



## DETERMINATION

<b>Case reference:</b>	<b>ADA 3056</b>
<b>Admission Authority:</b>	<b>The Governing Body of St Peter's Church of England Primary School, Brentwood, Essex</b>
<b>Date of decision:</b>	<b>11 April 2016</b>

### **Determination**

**In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of St Peter's Church of England Primary School, Brentwood for September 2016 and September 2017. I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.**

**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 revise its admission arrangements within two months of the date of a determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 31 May 2016.**

### **The parties**

1. The parties in this case are as follows:

- (i) St Peter's Church of England Primary School, Brentwood, Essex (the school);
- (ii) Essex County Council (the LA), and
- (iii) the Diocese of Chelmsford (the diocese).

### **The referral**

2. The school is a Church of England voluntary aided primary school for children aged four to 11. Its admission arrangements for September 2016 were brought to the attention of the Schools Adjudicator when it submitted a request to vary these on 18 January 2016.

3. However, the school was unable at that time to provide evidence that the arrangements which it said it wished to vary had been determined, and was informed that in consequence I had no power to consider the requested variation. The Office of the Schools Adjudicator (OSA) had previously

informed the school of concerns which I had about these arrangements, and referred to these concerns when asking the school to forward a copy of its admission arrangements for September 2016 as soon as these had been determined.

4. Having looked at the school's determined admission arrangements for September 2016, and those for September 2017 which it had also determined and forwarded to me and which are worded identically, I considered that both may fail to comply with the School Admissions Code (the Code).

### **Jurisdiction**

5. These arrangements, which are those for September 2016 and for September 2017, were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the school's governing body on 11 February 2016. I am satisfied that it is within my jurisdiction to consider them and I am using my powers under section 88I to consider both sets of arrangements as a whole.

### **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 school's email dated 18 January 2016;
- b. the content of the school's website on 22 January 2016;
- c. the content of the diocese's website on 24 January 2016;
- d. emails from the headteacher and chairman of Governors of the school dated 29 January 2016 and 31 January 2016 respectively;
- e. an email dated 29 January 2016 from the diocese;
- f. the LA composite prospectus for parents seeking admission to schools in the area in September 2016;
- g. a copy of the minutes of the meeting at which the admission authority of the school determined the arrangements;
- h. a copy of the determined arrangements, and
- i. the school's comments on the matters of concern referred to it by the adjudicator.

### **Background**

8. The school approached the adjudicator to seek a reduction in the published admission number (PAN) which it believed was part of its determined admission arrangements for September 2016. This reduction was requested because planning permission for building work at the school had not been

obtained and so a planned expansion of the school could not go ahead. The school believed that it had recently determined admission arrangements for September 2016 in which the PAN had been increased from 45 to 60. The request made was that the arrangements be varied to revert to a PAN of 45.

9. However, a copy of admission arrangements for the school which was forwarded to the adjudicator with this request, but which was undated, still referred to a PAN of 45. This set of arrangements was also available on the school's website on 22 January 2016 and was again undated.

10. The arrangements contained what I considered may be a number of breaches of the requirements concerning admission arrangements and these concerns were therefore conveyed to the school, the LA and the diocese and the comments of each party invited. The school was also asked to provide evidence that these arrangements had been determined by the school's governing body, but it did not do so. The school replied instead by providing a copy of what it said were revised admission arrangements for the school for September 2016 and which it said took my concerns into account.

11. The school was again asked for evidence that its admission arrangements, either those provided with the request that they be varied, or those which it said were a revised version of those arrangements, had been determined by the school's governing body.

12. The school replied by providing a copy of the minutes of the governing body of 9 July 2014 which recorded a conditional decision in principle that the school be expanded at a future date to accommodate an annual intake of 60 children, but nothing further. My view was that this did not constitute the annual determination of the school's admission arrangements which is required by the Code. The school also told me that its most recently revised admission arrangements were still subject to approval at a future meeting of its governing body.

13. The school was informed of my view that it had at that point no determined admission arrangements for September 2016, and that I therefore had no jurisdiction to consider the requested variation. The OSA also asked the school to provide a copy of the arrangements once these had been determined by the governing body, together with evidence of that determination.

14. The school subsequently provided me with separate documents setting out admission arrangements for September 2016 and September 2017 saying that it had determined both on 11 February 2016. This was confirmed by a copy of the draft minute of the school's governing body of that date provided by the school.

