



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3243

Referrer: The London Borough of Bexley

Admission Authority: The governing body of Christ Church Church of England Primary School, Shooters Hill, Royal Borough of Greenwich

Date of decision: 31 October 2016

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements for September 2016 and September 2017 determined by the governing body for Christ Church Church of England Primary School, Shooters Hill in the Royal Borough of Greenwich. I determine that there are 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. The admission arrangements for September 2016 for Christ Church Church of England Primary School, Shooters Hill (the school), a voluntary aided school for children aged 5 to 11 in the Royal Borough of Greenwich, were brought to the attention of the Office of the Schools Adjudicator (OSA) by the London Borough of Bexley on 2 August 2016. The referral was about the allocation of places on the basis of faith.
2. On 4 August 2016 I noted that the admission arrangements for September 2017 were not published on the school's website as required by the School Admissions Code (the Code). A copy of the admission arrangements for September 2017 was received from the school by the OSA on 9 September 2016. These appeared to be the same as those for 2016. If the 2016 arrangements did not conform to requirements, then the 2017 arrangements would fail to do so as well.

Jurisdiction

3. The school is a voluntary aided school so its admission authority is the governing body. The 2016 arrangements were determined by the governing body on 13 April 2015 following a period of consultation. The 2017 arrangements were determined by the governing body on 9 March 2016. Although this date is after 28 February 2016 when The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) required arrangements to be determined for 2017, I am satisfied that the arrangements have been determined as required by section 88C of the Act.
4. As it appeared to me that both sets of arrangements (the arrangements) brought to my attention did not or may not conform with the requirements relating to admission arrangements, I have used my power under section 88I(5) of the School Standards and Framework Act 1998 to consider the arrangements as a whole.
5. The local authority (LA) for the area in which the school is located is the Royal Borough of Greenwich. The LA is a party to this case. Other parties to the objection are the London Borough of Bexley (the referrer), the Diocese of Southwark (the diocese) which is the representative religious body for the school, and the school itself.

Procedure

6. In considering this matter I have had regard to all relevant legislation and the Code.
7. The documents I have considered in reaching my decision include:
 - a. the referrer's form dated 2 August 2016 and subsequent emails;
 - b. the school's response to the referral, supporting documents and responses to my enquiries;
 - c. the comments of the diocese on the referral, its guidance to schools on admissions and its responses to my enquiries;
 - d. the LA's comments on the referral;
 - e. confirmation of when consultation on the arrangements last took place;
 - f. copies of the minutes of the meetings at which the governing body of the school determined the arrangements; and
 - g. a copy of the determined arrangements.

The Referral

8. The school divides the 30 places available each year into “*foundation*” and “*open*” places. The referral concerned the statement in the arrangements that in order to qualify for foundation places “*parents or carers will be expected to show active involvement in the church.*” The referrer considered that the active involvement in the church described in the arrangements might not comply with paragraphs 1.9e and 1.38 of the Code. The referral also said that because the arrangements did not contain an exhaustive list of qualifying activities it “*left the application of this criterion open to interpretation*”. Paragraph 14 of the Code requires arrangements to be clear and objective and paragraph 1.37 requires that faith-based criteria are easily understood by parents.

Other Matters

9. Paragraph 1.47 of the Code requires the school to publish arrangements on its website once they have been determined, it did not appear to have done so for the 2017 arrangements. When I drew this to the school’s attention it immediately addressed this matter and I will not refer to it again.
10. The Code at paragraph 14 requires that admission arrangements are fair as well as clear and objective. I was concerned that some families who were regular and frequent worshippers may be disadvantaged by the requirement to participate in church activities. For example, in a single parent family the lack of suitable childcare may preclude the parent from taking as active a role in the church as they might wish and therefore mean they could not be considered for a foundation place.
11. Paragraph 2.4 of the Code sets out the requirements for any supplementary form (SIF) used by the school and provides that such forms should only request additional information when it has a direct bearing on decisions about oversubscription criteria. The copy of the SIF provided to me by the school included space for the incumbent of named churches to add comments and details which did not appear to be necessary in order to make such decisions.
12. When I considered the arrangements as a whole it appeared to me that they did not meet the requirement of paragraph 2.14 of the Code and state that “*each added child will require the [waiting] list to be ranked again in line with the published oversubscription criteria.*”
13. I also noted that the arrangements did not appear to “*make clear ... the process for requesting admission out of the normal age group*” as required by paragraph 2.17 of the Code.

