

## **DETERMINATION**

<b>Case reference:</b>	<b>ADA 2579</b>
<b>Referrer:</b>	<b>A member of the public</b>
<b>Admission Authority:</b>	<b>The governing body of the Academy Trust of St Cyprian's Greek Orthodox Primary Academy, Croydon</b>
<b>Date of decision:</b>	<b>8 May 2014</b>

### **Determination**

**In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements for St Cyprian's Greek Orthodox Primary Academy for 2013, 2014, and 2015. I determine that some aspects do not conform with the requirements relating to admission arrangements.**

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

### **The referral**

1. The admission arrangements (the arrangements) for 2014 for St Cyprian's Greek Orthodox Primary Academy (the school) have been brought to the attention of the adjudicator by a member of the public (the referrer).

### **Jurisdiction**

2. The terms of the academy agreement between the academy trust of St Cyprian's Greek Orthodox Primary Academy and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. As there was a lack of certainty about the determination of any arrangements since 2012, both the 2013 arrangements and the 2014 arrangements were determined retrospectively on 26 March 2014 by the governing body which is the admission authority for the school. The 2015 arrangements were also determined at the same meeting on 26 March 2014.

3. Although the referral was brought to the attention of the adjudicator on 27 February 2014, which is well after the deadline for receipt of objections, arrangements that come to the attention of the adjudicator by any means may be considered under section 88I(5) of the School Standards and Framework

Act 1998 (the Act). Accordingly, I am satisfied that it is within my jurisdiction to consider the 2014 arrangements under section 88I(5) of the Act.

4. At the time the objection was received, only the 2013 arrangements had been published on the school's website, but the 2014 arrangements were available in the composite prospectus "Starting Primary School 2014" on the website of Croydon Council (the council). The 2013 admission arrangements apply to any waiting list held by the school and I note that the 2013 arrangements were adopted unchanged as the 2014 arrangements. Furthermore, I note that the 2015 arrangements sent to me on 27 March 2015 are unchanged from the 2013 and 2014 determined arrangements. Under section 88I(5) of the Act an adjudicator has the power to consider admission arrangements that do not, or may not, conform with the requirements relating to admission arrangements. Therefore I am satisfied that under section 88I(5) of the Act I have the power to consider all three sets of arrangements and other matters about the arrangements.

## **Procedure**

5. In considering these arrangements I have had regard to all relevant legislation and the Code.

6. The documents I have considered in reaching my decision include:

- the funding agreement for the school;
- the 2014 arrangements published in the council's on-line composite prospectus "Starting Primary School 2014";
- the 2013 arrangements and the admissions form from the school's website on 27 February 2014;
- the "Information Booklet" for parents downloaded from the school's website on 27 February 2014;
- copies of the determined admission arrangements for 2013, 2014 and 2015 emailed by the school on 27 March 2014;
- an extract from the minutes of the governing body's meeting on 26 March 2014 at which the 2013, 2014 and 2015 arrangements were determined, emailed by the school on 31 March 2013;
- a copy of the amended supplementary information form (SIF) emailed by the school on 2 April 2014;
- the amended arrangements for 2013 and 2014 and the amended SIF as seen on the school's website on 8 April 2014;
- email correspondence between the school and the council's admissions team regarding the consultation process for the school's arrangements; and
- admissions data for the school for 2012 and 2013 provided by the council in the meeting on 17 March, and follow-up email dated 16 April 2014.

7. I arranged a meeting on 17 March 2014 attended by representatives of

the school and the council. I have considered the representations made to me during the meeting and the documentation and correspondence submitted before and after the meeting.

## Background

8. The school opened as an academy school on 1 July 2012, replacing the predecessor voluntary aided school known as St Cyprian's Greek Orthodox Primary School, which ceased to be a maintained school on that date.

9. The school is a state-funded co-educational academy primary school in Croydon for pupils aged 3 to 11 years. The funding agreement confirms that the school has a planned capacity of 446, including a nursery unit of 26 places. The 2014 admission arrangements indicate that the published admission number (PAN) will be 60.

10. The funding agreement states that the school is '*a faith academy in the Archdiocese of Thyateira and Great Britain*'. The school is therefore designated with a religious character in accordance with section 124B of the Act and further to section 6(8) of the Academies Act 2010.

11. The headteacher who had been dealing with the school's admission arrangements left the school in August 2013 to take up a new post. Since that time, there has been an acting headteacher in charge of the school who had not been involved previously in the school's admission process.