15. The school's determined admission arrangements for both years:

(i) state that the published admission number is 45;

(ii) provide a list of 10 criteria that are applied in order to applications, the first being for all looked after and previously looked after children, followed by:

a. 10 places for children whose parents "*are regularly involved in the work and*

worship of St Peter's Church South Weald", with priority being given based on "the depth of the parents' involvement in the work and worship of the church";

- b. children meeting this criterion who have a sibling at the school;
- c. other children with a sibling at the school;
- d. children meeting criterion a. above who live in a defined area;
- e. other children living within the same defined area;
- f. children living within the Borough of Brentwood who are "regularly involved in the work and worship of another Christian church (as defined)" together with any remaining children meeting the criterion above, with priority being given "on the basis of the parents' involvement in the work and worship of the church";
- g. children living within the Borough of Brentwood;
- h. children whose parents practice "other faiths", and
- i. all remaining applicants.

16. A tie-breaker of distance from the school is provided. "Regular worship" for the purpose of considering applications is defined, and parents' involvement in the work and worship of the church is stated to be "judged by reference to the following factors: the length of their attendance, the frequency of attendance over that period and their participation in other church activities which include reading in church, singing in the church choir, being on a rota for coffee, baptism visits, car parking, crèche or oblations, being a member of the PCC, assisting with church events, serving the church through deliveries or maintenance, running or helping with Sunday groups".

17. The arrangements also set out a "pattern of intake" which says that pupils will be admitted "in one intake" and that children "will attend mornings only for the first 10 school days and then full days thereafter", and include a supplementary information form (SIF).

### **Consideration of Case**

18. I was concerned that these arrangements, although improved from those which had been submitted with the request that they be varied, were still not compliant with the requirements of the Code. The OSA wrote to the school and the other parties setting out these continuing concerns and seeking their views on them.

19. Neither the LA nor the diocese has taken the opportunity to make any comments about the school's admission arrangements. I have considered carefully comments which have been made by the school before coming to the views about its admission arrangements which I shall set out below.

20. First, the Code at paragraph 14 requires admission authorities to 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.”*

21. Paragraph 1.8 says that “oversubscription criteria **must** be reasonable, clear, objective, procedurally fair and comply with all relevant legislation...”, and paragraph 1.37 states that admission authorities for schools designated with a religious character “**must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.”

22. The Code makes it a mandatory requirement that admission arrangements should be clear in their meaning in order that parents can read them and know how they would stand in relation to them were they to seek a place at the school for their child. It makes this requirement at a general level in paragraph 14, specifically with respect to oversubscription criteria in paragraph 1.8 and more specifically still concerning any faith-based oversubscription criteria in paragraph 1.37.

23. The school’s oversubscription criteria give priority to children whose parents practice “*another faith*”, which in the context of the arrangements as a whole clearly has the meaning of faith other than the Christian faith. However, when I read the arrangements I was not certain to which children this priority referred and I believe that any other reader would have the same difficulty. My concern is that there is no common understanding of what “a faith” means and that a range of interpretations might therefore easily be placed on the term.

24. The school could make this matter plain but it provides neither a list of the faiths to which it will give priority nor any insight into how it would determine whether or not a person who sought priority for admission on this basis did in fact belong to “a faith”. If parents are to be able to look at arrangements to decide how they would stand in relation to them as the Code requires, then the arrangements must convey the same meaning to all readers. The school has offered me no argument that I can find relevant to my concerns, referring me only to the manner in which it uses length and frequency of attendance at St Peter’s and other Christian churches within its arrangements, which are of very limited relevance to those of other faiths. In my view the school’s arrangements fail to be clear because the meaning of the oversubscription criterion which gives priority to children of other faiths has not been clarified, and so parents would not know how this faith-based oversubscription criterion was to be satisfied for the purposes of admission to the school. The arrangements therefore do not meet the requirements in each of the provisions of the Code which I have set out above.

25. Secondly, paragraph 1.9i of the Code says that:

*“...admission authorities....**must not** .....*

*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)”.*

26. The overall effect of this is that no hobbies or activities may be used in this way, unless the faith body for a school with a religious character specifically “lays out” a named religious activity or activities for the purpose of giving priority within admission arrangements. The school’s faith body is the Diocese of Chelmsford. It has informed me that the advice which it gives to schools concerning their admission arrangements is the Church of England National Society Advice to Diocesan Boards of Education concerning admissions to Church of England schools. It displays this advice on its website.

27. Paragraph 7 of the appendix to this advice, under the heading “church criteria”, states that “*the only criterion which should be taken into account is attendance at worship*”. It is clear to me that, far from listing any permitted religious activities for use by the school, the guidance of the school’s religious body is that only attendance at worship may be used in constructing faith-based oversubscription criteria.