Background

14. The school is situated on the edge of Eltham Common. It has a published admission number (PAN) of 30 and is oversubscribed. Fifteen of the places are designated as “*foundation places*” which are

offered to “*children who together with a parent or carer are faithful and regular worshippers at Christ Church, or one of the named Anglican Churches in Plumstead Deanery and whose parents or carers are actively involved in the life of that church*”. When applying for foundation places parents are asked to complete a SIF and this is sent to the priest to confirm the commitment to the church.

15. The oversubscription criteria for these 15 foundation places can be summarised as:
 1. Looked after or previously looked after children.
 2. Children who meet the criteria for a foundation place set out above who have siblings at the school at the time of admission.
 3. Children who worship at Christ Church, Shooters Hill and meet the criteria for a foundation place set out above.
 4. Children who worship at St. Mary’s, Welling; St. John’s, Plumstead or All Saint’s, Shooters Hill and meet the criteria for a foundation place set out above.
16. Within each criterion priority is given to children who live closest to the school and random allocation is used as a final tie-breaker.
17. The remaining 15 places are designated as “*open places*”. The oversubscription criteria for these open places can be summarised as:
 - Looked after and previously looked after children.
 - Siblings of children who will be attending the school at the time of admission.
 - Other children.
18. Within each criterion priority is given to children who live closest to the school and random allocation is used as a final tie-breaker.
19. If fewer than 15 children qualify for foundation places, the remaining places become open places. The arrangements include notes and definitions of the terms used in the oversubscription criteria.

Consideration of Case

Active involvement in the church

20. The referrer said “*the inclusion of active involvement in the Church as part of the admissions criteria was in effect giving priority to children on the basis of practical support given by parents to any associated organisation and therefore contrary to the Admissions Code.*” Paragraph 1.9e of the Code says admission authorities “**must not:** ...
e) *give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation,*

including any religious authority.”

21. Paragraph 1.38 of the Code says “*Admission authorities for schools designated as having a religious character **must** have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith based admission arrangements, to the extent that the guidance complies with the mandatory provisions and guidelines of this Code.*” The referrer quoted from the Southwark Diocesan Board of Education Guidelines for Governors dated September 2015, “*Governors must not include in any examples of evidence of involvement reference to financial giving to the Church or practical activities which are not directly related to worship, or strictly religious activities; these are barred by paragraph 1.9(e) of the Admissions Code.*”
22. I also consider paragraph 1.9i of the Code to be relevant which says that admission authorities “***must not** ... i) prioritise children on the basis of their own or their parents’ past or current hobbies or activities (schools which have been designated as having a religious character may take account of religious activities, as laid out by the body or person representing the religion or religious denomination)*”.
23. The final part of the referral was that “*because the school’s explanatory notes gave examples of active involvement with a proviso that this was not an exhaustive list, this left parents unclear as to what was required of them and left the application of this criterion open to interpretation.*” Paragraph 14 of the Code says “*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. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*” In addition, paragraph 1.37 says “*Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.*”
24. Commenting on these matters the school said “*When setting this criteria,[sic] governors followed the Diocesan Guidance and ensured that examples of ‘active involvement’ matched those provided in the guidelines. These were all examples of religious activities that embodied life within the church community, such as the role of a worship leader or sidesperson, for example. The school and its governors worked very carefully so as not to create admission arrangements that requested support of a ‘practical’ kind that could not be determined as genuine ‘active involvement’ within the church. Parishioners are free to discuss matters with their priest when considering making an application if they are still unsure.*”
25. The school also referred to the diocese’s guidance saying “*All of the activities mentioned in both the SDBE Guidance and the school admissions policy are directly related to worship or religious activities and not ‘practical examples’ that could be shown in a non-faith institution, such as a community centre for example. It is for these*

reasons that the school feels that its arrangements are neither contrary to 1.9 (e) of the code or the SDBE guidance.”

