



## **DETERMINATION**

<b>Case reference:</b>	<b>ADA2598</b>
<b>Referrer:</b>	<b>A member of the public</b>
<b>Admission Authority:</b>	<b>The governing body of the Blessed Hugh Faringdon Catholic School and Sixth Form Centre, Reading</b>
<b>Date of decision:</b>	<b>30 June 2014</b>

### **Determination**

**In accordance with section 88I(5) of the School Standards and Framework Act 1998, I determine that the admission arrangements for the Blessed Hugh Faringdon Catholic School and Sixth Form Centre for 2014/15 and 2015/16 do conform with the requirements relating to admission arrangements on the matters brought to my attention, but there are other matters that do not conform.**

**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 88I(5) of the School Standards and Framework Act 1998 (the Act) the admission arrangements (the arrangements) for the Blessed Hugh Faringdon Catholic School (the school), Reading, have been brought to the attention of the Adjudicator. The school is a voluntary aided school and the governing body is the admissions authority. Reading Borough Council (the council) is the local authority (LA). The school is within the Diocese of Portsmouth (the diocese).**
- 2. The concerns raised are that the oversubscription criteria in the school's arrangements give priority for places to pupils of any faith over pupils with no declared faith; that there may be selection by aptitude or ability; and that the naming of feeder schools is unreasonable.**

### **Jurisdiction**

- 3. The referrer wrote on 29 April 2014 to object to the arrangements. The objection was received after the deadline of 30 June 2013 for 2014 admissions and I have decided to view the "objection" under**

section 88I(5) of the Act as the arrangements have been brought to my attention. I am satisfied that it is within my jurisdiction to consider the arrangements. I have also used my power under section 88I(5) of the Act to consider as a whole the arrangements for admissions in 2014/15 and the arrangements for admissions in 2015/16 which were sent to me by the school. I have also considered the arrangements for admission to the sixth form, as published on the school's website.

### **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 referral dated 29 April 2014;
  - b. subsequent comments from the referrer, dated 20 May, 27 May and 6 June;
  - c. the school's responses of 12, 21 and 23 May and 4 June 2014;
  - d. the LA's responses, one dated 16 April 2014 but received on 12 May 2014, and 4 June;
  - e. the diocese's responses of 15 May, 20 May and 9 June 2014;
  - f. the council's composite prospectus for parents seeking admission to secondary schools in the area in September 2014;
  - g. the council's common application form (CAF);
  - h. a copy of the determined arrangements for the school for entry in 2014/15 and 2015/16;
  - i. the school's supplementary information form (SIF); and
  - j. arrangements for entry to the school's sixth form, as published on its website.

### **The Referral**

6. The school's arrangements for entry to year 7 in September 2014 include as criterion seven of the oversubscription criteria, "Children who are members of Eastern Orthodox Churches"; criterion eight refers to "Children of families who are members of other Christian denominations that are part of Churches Together in England"; and criterion nine refers to "Children who are member of other faiths." In all three categories, evidence of baptism, dedication or membership, endorsed by a faith leader as appropriate, is required with the SIF. The concern expressed in the referral is that these three categories exceed the exemption given to faith schools to give priority based on

religion by going beyond the specific denomination or faith of the school and that the arrangements thus exceed the permission granted by paragraph 1.36 of the Code which states, “*Schools designated by the Secretary of State as having a religious character (commonly known as faith schools) may use faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed.*” The referrer further submits that the school’s admission procedure is “*essentially a concealed selection for academic aptitude*”; in relation to the supposed academic advantages of children from homes which demonstrate “*a strong religious element.*” This unfairness is compounded, it is claimed, by an additional criterion in the arrangements relating to named faith feeder schools, which is “*prejudicial to pupils living in the locale of the school who do not meet the faith criteria*”; and that it discriminates unfairly in favour of “*those of no stated faith fortunate enough to have a place at a named feeder school.*”

7. There are thus three elements to the referral: the scope of the faith criteria; the possibility of selection by academic aptitude, conscious or not; and the impact of naming feeder primary schools.

