



DETERMINATION

Case reference: ADA3232

Objector: Northamptonshire County Council

Admission Authority: The Governing Body of Newbottle and Charlton Church of England Voluntary Aided Primary School

Date of decision: 12 July 2016

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2017 determined by the governing body for Newbottle and Charlton Church of England Voluntary Aided Primary School, Northamptonshire.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which 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 within two months of the date of the determination.

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 Northamptonshire County Council (the objector), about the admission arrangements for September 2017 (the arrangements) for Newbottle and Charlton Church of England Voluntary Aided Primary School (the school), a voluntary aided school for children aged 4 to 11. The objection is to the priority given in the oversubscription criteria to children who have attended a pre-school.

2. The other party to the objection is the Diocese of Peterborough (the diocese) which is the body representing the religious denomination of the school.

Jurisdiction

3. The school is a voluntary aided school and as such its admission

authority is the governing body. The governing body determined the arrangements on 28 January 2016. The objector submitted the objection to these determined arrangements on 13 May 2016. 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 power under section 88I of the Act to consider the arrangements as a whole.

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 objector's form of objection dated 13 May 2016;
 - b. the admission authority's response to the objection and supporting documents;
 - c. the comments of the diocese which is the religious authority for the school;
 - d. maps of the area identifying relevant schools;
 - e. confirmation of when consultation on the arrangements last took place;
 - f. copies of the minutes of the meeting at which governing body of the school determined the arrangements; and
 - g. a copy of the determined arrangements.

The Objection

6. The objector questioned whether it is lawful to include the eighth oversubscription criterion in the admissions policy of the school. This criterion gives priority to children who have attended Newbottle and Charlton Pre-school for at least one year at the time of the closing date for applications.
7. The objector did not specify which parts of the Code it was thought the arrangements did not comply with. In considering this case I have had regard to paragraphs 1.4, 1.8 and 1.39B of the Code.

Other Matters

8. When I considered the arrangements as a whole I noted that oversubscription criteria refer to "*worshipping members of the Church of England or any other Church that is a member of Churches Together in England.*" The term worshipping member is not defined and this may not comply with paragraph 1.37 of the Code which requires "*Admission authorities must ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.*"

9. I also noted that the definition of previously looked after children did not reflect the introduction by the Children and Families Act 2014 of child arrangements orders which replace residence orders. It also appeared to me that the arrangements did not include the requirement, found in paragraph 2.17 of the School Admissions Code, for admission authorities to make clear in their arrangements the process for requesting admission outside of the normal age group.

Background

10. The school is situated in a rural part of Northamptonshire about eight kilometres south east of Banbury. It has a published admission number of 15 and in 2016 was oversubscribed. The oversubscription criteria can be summarised as:

1. Looked after and previously looked after children.
2. Children who need to attend the school on social or medical grounds.
3. Siblings of children at the school who live in the parishes of Newbottle with Charlton and Aynho.
4. Children of parents resident in the parishes who are worshipping members of the Church of England or any other Church that is a member of Churches Together in England.
5. Children of parents resident in the parishes.
6. Siblings of children at the school who live outside the parishes.
7. Children of parents not resident in the parishes who are worshipping members of the Church of England or any other Church that is a member of Churches Together in England.
8. Children who have attended Newbottle and Charlton Pre-school for at least one year at the time of the closing date for applications.
9. Children of members of staff employed at the school.
10. Any other children.

11. The eighth criterion is new and was introduced by the school for September 2017. Random allocation is used as a tie-breaker in each criterion.

Consideration of Case

12. In its response to the objection the school said that it believed the addition of the eighth criterion did not contravene paragraph 1.8 of the Code which says "*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities*

*legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated.”*

13. The school said that the consultation on the introduction of the criterion had produced no objections and the decision to introduce the criterion was taken after long discussion. The governors considered that the school benefits from having “*a strong pre-school just next door*”. There was concern that the pre-school was not recruiting as many children as it had in the past and the governors thought that giving priority for places at the school to children attending the pre-school might help the pre-school to recruit more children. This, the governors considered, would be mutually beneficial to the school, the pre-school and the wider community. By putting the pre-school criterion in eighth place, the governors considered it would not disadvantage local children, siblings, or those seeking priority at the school on grounds of faith.