26. In its response the diocese said that the school had followed its guidance. I have looked at that guidance and observe that the quote provided by the referrer is a note at the end of a section on active involvement in the church. This guidance says in paragraph 2.17 *“Where schools are heavily oversubscribed with church applicants, governors may consider including ‘active involvement in the life and worship of the church’ as part of their criteria; however, active involvement is difficult to define objectively and involvement can be interpreted differently in different churches. The Board does not recommend a points system which gives more points to some activities than others: this may have a tendency to reduce commitment to a competition. If using “active involvement”, governors must give examples of commitment and assess the evidence for this objectively and state that any list of examples is not exhaustive. It should be made clear whether the requirement is for one activity only, or if more, the number of activities required to qualify for admission under the criteria should be specified. However, it is important in this context for parents simply to show that they are committed, not that they are more committed than others. It must be very clear to parents what they have to do to meet the criteria.”*

27. The diocese’s guidance continues to give examples of involvement which it considers are acceptable:

“(i) participation in church activities, eg, home/study groups, reading in church, singing in the choir, mission, worship groups, etc;

(ii) membership of church committees;

(iii) responsibilities in the church, eg, steward, sidesperson, youth leader, Sunday school teacher;

(iv) leading worship, or other involvement, in services or liturgy.”

28. The judgement of Cobb J in the London Oratory case ([2015] EWHC 1012 (Admin)) addresses the meaning of “*have regard to*” in paragraph 1.38 of the Code. The same judgement also makes it clear that unless a religious activity has been laid out by the representative body of the religion in guidance on school admissions it cannot be used to prioritise admission.

29. The examples given by the school in the arrangements are *“Active involvement in the church includes participation in church activities. It also includes membership of church committees, such as Giving Group, Fabric & Vision Group, Social Committee and PCC. Finally it includes responsibilities in the church e.g. warden or assistant warden, sidesperson, youth group leader, Messy Church co-ordinator or helper, leading worship or other involvement in services. This is not an exhaustive list.”* It is clear in the arrangements that participation in only

one such activity is required.

30. The school said that the word 'also' used in the above quote "*may possibly give the impression that a number of other activities or commitments may meet the criteria*" and offered to remove that word. Given that the last sentence says the list is not exhaustive, I do not see how this suggestion clarifies anything. However, I am satisfied that the school has had regard to the guidance from the diocese, as required by paragraph 1.38 of the Code when setting this part of the arrangements.
31. With one exception the activities listed by the diocese in its guidance appear to me to be religious activities and not practical or financial support given to the school or an associated organisation which would be prohibited by paragraph 1.9e of the Code. The exception is membership of church committees. It may be that membership of some committees may be a religious activity however other committees may be less concerned with religious activity, and stray into areas of practical support prohibited by paragraph 1.9e or activities which are not religious. The responsibility for ensuring that the activities which are taken into account are religious remains with the school, being listed in the diocesan guidance does not of itself ensure compliance with the Code.
32. It was not entirely clear to me how membership of all of the committees listed by the school were religious activities. In response to my enquiries the school said "*The Social Committee's main duty is to provide lunch at Messy Church. The lunch is an essential part of Messy Church and is very much considered part of the Messy Church Worship. In fact, you cannot call it Messy Church if it does not include lunch. This helps to strengthen our worshipping community.*"
33. Helping with Messy Church is listed as another religious activity in the arrangements which would seem to cover providing lunch. As eating together is a key part of Messy Church, I accept that providing lunch is a religious activity in that context; however, the school's response suggests that the social committee has other functions and membership is listed separately from helping with Messy Church. Social events and the organisation of them, even if they strengthen a worshipping community are not always going to be religious activities. I am not convinced that membership of the social committee is a purely religious activity and therefore find that giving priority for children of members of this committee does not comply with paragraph 1.9i of the Code.
34. The school told me that "*The Giving Group is probably more accurately described as the communications team as their main aim is to keep members of the congregation, including those vulnerable parishioners who may struggle to come to church, informed of all the things that are going on in the church: services, study groups, fundraising for charities and everything else that the Church does. They also help organise fund raising events without which the church could not pay for the cost of ministry and further its religious purpose.*" They also said that "*The*

Fabric and Vision Group exist to formulate a vision for the church, what our priorities should be and how we best use the church to make it more suitable to modern day worship.”