### **Background**

8. The Blessed Hugh Faringdon Catholic School and Sixth Form Centre, Reading, is a voluntary aided school in the Diocese of Portsmouth and as such, the governing body is its admission authority. The published admission number for year 7 is 150.
9. The arrangements for admission to year 7 in September 2014 were published with the following oversubscription criteria, applicable after the admission of pupils with statements of special educational needs where the school was named on the statement (detailed explanatory notes that accompany the criteria that are not included here):
  1. baptised Catholic looked after or previously looked after children;
  2. baptised Catholic children with a sibling at the school at the time of admission;
  3. baptised Catholic children without a sibling at the school at the time of admission;
  4. other looked after and previously looked after children;
  5. children who are not baptised but are under instruction in the Roman Catholic faith (catchumens);
  6. other children with a sibling at the school at the time of admission;
  7. children who are members of Eastern Orthodox Churches;

8. children of families who are members of other Christian denominations that are part of Churches Together in England;
9. children who are members of other faiths;
10. any other children who attend a named feeder Catholic primary school; and
11. any other children.

The arrangements include a tie-breaker based on distance between the home and the school, with random allocation of places where distances are equal.

10. The school was deemed 'good' in its Ofsted inspection of November 2012, after three previous 'satisfactory' judgements in 2002, 2006 and 2009. Data supplied by the school show that more than four out of ten pupils admitted to year 7 in 2013 were eligible for free school meals; that almost four out of ten pupils in years 7 - 11 are on the register of special educational needs (compared with about two out of ten nationally), of whom almost five per cent, double the national average, have a statement of special educational need. Almost half the pupils on roll are from ethnic minority groups, which is double the national figure, and the first home language of a quarter of pupils is not English, again substantially higher than the national average. The profile of the school intake at year 7 has remained broadly similar in recent years and the head teacher argues convincingly that improvements in results and in the general quality of education recognised by the most recent Ofsted inspection have been brought about by better leadership and management of teaching and learning, not by a change in the nature of the school's intake. In both the national and the local context, data suggest that the school's profile is not significantly above average but that its performance, which has improved steadily in recent years, is now better than might be expected given the prior attainment and recorded characteristics of the pupils.
11. The first admissions year in which not all first-choice applicants for year 7 were offered a place at the school was 2014; 151 offers were made to 174 applicants. In 2013, by way of comparison, 150 offers were made when there had been just 121 first-choice applicants. The overall number of choices naming the school on the CAF rose from 280 in 2012 to 402 in 2014. These changes are attributed in part to local demographic trends as well as to perceived improvements in the performance of the school which make it a more attractive choice for applicants.
12. The school designates six feeder Catholic primary schools, which are: English Martyrs; St. Paul's; St. Martin's; St. Anne's; Christ the King; and St. Dominic Savio. These schools are considered by the diocese to form a 'cluster' with the Blessed Hugh Faringdon Catholic School and Sixth Form Centre, a model of linked Catholic primary

and secondary schools that is replicated throughout the diocese.