## Consideration of Factors

12. At the time the referral was made, only the 2013 arrangements were available on the school's website. In the meeting at the school on 17 March 2014 (the meeting), there was some doubt that the 2013 arrangements had ever been determined by the governing body. The school gave an assurance that the 2013 arrangements were unchanged from the 2012 arrangements which had been lawfully consulted upon and determined when the school converted to academy status. The Code at paragraph 1.46 identifies that admission authorities '**must determine admission arrangements by 15 April every year, even if they have not changed from previous years and a consultation has not been required**' and at paragraph 1.47 '**must publish a copy of the determined arrangements on their website displaying them for the whole offer year**'.

13. Given the lack of certainty that the governing body had determined the 2013 arrangements by the deadline of 15 April 2012, it was agreed during the meeting that the governing body should determine retrospectively, and as soon as possible, the 2013 arrangements as they still apply to any waiting list held by the school and because the 2013 arrangements had been adopted unchanged as the 2014 arrangements.

14. However, in considering the 2013 arrangements, I had noticed aspects

which appeared not to comply with the requirements relating to admission arrangements, so I used my powers under s88I of the Act to review the 2013 arrangements as a whole for full compliance with the Code.

15. In the meeting I explained that the Code makes clear at paragraph 14 that parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated, and at paragraph 1.8 that *'oversubscription criteria **must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation....**'*. Accordingly, I raised a number of points and offered the school the opportunity to make the amendments immediately as a permitted variation under paragraph 3.6 of the Code, before then determining the arrangements retrospectively.

16. I raised the following points in the meeting and agreed to note the changes made in my determination:

- To avoid uncertainty for parents, the school should be named consistently as St Cyprian's Greek Orthodox Primary Academy. Changes have clearly been made, but the naming of the school is still not consistent in the arrangements and other documents related to admissions;
- The statement limiting the places available for non-Orthodox Christian families and for children of other faiths should be removed as there is no basis for these quotas in the funding agreement, nor in the legislation relating to admission arrangements. The statement has now been removed;
- To avoid confusion for parents, the arrangements related to the non-compulsory nursery should be published separately from the arrangements for admissions to Reception, which is the start of compulsory education. The nursery arrangements have now been removed from the arrangements for admission to Reception;
- As the first oversubscription criterion prioritises looked after children and previously looked after children, then there is no need for criterion 2 which prioritises *'baptised looked after Greek Orthodox children'* and criterion 6 which prioritises *'any other looked after child'*, and these unnecessary criteria should be removed to avoid confusion for parents. These criteria have now been removed;
- The Code at paragraph 1.6 makes clear that all children with a statement of special educational needs naming the school **must** be admitted. To avoid confusion, the reference to children with a statement of special educational needs must be moved from the oversubscription criterion section, but may be included in any introductory paragraphs before the oversubscription criteria are listed. The statement has now been moved to the introductory paragraphs;
- The definition of looked after children provided in Note 1 must be amended to include children being provided with accommodation by a local authority in addition to children in the care of a local authority. The terms 'looked after' and 'previously looked after' are now appropriately defined in Note 1;

- As the arrangements include random selection as a tie breaker, the second set of oversubscription criteria is unnecessary and should be removed so as to comply with paragraph 1.8 of the Code which states that oversubscription criteria must be clear. There is now one set of oversubscription criteria;
- The section at the end of the arrangements entitled *‘Notes: Admission to the school including the Nursery’*, at Note 1, seeks to clarify the meaning of *‘regularly worship’* included in criteria 3, 4, 5 and 7 as *‘worship sufficiently throughout the year as to be considered a member of a particular parish by the local priest’*. At the meeting I explained that in order to comply with the Code at paragraph 1.37, *‘regularly’* and *‘sufficiently’* would need to be objectively quantifiable so that parents would easily understand how this faith-based requirement would be satisfied. In addition, the use of another ‘Note 1’ is likely to be confusing for parents. It is not helpful that this section has now been removed altogether from the arrangements. The governing body must still consider how *‘regularly worship’* is to be objectively quantified; and
- Note 2 of *‘Notes: Admission to the school including the Nursery’* identifies that parents worshipping at a Christian Orthodox or other Christian church *‘must provide a written reference from their priest or other minister, confirming their regular attendance’*. Although this section has been removed from the arrangements, the governing body must still determine how *‘regular attendance’* is to be objectively quantified so that the reference will avoid the improper exercise of discretion.

17. In considering the 2013 arrangements as a whole, I also noticed on the school’s website a document called *‘Admission Form’*. In the meeting the school clarified that the purpose of this form was to collect the supplementary information necessary to allocate places by reference to faith where the school is oversubscribed. The school confirmed that the form was not actually an application form as parents would not apply directly to the school, but would use the council’s co-ordinated admissions scheme for a place in Reception or for an in-year admission.