35. The diocese said that it was “*satisfied that the committees further the worship and mission of the church and are thus religious activities for the purposes of the Code.*” Unlike the social committee, these two committees appear to me only to support religious activity. I have considered whether support for religious activity is, as the diocese says, a religious activity in itself or not. I have been unable to find a legal definition of religious activity and so have considered other situations. I am satisfied that someone who sat on the committee of a sports club responsible for organising the sport would be said to be actively involved in that sport or that members of the committee of a political group would be said to be actively involved in politics. Consequently, I find that membership of committees which organise religious activity constitutes religious activity. As membership of committees is an activity laid down by the religious authority for the school this aspect of the arrangements complies with paragraph 1.9i of the Code and does not contravene paragraph 1.9e.
36. In passing I note that while frequency and length of time are set for the worship element of qualifying for a foundation place, no such conditions are set on committee membership or other activities. A regular worshipper who joined a committee shortly before applying for a school place who had attended a single meeting would meet the criteria as much as a regular worshipper who had been helping lead worship for many years.

Clarity and objectivity

37. I will now turn to the question of whether parents can easily understand how the faith-based criteria can be satisfied as required by paragraph 1.37 of the Code and whether the arrangements are clear and objective as required by paragraph 14. The arrangements say that the list of activities is not exhaustive and advises parishioners to discuss matters with their priest if they are not sure. The diocese said any list of activities provided by the governors cannot be exhaustive because worshippers at different churches are given priority and activities in those churches will differ. I take it to mean by this that within the categories of activities laid out by the diocese (which as I show above must be done in order to comply with paragraph 1.9i of the Code) different churches will offer some but not all of those activities or some but not all elements of each and that different churches will have different names for the activities laid out by the diocese.
38. The diocese has laid out four categories of religious activity and gives examples within these categories that can be taken into account for the purposes of paragraph 1.9i. The school only offers foundation places to children attending four churches; I think it would be possible for the school to liaise with those four churches each year to produce a current definitive list of religious activities which fall within the categories of

activities laid out by the diocese to be included in the arrangements. To say that the list of activities is not exhaustive is not clear and leaves the possibility that an activity could be accepted which was not consistent with the examples laid out by the diocese and therefore would not comply with paragraph 1.9i.

39. I am also concerned that the arrangements suggest that parishioners discuss matters with their priest if they are not sure whether they meet the definition of being actively involved with the church. While individual priests in the four parishes should be well informed on these matters, it is for the admission authority to define what constitutes active involvement in the church and ensuring it complies with paragraph 1.9i of the Code. Allowing individual priests to make such decisions, particularly when no definitive list is provided by the school, could lead to inconsistent decisions possibly leading to an activity not compliant with paragraph 1.9i being used to qualify for a foundation place. It is also possible that any discussion with a priest could be construed as an interview; paragraph 1.9m of the Code prohibits interviews being part of admission arrangements other than to assess suitability for boarding.
40. For these reasons I find that the arrangements are not clear and objective and it is not easy for parents to understand how faith-based criteria can be met. The arrangements do not comply with paragraphs 14 or 1.37 of the Code.

Fairness and the supplementary information form

41. When I considered the arrangements I was concerned that some families who have worshipped at one of the four churches regularly and for a long period of time may be prevented from being considered for foundation places due to circumstances beyond their control and this may not be fair. For example, a single parent family, or a family responsible for caring for an elderly or disabled relative may be prevented from taking an active role in the church as their time to do so is constrained by those responsibilities. While a single parent could worship alongside their child on a Sunday morning, they may not be able to arrange childcare to enable them to attend a committee meeting in an evening during the week.
42. I was also concerned that the SIF, after sections gathering information to identify the applicant, their church, length and frequency of worship and active involvement in the church, included a box for the incumbent of one of the four named churches to add any comments or details. Paragraph 2.4 of the Code says that admission authorities “*must only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria*”. The box for the incumbent to add comments or details did not appear to comply with this requirement of the Code.
43. In response to my enquiries on these matters the school said “*The requirement for active involvement in church activities is not meant to*

prevent a single parent from participating and thus fulfilling the requirements for a foundation place; nor is it meant to similarly prevent those with responsibilities for elderly or disabled relatives. The box for 'any comment details' from the priest was intended to allow the priest to specify any such circumstances which would prevent a member of their congregation from 'qualifying' under the admission arrangements for a foundation place. However, on re-appraising this, I can see that this is not clear to either parents, or priests and also, having looked back on correspondence from the Diocesan Board, I can see that the Governors omitted to make their suggested change to this section of the form which would have dealt with this concern."

