LA's website; and
 - j. the school's website.

The Objection

6. The LA has objected to the inclusion, in the oversubscription criteria within the school's arrangements, of a criterion that gives preference, when allocating places in the reception class, to non-Catholic children who have attended the pre-school (Sedgley Kids Club) on the school site. The LA contends that this does not meet the requirement of paragraph 12 of the Introduction to the Code, which refers to school places being "*allocated and offered in an open and fair way.*" The LA draws attention also to paragraph 1.8 of the Code, which again mentions fairness, and paragraph 1.15 which states that "*the selection of a feeder school or schools as an oversubscription criterion **must be transparent and made on reasonable grounds.***"
7. The LA objection is that "*giving priority to pupils who are in the nursery (sic) could be seen as a disadvantage to parents who opt not to send their child to nursery or to a nursery that offers wrap around provision*

and greater flexibility.” The LA refers to the November 2013 annual report from the Office of the Schools Adjudicator, which drew attention to a number of objections to oversubscription criteria that gave priority to applications for children in named nursery provision. In summary, the LA’s position was that *“Schools should ensure fair access for all children on reaching compulsory school age in order that children are not disadvantaged by any decisions their parents make about the care of their children prior to compulsory school age or by access to specific child care.”*

Background

8. The school, which is part of the St. John Bosco MAC, is a Catholic primary academy school for 4 – 11 year old pupils. There are about 210 pupils on roll and the school is in the archdiocese of Birmingham. The local governing body, known as the academy committee, is represented on the board of directors of the St. John Bosco MAC, which is the admission authority under the articles of the academy trust.
9. The arrangements for 2015 were determined by the St. John Bosco MAC on 10 April 2014 using a common or ‘model’ policy provided by the archdiocese to all Catholic primary schools in Dudley.
10. The school has a planned admission number (PAN) of 30. The arrangements give priority, as required, to children with a statement of special educational need in which the school is named. Oversubscription criteria are then, in summary:
 1. Catholic looked after or previously looked after children
 2. Catholic siblings living in two named parishes
 3. Other Catholic children living in the two named parishes
 4. Other Catholic siblings
 5. Other Catholic children
 6. Non-Catholic looked after or previously looked after children
 7. Non-Catholic siblings
 8. Non-Catholic children who attend the pre-school (Sedgley Kids Club)
 9. Non-Catholic children
11. Criterion 8 in the above list of oversubscription criteria was introduced in the 2015/16 arrangements, having not been included previously. This criterion is not in the model policy circulated by the diocesan education service. The arrangements contain the statement, taken from the model policy, that *“Attendance at a nursery does not automatically guarantee that a place will be offered in main school.”*
12. The school was slightly oversubscribed in two recent years for which LA data are available (2009/10 and 2010/11), but was undersubscribed in 2011/12. No looked after or previously looked after children were admitted during the three years, but between 9

and 13 siblings were allocated places in each of those years. Only one, unsuccessful, appeal was heard during that time.

13. The pre-school (Sedgley Kids Club) is not a nursery class within the school but a private enterprise that offers wrap around care and holiday provision, using the school premises and facilities for activities before and after the school day, and for pre-school sessions for children aged 2-4 years during school holidays. A fee is payable for these activities.

Consideration of Factors

14. I have considered the reasons given by the LA for the objection and factors relevant to the position of nursery or pre-school classes in relation to admissions to reception classes. I have also considered the case presented by the school in defending the introduction of criterion 8 in the 2015/16 arrangements and the support given to the school's position by the diocesan education service.
15. The LA's argument centres on the notion of fairness and equal access, especially for those parents who prefer not to make use of nursery or pre-school provision for their child, or who might choose provision with more flexible terms than those offered by the Sedgley Kids Club. Although the LA refers to paragraph 1.15 of the Code, which concerns feeder schools, this paragraph mentions only primary and middle schools and is silent on pre-school provision. This silence does not mean that oversubscription criteria relating to pre-school provision are fair or permitted, but neither does it mean that they are prohibited.
16. Sedgley Kids Club, however, is not a school and so paragraph 1.15 is not relevant in this context. I have therefore decided to consider the pre-school oversubscription criterion used by the school against the overall principles behind setting admission arrangements as outlined in paragraph 14 of the Introduction and the more detailed provisions found in paragraphs 1.8 and 1.9 of the Code. If I were to consider a claim that the Sedgley Kids Club, by virtue of being named in the oversubscription criteria, might be regarded as "*a named feeder school*" and therefore allowed, it would nonetheless still be subject to the tests of 'fairness' and objectivity'. Moreover, parents must pay for their children to attend this provision and so, even if it were possible to argue that Sedgley Kids Club is a 'feeder' of some description, paragraph 1.9(l) of the Code states clearly that admission authorities "**must not ... name fee-paying independent schools as feeder schools**".
17. With regard to paragraph 14, which requires that "*the practices and the criteria used to decide the allocation of school places are fair, clear, and objective*" I have above all to consider 'fairness' and 'objectivity', since the clarity of the arrangements is not in dispute. Paragraph 1.8 uses similar terminology but introduces also the idea that arrangements should not "*disadvantage unfairly, either directly or*