### Consideration of Factors

13. I consider first of all the referrer's objection to the citing of different faiths in the school's oversubscription criteria. The referrer quotes from previous versions of the Code to support an argument that such criteria should take account only of the specific denomination or faith of the school. However, the version of the Code that must be considered in determining this referral is that in current force, that is, the version published on 1 February 2012. This Code (in paragraph 1.36) states clearly that a faith school "*may use faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed.*" The lack of any article, definite or indefinite, before the word '*faith*' in the quoted extract might be taken to mean that oversubscription criteria may refer to faith in general, not only to the specific denomination or faith of the school.
14. Moreover, although paragraph 1.37 of the Code uses the definite article in making several references to "*children of the faith*", this is in respect of looked after and previously looked after children. The school's arrangements follow the requirements of this paragraph in giving priority to such children of **the** faith before other children of **the** faith. Then, because some criteria are ranked in relation to children not of **the** faith, the school properly gives "*priority to looked after children and previously looked after children not of the faith above other children not of the faith.*" Implicit in this paragraph of the Code, therefore, is permission for faith schools to admit children not of **the** faith, which logically could include children of any other faith, provided that first priority is given to all other looked after and previously looked after children, whether they profess a faith or not. In this respect, I find no lack of conformity with the Code in the school's arrangements for 2014/15.
15. I have considered also paragraph 1.38 of the Code, which states that admissions authorities "**must** have regard to any guidance from the body or person representing the religion or religious determination when constructing faith-based oversubscription criteria" and that they "**must** also consult with the body or person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated." In respect of the latter requirement, the diocese confirms that the school consulted the Diocesan Department for Schools about its arrangements, and that its definition of how membership of the Catholic faith should be demonstrated follows diocesan guidance.
16. The school's arrangements require, for the three categories on non-Catholic faith applicants mentioned above, "*evidence of Baptism ... (or dedication) ... [or] membership of the faith*" to be supplied by "*a priest, minister or religious leader of a designated place of worship.*" Given the first requirement of paragraph 1.38 of the Code quoted above, it might be wondered – there being no apparent restriction of

the faith to which an applicant might belong – how this requirement for consultation with representatives of every potential faith might be managed or, indeed, how it might even be possible if taken to the limit. Schedules 3 and 4 of The School Admissions (Admission Arrangements and C-ordination of Admission Arrangements)(England) Regulations 2012 provide lists of representative bodies or persons and of Rabbinic authorities, which might be considered as a starting-point for a more transparent approach to paragraph 1.38 if the requirement for broad consultation with religious bodies were to be followed. The diocese states, in support of the school, however, that these schedules “do not include all Christian and faith traditions.” The implication of this comment is, therefore, that in acknowledging the list to be incomplete, the diocese would be able to provide a complete list of what it recognises as “Christian and faith traditions”. While I consider it unlikely that the school would accept apparently far-fetched demonstrations of adherence to a less than convincing ‘faith’, there is nonetheless a potentially unhelpful open-endedness about this ‘other faiths’ criterion which might be made more rigorous and thus more transparent through guidance. If it is for the school to decide what qualifies as endorsement of membership of a faith, and what qualifies as a faith, then it might be very difficult, if not impossible, for a parent to understand the process and therefore to be able to understand easily how places at the school are allocated, an expectation enshrined in paragraph 14 (“Overall principles behind setting arrangements”) of the Introduction to the Code.

17. There is, however, another interpretation of paragraph 1.38 which would read its meaning as a requirement on the school to consult only with “the body or person representing the religion or religious denomination”, that is, in this case – given the uses of the definite article in the quotation – the Catholic diocese. Paragraph 1.38 goes on to say that schools “**must** also consult with the body or person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated.” In this interpretation, the school has followed diocesan guidance absolutely, in regard to both the Catholic faith and other faiths, on which the guidance from the diocese states, “Evidence of membership [of other faiths] should be a statement of membership made on a supplementary information form by a faith leader” and adds that “admission authorities should not expect members of other faiths to demonstrate Catholic expectations of religious practice. It is for the leader of the relevant faith to determine commitment to that faith.” This would be my interpretation of the requirements of paragraph 1.38 of the Code, and in that respect I am satisfied that the school conforms with them. Again, though, I would commend that some attempt to define or to delimit what is accepted as ‘other faiths’ would be helpful to applicants. The diocese’s comment that “if a parent claims to be a member of a Christian or faith tradition which is not Catholic, the school does not pass judgement on the validity of that claim but instead requires the parent to secure endorsement of

*that claim from their relevant church leader through the Supplementary Information Form” may be seen as somewhat disingenuous in that it leaves a loophole – albeit probably a very small one – in respect of what is accepted as a ‘faith’ and consequently of who might claim legitimate status as a ‘church leader’.*