44. The diocese drew my attention to paragraphs 2.16 and 2.18 of their guidance to schools in which it refers to the needs of families with caring or other responsibilities which may prevent them from worshipping as frequently or being as actively involved in the church as they may wish. The diocese also informed me that they had raised this issue with the school and that the diocese was proposing a revised SIF without the box for additional comments or details. This revised SIF would allow parents or carers to note extenuating factors for the priest to consider when asked to confirm whether the applicant met the set level of attendance or active involvement with the church.
45. I do not think that the school intends its arrangements to be unfair to families with caring responsibilities and it intended to provide opportunity for the priest to confirm that such families are actively involved in the church on the SIF. However, as the school agrees, this is not clear in the arrangements. In order to comply with paragraph 14 of the Code the school must make their arrangements clear and to comply with paragraph 1.37 it must ensure *"that parents can easily understand how any faith-based criteria will be reasonably satisfied."* The arrangements are not clear that families in extenuating circumstances can ask the school to accept that their involvement in the church is sufficient to qualify for a foundation place given those circumstances. While the priest will be able to confirm the circumstances and level of involvement in the church, it remains for the governing body, not the priest, to decide if they are satisfied that the family should be considered for a foundation place. The Code requires that the arrangements the governing body puts in place meet its tests of clarity and objectivity.

Other matters

46. Paragraph 2.14 of the Code says *"Each admission authority **must** maintain a clear, fair and objective waiting list until at least 31 December of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria."* The arrangements did not state that the waiting list would be ranked again when a child was added. When this was drawn to the school's attention it immediately agreed to correct this omission.

47. Paragraph 2.17 of the Code says “*Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.*” I could not find this process set out in the arrangements. The school drew my attention to the sentence in the arrangements under the heading “*Deferred entry to Reception Class*” which said “*With regards to summer born children we follow Royal Borough of Greenwich’s published Admissions Guide.*”

48. I do not consider this to meet the requirements of the Code for two reasons. The first reason is that parents may wish to apply for admission to a different year group perhaps because the child is gifted or has been ill, not just because the child was born in the summer. The second reason is that the statement is not clear, it is under a heading which a parent may not consider relevant and refers to another document which a parent may not have ready access to. The Code requires the process to be clearly set out in the arrangements. The school has indicated a willingness to address this matter.

Summary of Findings

49. I find that for the reasons set out above the admission arrangements for both 2016 and 2017 do not comply with requirements in the following ways.

- A parent’s membership of the Social Committee is not a religious activity and so is prohibited from being used to prioritise children by paragraph 1.9i of the Code.
- The list of activities which qualify as active involvement in the Church is not definitive and therefore the arrangements are not clear and objective as required by paragraph 14 of the Code, nor will parents be able to understand easily how the faith-based criteria might be satisfied as required by paragraph 1.37 of the Code.
- The arrangements do not make it clear that the school will take extenuating circumstances into account when deciding if an applicant qualifies for a foundation place. Paragraph 14 requires that arrangements are clear.
- The SIF collects information which is not required to make decisions about oversubscription criteria contravening paragraph 2.4 of the Code.
- The statements in the arrangements concerning the waiting list and admission outside of the normal year group do not meet the requirements of paragraph 2.14 and 2.17 of the Code.

Determination

50. In accordance with section 88(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements

for September 2016 and September 2017 determined by the governing body for Christ Church Church of England Primary School, Shooters Hill in the Royal Borough of Greenwich. I determine that there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

51. 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: 31 October 2016

Signed:

Schools Adjudicator: Phil Whiffing