28. Two of the school’s oversubscription criteria, those which I have described as a. and f. above, use the extent of a parent’s involvement in the work and worship of the church to give priority to some children over others. The school has told me that its admission arrangements do so only “as a tie-breaker” to applicants who are otherwise equally qualified as a result of their church attendance. The school refers me to paragraph 1.8 of the Code which requires there to be an effective tie-breaker for such circumstances.

29. While this is of course accurate, it does not mean that paragraph 1.8 can be used to sanction the use of a means for giving priority which is explicitly forbidden by the Code. It does not matter that religious activities are used, as the school sees it, as a tie-breaker. The school uses religious activities which have not been laid out by its religious body to give such priority to some children over others. In so doing it breaches paragraph 1.9i of the Code.

30. Thirdly, paragraph 2.16a of the Code says that admission authorities:

*“must make it clear in their arrangements that, where they have offered a child a place at a school:*

*a) that child is entitled to a full-time place in the September following their fourth birthday”.*

31. The school’s arrangements describe a pattern of intake into the school which does not include the possibility of full-time attendance from the outset. The Code, by contrast, requires it to tell parents as part of its arrangements not only that this is possible, but that it is an entitlement. The school has commented that my concerns “are covered” by the section “*pattern of intake*” within the arrangements “*which also provides for the parental right to refrain from taking up a place at that time*”.

32. I have read this section of the arrangements closely, and in spite of what the school says, cannot find there the statement required by the Code. Parental deferment has nothing to do with the requirements that a full-time place must be available from September and that the arrangements must say so. A pattern of initial half-time attendance as set out in the arrangements

does not equate to a full-time place, and the arrangements omit to state that one is available, as they must do. The arrangements fail to conform to the requirement in paragraph 2.16a of the Code.

33. Finally, paragraph 2.4 of the Code says that admission authorities “**must only use supplementary application forms that request additional information when it has a direct bearing on decisions about oversubscription criteria...**”

34. The school includes as part of its admission arrangements for both September 2016 and September 2017 a SIF which provides for a parish priest or minister to add comments concerning a family’s Christian commitment “*which would be helpful to the Governors in considering this application*”.

35. The school has told me that it does not agree with my view that this part of the SIF breaches paragraph 2.4 of the Code because it invites information which is not necessary to apply the oversubscription criteria, but does not say why. It rehearses the purpose of the SIF and the use of the information provided by those parents who complete it to determine the priority which the school gives to their children.

36. Some of the information which the school obtains from completed SIFs concerns religious activities which has not been laid out for this purpose by the school’s faith body and, for the reasons I have explained above, the oversubscription criteria are themselves forbidden. Other information provided by the SIF, however, concerns frequency and duration of church attendance and is needed to apply permitted oversubscription criteria. There is therefore a legitimate reason for the school to employ a SIF and to ask parents who wish their applications to be given priority on the basis of the information contained in this part of it to complete the form and to have it countersigned by the relevant authority.

37. However, the third type of information which the SIF provides to the school concerns parents’ Christian commitment. The school has not addressed in its response the absence of a link between any of its oversubscription criteria and the need for this information. None of the oversubscription criteria which the school employs mentions a parent’s Christian commitment and so any comments about this would have no direct bearing on any of them. Since this is clearly and explicitly required in paragraph 2.4 of the Code, the school’s SIF, which forms part of its admission arrangements, contravenes this stipulation by asking about Christian commitment.

### **Summary of Findings**

39. I have set out above the reasons why I am of the view that the admission arrangements which the school has determined for admissions in September 2016 and September 2017 fail to comply with the requirements of the Code:

(i) in paragraphs 14, 1.8 and 1.37, by failing to be clear concerning the “other faiths” to which priority for admission is given;

(ii) in paragraph 1.9i, by employing within oversubscription criteria religious activities which have not been laid out by the school’s faith body for this purpose;

(iii) in paragraph 2.16a, by omitting from the arrangements the statement which is required there; and

(iv) in paragraph 2.4, by employing a SIF which seeks information which has no direct bearing on the application of any of the school's oversubscription criteria.

### **Determination**

40. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of St Peter's Church of England Primary School, Brentwood for September 2016 and September 2017. I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

41. 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 revise its admission arrangements within two months of the date of a determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 31 May 2016.

Dated: 11 April 2016

Signed:

Schools Adjudicator: Dr Bryan Slater