18. Further to admitting children of other, that is non-Catholic, faiths above any other children, that is, those of no proclaimed faith, the diocese argues that *“those of other faiths will choose to send their children to Catholic schools in the absence of any school providing education in its own faith tradition ... The parents of such children choose to send them to a Catholic school because they wish their children to be educated in an environment where faith is important, even though this is not the same. We would say that the law does not preclude us from doing so.”* This echoes an introductory statement to the school’s arrangements, which states that, although the school was established *“primarily to serve the Catholic community in the Greater Reading area”*, so that Catholic children have priority of admission, the governing body *“also welcomes applications from those of other denominations and faiths who support the religious ethos of the school.”* I agree with the diocese that this approach is not prohibited by the Code. The school’s statement makes clear the rationale that underpins its arrangements and choice of oversubscription criteria. However, it is worthy of note that in its published guidance, of the diocese’s three examples of *“acceptable oversubscription criteria”*, the first – and simplest – does not contain any reference to ‘other faiths’ beyond Catholic and *“Other Christian tradition/faith categories (if applicable)”* In other words, the diocese would not require faith criteria necessarily to extend beyond Catholic and other Christian traditions or faith categories.
19. I determine, therefore, that the range of faith criteria in the school’s arrangements does not contravene either paragraph 1.36 of the Code, or the statement in paragraph 1.37 that *“Admission authorities must ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied”*, since I would argue that, despite my reservations expressed above, most applicants with no faith background would realise that the likelihood of their being allocated a place is low. Furthermore, in relation to paragraph 1.38 of the Code, the school consulted fully with the diocese and followed diocesan guidance appropriately in the determination of its arrangements. Nevertheless, both the school and the diocese might wish to consider whether it would be helpful to specify and explain more fully the scope of the oversubscription criterion of ‘other faiths’.
20. The second aspect of the referral, to which I now pass, concerns the possibility raised by the referrer that giving priority in oversubscription criteria to children from faith backgrounds *“is a form of academic aptitude selection that is not permitted under the schools admission legislation.”* In support of this objection, the referrer cites *“ample*

*evidence from the United States that a strong religious element in pupils (sic) lives indicates a higher application to study and leading (sic) to higher academic achievement. This has been shown to be a positive indicator even after varying levels of social and wealth factors.*” There are two initial points to be made here. The first is that, as the referrer acknowledges, the Code (in paragraphs 1.36-1.38) permits schools with a religious character to use faith-based oversubscription criteria. Secondly, this permission in the Code does not bring the school’s arrangements into conflict with prohibitions against selection by ability or aptitude as expressed in paragraph 1.9(d), since the school’s arrangements do not propose any form of testing for ability or aptitude as part of the process of allocating places.

21. The referrer raises the question of whether the use of faith-based oversubscription criteria is unfair *per se* since, regardless of whether there is any declared selection policy based on ability or aptitude, this is in itself a form of ‘back door’ selection. In arguing this point of view, the referrer admits that *“Much of [the] evidence is from extensive US data collected and analysed during the 1990s.”* Such evidence is simply not admissible in the present context. While there will always be a legitimate debate concerning the impact of social and economic factors on children’s development and thus on school performance, a swingeing challenge to the probity of the oversubscription criteria of – by implication – all schools with a religious character because of a fundamental flaw in permitting that very designation, cannot be allowed.
22. I determine, therefore, that I do not agree with that aspect of the referral that claims to detect implicit selection by ability or aptitude in the school’s arrangements, and that the arrangements do not contravene paragraphs 1.9(d) or 1.36-1.38 of the Code.
23. I move now to the question of feeder schools. The referrer claims that *“the feeder school criteria (sic) is prejudicial to pupils living in the locale of the school who do not meet the faith criteria and has a positive discrimination (sic) to those of no stated faith fortunate enough to have a place at a named feeder school.”* Paragraph 1.15 of the Code states that *“The selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds”*. The Code therefore allows a school to nominate feeder schools, provided they meet the requirements of transparency and reasonableness. All Catholic primary and secondary schools within the diocese are ‘clustered’ in the way exemplified by this school and its named feeder primary schools; the diocese argues that such ‘clusters’ were established in the interests of collaboration and mutual support since, by virtue of their religious character, Catholic schools traditionally serve a wider area than community schools. The arrangement facilitates *“a smooth and seamless transfer from primary to secondary school.”* This seems to me a reasonable educational position, intended to encourage



efficiency as well as effective continuity and progression for children. In that this is a diocese-wide structure, I would also deem it transparent.

