



DETERMINATION

Case reference: ADA3054

Referrer: A School Admission Appeals Panel

Admission Authority: The Governing Body of St. Katharine's Church of England Primary School, Bournemouth

Date of decision: 11 January 2016

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements for St Katharine's Church of England Primary School for admission in 2015 and 2016. I determine that some aspects 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 by 28 February 2016.

The referral

1. The admission arrangements (the arrangements) for St Katharine's Church of England Primary School (the school) were brought to the attention of the Office of the Schools Adjudicator (OSA) on 10 August 2015 in a letter from a school admission appeals panel (the panel). The school is a voluntary aided school for children aged 4 to 11 in Bournemouth. The panel was concerned that aspects of the arrangements may not be fair and that parents might not be able to understand how the faith-based oversubscription criteria used by the school might be reasonably satisfied.

Jurisdiction

2. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the school's governing body, which is the admission authority for the school.
3. The referral was about the 2015 arrangements and made reference to the 2016 arrangements which brought those arrangements to my attention. The date of the referral was after the deadlines by which any objection to either set of arrangements could be made, however as it appeared to me that the arrangements may not conform with requirements I have used my power under section 88(I) of the Act to

consider the matters brought to my attention and the arrangements as a whole.

4. Some matters raised in the referral were about how the school processes in-year applications and manages its waiting list. These are not within my jurisdiction. I am satisfied that other matters in the referral and those I have raised with the school myself are within my jurisdiction.

Procedure

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
6. The documents I have considered in reaching my decision include:
 - a. the referrer's letter dated 10 August 2015;
 - b. the school's response to the matters raised and supporting documents;
 - c. the Diocese of Winchester's (the diocese) comments on the matters raised;
 - d. information about school admissions found on Bournemouth Borough Council's, the local authority (the LA) website;
 - e. a map of the area identifying relevant schools and churches;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. copies of the minutes of the meeting of the governing body at which the arrangements were determined; and
 - h. copies of the determined arrangements.

The Referral

7. The referral was made by the independent panel which heard appeals from parents who had been refused places at the school for their children for September 2015. In the first part of the referral, the panel identified that the school uses one supplementary information form (SIF) in the main admission round to establish whether an applicant meets its faith-based oversubscription criteria and another SIF for applications received outside of the main admission round. This second SIF is also used to collect information about changes to a parent's church attendance which may affect their child's place on the waiting list.
8. The referral continued to say the panel had identified that the school allowed ministers of religion discretion when signing the SIF and this was not set out in the published arrangements for 2015. The panel

considered this was unfair as parents were not advised of this discretion and there was no guidance to churches which could lead to an inconsistent approach.

9. For these reasons the panel considered that the arrangements did not comply with paragraphs 1.8 and 1.37 of the Code.

Other Matters

10. With the referral the panel provided a copy of the 2016 arrangements drawing my attention to changes which had been made referring to the discretion the school allowed to church leaders when signing the SIF. It appeared to me that new and undefined terms had been introduced into this section of the arrangements and therefore they may not be clear as required by paragraph 14 of the Code.
11. Another change had been made in the arrangements reducing the number of churches at which attendance could lead to the faith-based criteria being met. It appeared to me that this may be unfair to families who may have recently moved into the area or, although living in the area, had chosen to worship at other churches in the understanding that their practice would enable them to meet the faith-based oversubscription criteria. Paragraph 14 of the Code requires arrangements to be fair.
12. I also noted that the 2015 arrangements did not have a tie-breaker that would meet the requirements of paragraph 1.8 of the Code and that the definition of looked after and previously looked after children in the 2016 arrangements was not in line with that given in paragraph 1.7 of the Code and in its footnotes.

Background

13. The school is situated in Southbourne to the east of Bournemouth. In order to reflect changing need in the area, the school has set a published admission number (PAN) for Year R of both 60 and 90 in recent years. The school also admits either four or six children into Year 3 taking the year group size up to 64 or 96. In both 2015 and 2016 the PAN was 60 and the school was oversubscribed.
14. The oversubscription criteria for both Year R and Year 3 can be summarised as:
 1. Looked after and previously looked after children.
 2. Applicants who have a serious medical, physical or psychological condition.
 3. Children who have a sibling at the school.
 4. Children living in the catchment area who have a parent who is an active member of specified churches.

5. Other children living in the catchment area.
 6. Other children.
15. The arrangements are easy to find on the school's website where the catchment area is clearly shown both on a map and as a list of roads.