14. In its response to the objection the diocese noted that it had advised the school that the criterion might not comply with the Code, but “*felt that the Governors had made an arguable case that the Nursery priority criterion should not be considered unfair.*”

15. The Code does not explicitly prohibit using attendance at a pre-school setting as an oversubscription criterion. It does give specific permission in paragraph 1.39B for oversubscription criteria to include such priority for a restricted group of children attending a restricted type of pre-school provision “*Admission authorities may give priority in their oversubscription criteria to children eligible for the early years pupil premium, the pupil premium or the service premium who: a) are in a nursery class which is part of the school; or b) attend a nursery that is established and run by the school. The nursery **must** be named in the admission arrangements and its selection must be transparent and made on reasonable grounds.*”

16. In this case, the pre-school is not part of the school, nor is it established and run by the school. So far as children who are eligible for one of the categories of pupil premium are concerned the school’s arrangements are not covered by the permission in paragraph 1.39B. In addition, the school’s criterion also covers all children, not just those eligible for a pupil premium. I must therefore test the fairness of the criterion against paragraph 1.8 of the Code which is quoted above and against paragraph 14 which says that: “*In drawing up their admission arrangements, admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.*”

17. For the avoidance of doubt, I record that the pre-school is not a school within the meaning of the Act (or other education acts). I cannot therefore consider whether permission to give priority at Newbottle and Charlton School can be considered on the basis of the pre-school being a named feeder

school as provided for in paragraphs 1.9b and 1.15 of the Code.

18. The position of the criterion, eighth out of ten for a 15 place school means I can see no unfairness to local children, siblings, or faith based applicants. Some children attending the pre-school are likely to meet one of the higher criteria because for example they live in the specified parishes, or have a sibling at the school. Other children attending the pre-school also have a connection with the community and so arguably should have priority over children selected at random from a wider area.

19. There is however a counter argument to this. Because local children receive priority for places through meeting higher criteria, then those who benefit from this criterion would be children from farther away whose parents can afford to transport their children to the pre-school for a year before they are of statutory school age. This could be seen as unfair to less well-off families who live outside the parishes which form the catchment area. Some of these families may have connections to the community through relatives for example. While the criterion may help the pre-school recruit more children, it could also fetter parents' decisions about pre-school care.

20. Pre-schools do not have to comply with the Code, so it could be that children were admitted to the pre-school and thus get greater priority for a place at the school on unfair grounds. Those refused places at the pre-school would have no right of appeal and find themselves unfairly penalised when they came to apply for a place at the school.

21. I have concluded that the eighth oversubscription criterion is unfair and I uphold the objection.

22. There were three other matters where I considered the arrangements did not, or may not comply with requirements; the definition of "*Worshipping members of the Church*", the introduction of child arrangements orders and making clear how parents could apply for a place outside of the normal school year. With the support of the diocese, the school has acted quickly to amend the arrangements and I commend it for doing so.

Summary of Findings

23. The Code specifically permits schools to use attendance at a pre-school as an oversubscription criterion in a limited range of circumstances. None of those circumstances are met in this case. Having tested the criterion against the Code's core requirement for fairness, I have concluded that it is not fair. I therefore uphold the objection.

Determination

24. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2017 determined by the governing body for Newbottle and Charlton Church of England Voluntary Aided Primary School, Northamptonshire.

25. I have also considered the arrangements in accordance with section

88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

26. 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 within two months of the date of the determination.

Dated: 12 July 2016

Signed:

Schools Adjudicator: Mr Phil Whiffing