24. The main aspect of this objection by the referrer is that the school's criteria are prejudicial to potential pupils who live near to the school but do not attend one of the named feeder schools and do not meet the faith criteria. Such children would be 'overtaken' in the allocation of places by those also of no faith, but attending one of the feeder schools. This is true, but is it unreasonable? Remembering the diocesan argument quoted above, I would suggest that children of whatever background in the feeder primary schools will potentially benefit from the support for progression and continuity inherent within these oversubscription criteria. That some children who were not "*fortunate enough to have a place at a named feeder school*" may miss out on a place at the school nearest to their home is unfortunate, but is not contrary to any requirements in the Code. While there may be issues around the provision of school places within changing local demographics, that is a matter broader than, and separate from, the specifics of this referral.
25. I determine, therefore, that I do not agree with the objection to the naming of feeder schools in the school's arrangements and that in this respect the arrangements do not contravene paragraph 1.15 of the Code.

### **Other matters**

26. I turn now to the school's arrangements for 2015/16, determined on 25 March 2014. The list of oversubscription criteria has been reduced and simplified from that used in 2014/15. There is no longer any reference to catechumens, since the school explained that this was a category it had never been found necessary to use and, more significantly, the previously separate criteria relating to siblings and to feeder primary schools have now become priorities that are applied in turn to each of the oversubscription criteria. The effect of this is that siblings, and children attending one of the feeder primary schools, have a greater chance of gaining a place than before. Although the arrangements, with the accompanying notes, remain lengthy, this change is logical, removes some potential anomalies and makes the 'headline' criteria easier for parents to understand.
27. During the gathering and exchange of evidence in making this determination the referrer had the opportunity to see and comment on the 2015/16 arrangements. It was felt that they continued to raise the issues mentioned in the initial referral and, indeed, compounded one contentious area regarding siblings in that "*Any low ranking applicant with a sibling already at the school will be out ranked by any applicant only one category higher without a sibling. Although this will be least prejudicial to the Catholic applicants it will be more extreme as you drop down the categories.*" This is undoubtedly true,

but there is a logic to it, given the nature of the school's religious character. It is a change that is both reasonable and transparent. The latest arrangements comply with the requirements of paragraph 1.11 of the Code concerning siblings and the overall principles of the Code expressed in paragraph 14 of the Introduction, which states that "*admission authorities **must** ensure that the practices and criteria used to decide the allocation of school places are fair, clear and objective.*"

28. There are, however, two other aspects of the school's arrangements for both 2014/15 and 2015/16 that do not, in my view, conform with the requirements of the Code. The first concerns the SIF, and the second the admission arrangements to the sixth form.
29. The overriding purpose of the school's SIF is to gather detail relating to faith practice; it is used in applying the oversubscription criteria previously discussed. However, the SIF asks also, in section 7, for the names and year groups of siblings already attending the school. Paragraph 2.4 of the Code states that admission authorities "***must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria ...*" Information about faith adherence and practice is certainly permitted by this statement in the context of schools with a religious character, but information about siblings is already collected on the council's CAF, which all parents seeking a place at the school must complete. Details of siblings are not 'additional' information for the school, given that these details have already been sought by the LA, and as such should not be requested again. This dual provision of information, limited as it may be, is an unnecessary burden on parents, especially for those who may be completing more than one SIF for different schools. It should not be necessary, given the LA's co-ordinating role in admissions, which includes the provision of full information, including details of siblings, to individual admission authorities. Although paragraph 2.4 of the Code does not explicitly prohibit requests for information on the SIF that is already collected on the CAF, I believe that to be the spirit of the paragraph. I determine, therefore, that the question about siblings should be removed from the school's SIF as soon as possible.
30. In turning to the admission arrangements for the sixth form, I note that they do not provide a planned admission number (PAN), that indicates the number of places available for students new to the school.. Paragraph 1.2 of the Code states that admission authorities "***must** set an admission number for each 'relevant age group'*", the 'relevant age group' being defined as that "*at which pupils are or will normally be admitted to the school*", which in the case of this school would include year 12 for sixth form courses. No oversubscription criteria for sixth form applications are mentioned on the relevant section of the website. It might be assumed that they would be the same as those for the main school, but potential applicants should not be required to, and cannot, make this assumption. Paragraph 1.7