Consideration of Factors

16. I have considered whether or not parts of the referral were within my jurisdiction. The admission of children outside of the main admission round is not within my jurisdiction. The description of the waiting list in the arrangements meets the requirements of paragraph 2.14 of the Code as the waiting list is held "*until at least 31 December of each school year of admission*" and if children are added it is "*ranked again in line with the oversubscription criteria*". The referral was about how the school manages the waiting list and adjusts a child's position on the waiting list as their circumstances change. The mechanism a school uses to collect information about changes, such as address or religious practice, which affect a child's ranking, is not within my jurisdiction. I have not pursued these parts of the referral.
17. In the second part of the referral the panel identified that the school allowed church leaders to use their discretion when confirming church attendance on the SIF. The panel said this was not set out in the arrangements and there was no guidance to churches on the use of this discretion, and this was unfair as it could lead to inconsistency. The panel questioned whether the arrangements met the requirements of paragraph 1.37 of the Code which says "*Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.*"
18. I have looked at the published arrangements for 2015. To meet the faith-based criterion a parent is required to be an "*active member of a Christian church*". The definition of an "*active member*" given in those arrangements is "*attending worship at a church in the list of Churches Together in England at least twice a month for the previous two years before the deadline for admissions*". The SIF which is required in support of applications under this criterion asks the parent to declare that they have worshipped for the specified frequency and duration and asks for the signature of a church leader to confirm this one fact. There is no suggestion on the SIF or in the arrangements that a parent can be regarded as an "*active member of a Christian church*" in any other way or that the church leader has any discretion in the matter.
19. The panel provided evidence that the school allows church leaders to use their discretion when signing the SIF to take into account their parishioners' circumstances. This evidence came from a dispute, resolved by the appeal panel, where a vicar had not considered himself in a position to sign the SF had either not known he could use his discretion, or had chosen not to do so. This evidence was not disputed by the school.

20. In response to my enquiries the school said “*vicars either sign the Supplementary Form or they do not; the Governors, as the Admissions Authority for the School, can only consider the SIFs as received, i.e. if it is signed, we take it that the parent is an active member of the church.*” The school also said “*In the case of illness preventing a parishioner who has previously attended worship on a frequent and regular basis, it would seem reasonable that the vicar of that church could make a judgement regarding their attendance and whether or not it is compliant with the definition.*”
21. The 2015 arrangements however give no indication that a vicar’s judgement could be used to moderate the single stated definition of active church membership in the arrangements. The SIF does not allow for the church leader to confirm anything other than the truth of the parent’s declaration that they meet the required level of attendance. From the published information, parents, and some church leaders for that matter, would not know that in some undefined circumstances it would be possible to be considered an active member of a church without meeting the attendance requirement.
22. This means that parents could not easily understand how they might satisfy the faith-based oversubscription criteria so the arrangements do not meet the requirements of paragraph 1.37 of the Code.
23. The referral also quoted paragraph 1.8 of the Code and questioned whether the oversubscription criteria were as required by that paragraph, “*reasonable, clear, objective and procedurally fair*”. I think the published oversubscription criteria do meet this requirement, the frequency and duration of church attendance is set out precisely, it is reasonable and objective. However, paragraph 14 of the Code says “*admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective...*” I think the 2015 arrangements fail to comply with this part of the Code because there is a practice which is not made clear to parents and could potentially be unfair. The reason I consider it unfair is that some parents and church leaders may know about the practice, others may not, and the school has provided no guidance on the circumstances when any discretion could be used.
24. In the 2016 arrangements there is a new paragraph which says “*If a disability or other ‘special needs’ or other circumstances prevents regular attendance (as defined above) at a specific place of worship but the person concerned is recognised by the church leaders as being a ‘regular worshipper’ then this can be taken into consideration in your declaration and the verification of your ‘Active membership of a Christian Church’.*”
25. This paragraph introduces a new term “*regular worshipper*”. Both the school and the diocese have acknowledged that introducing this term alongside “*active member*” may not be clear to parents and the arrangements need to use consistent terms in future.