indirectly, a child from a particular social or racial group” I believe that, although choices regarding pre-school provision may not place parents in formal ‘social groups’ that, nevertheless, it would be a legitimate reading to consider that this prohibition should apply in such circumstances, especially with regard to cost implications. The detailed prohibitions of paragraph 1.9 might be seen to apply when it states (in sub section b)) that admission authorities **“must not ... take into account any previous schools attended, unless it is a named feeder school”**, which I have shown above that the Sedgley Kids Club cannot be, and (in sub section e)) which states that admission authorities **“must not ... give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation ... “**. I believe that parents who opt to send children to the Kids Club, in making that decision, are supporting the school in a practical way by sustaining the business of a client using the premises, as well as giving direct financial support to an ‘associated organisation’.

18. The school’s response to the objection emphasises the close contact during consultations with both the LA and the diocesan education service. The LA’s objection concerning the pre-school criterion to the St. John Bosco MAC was discussed, but the admission authority nevertheless regarded the criterion as *“clear and transparent”* in accordance with paragraph 1.15 of the Code. I have argued above that this paragraph is irrelevant, as the Sedgley Kids Club cannot be regarded as a ‘feeder school’. The school further submits that *“The [pre-school] children share St. Chad’s play and outside facilities. It is felt that parents who have committed to sending their children to the Pre-School at St. Chad’s should be given a priority over other non-Catholic children. It was felt that this was acting fairly.”* The school does not justify this last statement, nor does it attempt to present an educational case for using the criterion, for example, continuity and familiarity with the school environment. My view is that it is unfair on a child living close to the school to be denied a place in favour of another who might live at some distance, but happens to have attended the pre-school club.
19. Another point that I have considered is the placing of this criterion in the order of priorities. It is very low down the list and applies only to non-Catholic children. However, given fluctuating levels of first choice applications for the school, lower ranking priorities might affect a significant – even if small – number of children. That in itself is not a reason either to support or to reject the criterion but, taken with my comments above regarding fairness and objectivity, means that it would be better not to include it.
20. The diocese, in its response to the objection, provides tacit support for the school in stating correctly that *“The 2012 School Admissions Code does not specifically preclude giving priority to children who are already attending the nursery stage at the school ... “*. The first point to make is that the Sedgley Kids Club is not *“a nursery stage at the*

school". The diocesan response goes on to say that "*many parents opt for a faith education from an early age and want their children to continue through to full time education within the school.*" This latter point, while undoubtedly true, loses some force when it is remembered that the criterion under scrutiny relates to non-Catholic children only. This is not to deny that some non-Catholic families consciously make applications to Catholic schools, or to suggest that the children of such families are less welcome than those baptised in the faith, but merely to point out that the impact of the religious dimension is perhaps less fundamental in respect of the criterion under consideration than in some of the higher ranking oversubscription criteria, thus strengthening the argument that the pre-school criterion should be removed from the arrangements.

21. In considering the fairness of the pre-school criterion within the school's arrangements, therefore, I am of the opinion that it is unfair. It is unfair, because, as previously suggested, parents might wish not to send their child to a nursery or pre-school at all, or to one offering different provision. Parents might reasonably prefer another nursery or pre-school to the Sedgley Kids Club for various reasons, including financial concerns. It is also possible, of course, that parents might have been unsuccessful in gaining a place for their child at Sedgley Kids Club, which would become a double penalty if that then became the reason for them also missing out on a reception place at St. Chad's.
22. I determine, therefore, that the school's oversubscription criterion 8, concerning priority for non-Catholic children who attend Sedgley Kids Club, does not comply with the requirements of the Code and that it should be removed from the arrangements in order to conform with paragraphs 14, 1.8 and 1.9 of the Code.

Conclusion

23. The objection draws attention to what the LA believes is an unfair oversubscription criterion in the school's arrangements, giving preference to non-Catholic children who have attended the pre-school provision on the school site. While accepting that the school chose to add this criterion to its 2015/16 arrangements, contrary to the advice of the LA, in good faith and following discussion, I found that the criterion is unfair and lacks objectivity. To enrol children for any nursery or pre-school of their choice, or for none at all, is a decision parents are perfectly entitled to make and for which it would be unfair to 'punish' them, in effect, through the application of the oversubscription criterion here under scrutiny. Despite the context of its ranking within the oversubscription criteria, the level of first choice applications to the school mean that it may affect a significant number of children if the criterion were to remain in the arrangements, to the detriment of children who live near to the school but have not attended the pre-school provision. Furthermore,

Sedgley Kids Club is not a school and so cannot be named as a 'feeder' within the school's admission arrangements.

24. I therefore uphold the objection. The criterion contravenes paragraph 1.9(e) of the Code. Moreover, its removal would mean that the arrangements better comply also with the spirit of paragraphs 14, and 1.8 of the Code.

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

Determination

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

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

Dated: 8 July 2014

Signed:

Schools Adjudicator: Andrew Bennett