of the Code states that “*All schools **must** have oversubscription criteria for each ‘relevant age group’*”, and these criteria **must** follow all requirements of the Code for each ‘relevant age group’, for example in relation to children with statements of special educational need and looked after children. There is no indication on the website that such children would be afforded the priority to which they are entitled.

31. I determine therefore that the school’s arrangements for admission to the sixth form do not conform with paragraphs 1.2 and 1.7 of the Code and that they should be amended as soon as possible.
32. Regarding interviews, paragraph 1.9(m) of the Code allows meetings with children or parents to discuss courses and entry requirements, but states clearly that “*this meeting cannot form part of the decision making process on whether to offer a place.*” This prohibition is reinforced in paragraph 2.6, and while the information in the section of the sixth form admission information entitled ‘What happens next?’ does not say that the interview will be part of the decision making process, the use of the word ‘interview’ rather than ‘meeting’, and the use of the title ‘Decisions’ for the section immediately following, might be taken to imply a causal link between the two. A clear statement that this is not the case would remove any doubt from the mind of applicants.

## **Conclusion**

33. The referral draws attention to oversubscription criteria in the arrangements for 2014/15 that relate to the scope of the faith criteria, the possibility of selection by academic aptitude and the naming of feeder primary schools. I considered paragraphs 1.36-1.38 of the Code and decided that, while the inclusion of ‘other faiths’ might be unhelpfully vague, it does not contravene the Code. Nor do I accept that the school is in effect selecting by aptitude or ability in its arrangements. The naming of feeder primary schools is fair and reasonable and conforms with practice throughout the diocese.
34. I also considered the school’s arrangements for 2015/16 and found that they have been simplified and clarified, better satisfying the requirements of paragraph 14 of the Introduction to the Code. However, as is true also of the arrangements for 2014/15, they do not conform with the requirements of the Code in respect of the SIF. The admission arrangements for the sixth form do not provide a PAN or oversubscription criteria, and may be taken to imply that obtaining a place is dependent on performance in an interview.
35. In considering the school’s SIF I am of the opinion that it does not conform with the spirit of paragraph 2.4 of the Code, in that it seeks information about siblings that is already available to the school through the LA’s CAF.

36. I found that the sixth form arrangements contravene paragraphs 1.2 and 1.7 of the Code by not providing a sixth form PAN and by not publishing oversubscription criteria. I was also of the opinion that, while not contravening paragraph 2.6 of the Code, potential applicants might feel that decisions about offering places were dependent in part on interviews.
37. It is for these reasons that I do not agree with the referral but conclude that in some other respects the arrangements for 2014/15 and 2015/16 are not compliant with the Code and must be revised as soon as possible.

### **Determination**

38. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I determine that the admission arrangements for the Blessed Hugh Faringdon Catholic School and Sixth Form Centre for 2014/15 and 2015/16 do conform with the requirements relating to admission arrangements brought to my attention, but there are other matters that do not conform.
39. 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: 30 June 2014

Signed:

Schools Adjudicator: Andrew Bennett