26. The 2016 SIF continues only to offer parents the opportunity to declare that they have attended worship at least twice a month for two years at specified churches and for the church leader to verify that this is true. In their comments to me the school said *“for parents whose disability or other circumstances have prevented them from fulfilling this [attendance] requirement, we would anticipate an accompanying letter from their vicar explaining the situation and their supporting of the application under the faith criteria.”* This is not set out in the arrangements, so I do not see how a parent would know that they should ask their vicar to provide such a letter and the SIF would appear to be unsuitable for such cases as neither the parent nor the church leader could sign it. While the introduction of the new paragraph helps address compliance with paragraph 1.37 of the Code, it does not fully satisfy it.
27. I have thought carefully about whether or not the new paragraph addresses the question of fairness and would lead to a consistent application of discretion. The school gives priority to children of active members of a church; it considers active membership is demonstrated by attending worship twice a month for two years. The school however recognises that some people may be active members of a church, but are prevented by circumstances, such as illness or disability, from attending as regularly as the school requires. In these cases it has chosen to allow church leaders discretion in agreeing that someone is an active member of the church. I think this is fair and reasonable but only if that discretion is applied consistently. This consistency depends on the judgement of the leaders of ten churches in the area, in my view it should be possible for the school to ensure consistency by providing guidance to those churches which is also available to parents. I am not convinced that the new paragraph and the current SIF provide that consistency.
28. In the 2015 arrangements it was possible to meet the active church membership requirement through attendance at any church in the list of Churches Together in England. In the 2016 arrangements it is only possible to meet the attendance requirement at ten churches local to the school. The diocese and the school told me the change followed a request from Churches Together in England and the school also said there were administrative reasons for the change. I considered that the way this change has been implemented may be unfair to two groups.
29. The first group that this restriction may be unfair to is families who moved to the school catchment area within the last two years and had a long history of regular worship at a church near their former home. These families could not meet the active church membership requirement now it is based on the ten local churches. The school has said it would accept additional SIFs from previous churches attended by these families and has acknowledged that it does not say this in its arrangements. The school has undertaken to amend the wording in future arrangements to clarify the matter. As it stands this is another example of the school’s practice not being clearly set out in the arrangements as required by paragraph 14 of the Code and the

arrangements not meeting the requirement of paragraph 1.37 for parents to easily understand how they might meet faith-based criteria.

30. The second group that this change may be unfair to is families living in the catchment area, who have chosen to attend churches no longer listed by the school. Under the 2015 arrangements these families could have met the active church membership requirement if their church was a member of Churches Together in England. To meet the active membership requirement for 2016 attendance would be required from January 2014 at one of the 10 churches listed. As the 2016 arrangements were not determined until May 2015 parents would not have known that their practice no longer met the school's requirement and they would not have had time to change that practice by attending another church for two years before the application was made.
31. The school considers this would affect a minority of families. The minute of the governing body meeting at which the arrangements were determined records no discussion of this or any other issue and the webpage through which consultation on the 2016 arrangements took place no longer exists. I am therefore unable to ascertain whether families who might have been affected by this change had the opportunity to raise this issue and if they did so whether the matter was considered by the governors.
32. The number of families that might be affected is not relevant to the question of fairness. Although not set out in its arrangements, the school accepts attendance at churches elsewhere in the country towards meeting its qualification of active church membership for families moving into the catchment area within the two years in which this qualification must be met. A parent already living in the catchment area who for many years regularly attended a church not listed by the school prior to May 2015 would not be able to have that attendance count towards meeting the qualification and would not be able to change their practice in time to have their child considered under the faith-based criteria. I consider this unfair and so it does not comply with paragraph 14 of the Code.
33. Paragraph 1.8 of the Code requires there to be a tie-breaker that can "*decide between two applications that cannot otherwise be separated.*" The tie-breaker used in 2015 could not resolve between applicants living the same distance from the school. This has been addressed in the 2016 arrangements.
34. The Children and Families Act 2014 replaced residence orders with child arrangements orders and this is reflected in paragraph 1.7 of the Code and its footnotes. The definition of looked after and previously looked after children used in the 2016 arrangements does not reflect these changes.

Conclusion

35. For the reasons set out above the arrangements for 2015 do not meet

requirements of the Code. While the 2016 arrangements address some of the shortcomings identified, there remain parts of the arrangements which are unclear and unfair. Parents may not be able to easily understand how faith-based criteria can be satisfied.

36. There are other matters where the arrangements do not comply with the Code.

Determination

37. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements for St Katharine's Church of England Primary School for admission in 2015 and 2016. I determine that some aspects do not conform with the requirements relating to admission arrangements.

38. 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 by 28 February 2016.

Dated: 11 January 2016

Signed:

Schools Adjudicator: Phil Whiffing