18. In the meeting the council stated that the school had been oversubscribed in both 2012 and 2013, and provided the following data:

	PAN	Total number of Applications	1 <sup>st</sup> Preference	2 <sup>nd</sup> Preference	3 <sup>rd</sup> Preference	Other Preferences
<b>2012</b>	60	166	45	17	18	86
<b>2013</b>	60	168	58	32	28	50

The school was oversubscribed overall in both 2012 and 2013, but there were fewer applications putting the school as first preference than the 60 places

available in Reception. At the meeting I requested information of how places had been allocated against the oversubscription criteria. In an email dated 16 April 2014 the council responded that it does not *'hold data on how many children were allocated places under each criteria at St Cyprians in 2012 and 2013'* but confirmed that *'every child who wanted a place received one'*.

19. In the meeting I explained that as parents apply for a place using the council's procedures, then to avoid confusing parents, it would be more appropriate for the school's form to be called a supplementary information form. I drew the school's attention to paragraph 2.4 of the Code which specifies that *'schools **must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria'* but that such forms **must not** ask for any of the information prohibited by paragraphs 1.9 or 2.4. Accordingly, as I had noticed aspects of the form which appeared not to be necessary in order to apply the faith-based criteria, and therefore did not comply with paragraphs 1.9 and 2.4, I raised a number of features which must be removed from the form, including the requirement to detail any previous school; for both parents to complete and sign the form; and for the child's birth certificate and proof of address to be provided with the form. The school has now addressed all the points raised, as evidenced by the supplementary information form published on the school's website

20. The school had produced draft arrangements for 2014 which would have introduced changes to the criteria, but the school confirmed that these arrangements had not been the subject of a consultation. The Code at paragraph 15(b) specifies that when changes to admission arrangements are proposed *'the admission authority **must** first publicly consult on those arrangements'* so that parents, other schools, the local authority, the relevant religious body, the local community and other interested parties have the opportunity to understand the changes being proposed and then to have time to submit their views. When changes are proposed, paragraph 1.42 states that *'the admission authority **must** consult by **1 March**'* and 1.43 explains further that the minimum consultation period is for *'eight weeks which **must** take place between **1 November** and **1 March** in the determination year.'* Accordingly, a consultation before introducing changes for September 2014 would have to have been completed in the period 1 November 2012 and 1 March 2013. As there had been no consultation process, the governing body decided to adopt the 2013 arrangements unchanged as the 2014 determined arrangements.

21. At the meeting I also explained that the school had also missed the consultation period of 1 November 2013 to 1 March 2014 which would have been necessary in order to introduce changes for admissions in September 2015. Accordingly, at the governing body meeting on 26 March 2014, it was decided to adopt the 2014 determined arrangements unchanged as the 2015 determined arrangements. The governing body has determined the 2015 arrangements before the deadline of 15 April 2014, but at the time of this determination, the 2015 arrangements had not been published on the school's website. To comply with paragraph 1.47 of the Code, the governing body

needs to ensure that the 2015 arrangements which have now been determined are published on the school's website as soon as possible.

## **Conclusion**

22. I have considered the 2014 arrangements that have been brought to my attention by the referrer, and also the 2013 arrangements as they still apply to any waiting list held by the school and because the 2013 arrangements had been adopted unchanged as the 2014 arrangements.

23. The procedures and timescale for the determination of both the 2013 and 2014 arrangements appear not to have been fully compliant with the Code. However, following the meeting at the school, the governing body has acted promptly to determine retrospectively the 2013 and 2014 arrangements and to display them clearly on the school's website immediately afterwards. Furthermore, the 2015 arrangements have been determined within the deadline but now need to be displayed on the school's website as soon as possible.

24. As the oversubscription criteria had been unclear in arrangements which were complicated and confused, and as a number of aspects did not conform with the requirements of the Code, it seems unlikely that parents would have been able to look at the arrangements and then understand easily how places at school would be allocated. I recognise that following the meeting, the school has acted promptly to simplify the arrangements, and to address many of the matters that were contrary to the Code before determining the 2013 and 2014 arrangements retrospectively. However, a small number of matters stated above have yet to be rectified to comply with the Code, which apply to the 2013, 2014 and 2015 arrangements.

25. For the reasons above, I have concluded that the 2013 and 2014 arrangements did not comply with the requirements relating to admission arrangements. I recognise that the school has rectified quickly many of the non-compliant aspects, but a small number of aspects have still not been addressed. As quickly as possible, the governing body must make the remaining revisions to its admission arrangements, and also publish the 2015 arrangements on the school's website.

## **Determination**

26. In accordance with section 88(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements for St Cyprian's Greek Orthodox Primary Academy for 2013, 2014 and 2015. I determine that some aspects do not conform with the requirements relating to admission arrangements.

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

Dated: 8 May 2014

Signed:

Schools Adjudicator: Ms Cecilia Galloway