



## **DETERMINATION**

**Case reference:** ADA2958

**Objector:** A parent

**Admission Authority:** The governing body of St Joseph's Catholic Primary School, Redhill, Surrey

**Date of decision:** 3 November 2015

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body of St Joseph's Catholic Primary School, Redhill, Surrey for admission in September 2016.**

**I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangement 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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 28 February 2016.**

### **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 a parent (the objector), about the admission arrangements (the arrangements) for St Joseph's Catholic Primary School, Redhill, Surrey, (the school), a voluntary aided primary school for children aged four to eleven for September 2016. The objection is to aspects of the school's faith-based oversubscription criteria.

### **Jurisdiction**

2. These arrangements were determined under section 88C of the Act by the school's governing body on 23 March 2015. The objector submitted the objection to these determined arrangements on 25 June

2015 which is before the deadline for the submission of such objections. The objector wishes his or her identity not to be disclosed to the school and other parties. The objector has satisfied the requirement of regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) by providing both name and address to the adjudicator. Two aspects of the objection are outside my jurisdiction. First, the objector argues that the arrangements run counter to Canon Law. Canon Law is wholly a matter for the Catholic Church – I am concerned with whether or not arrangements (whatever their status in Canon Law) conform with the requirements relating to admissions as set out in the primary and secondary legislation of the United Kingdom and in the School Admissions Code (the Code). Second, the objector cites a newsletter published by the school in September 2014 and concerning admission to the school in September 2015. I am concerned with admissions in 2016 and the newsletter is not relevant to these. I cannot and have not considered further the matters not within my jurisdiction. In all other respects, 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. When I reviewed the arrangements I considered that they might also not conform with the requirements relating to admissions in ways other than those raised in the objection. I have accordingly used my powers under section 88I of the Act to consider the arrangements as a whole.

### **Procedure**

3. In considering this matter I have had regard to all relevant legislation and the Code.
4. The documents I have considered in reaching my decision include:
  - a. the objector's email of objection dated 25 June 2015 and subsequent submissions;
  - b. the school's responses to the objection;
  - c. the comments of Surrey County Council which is the local authority (LA) for the area on the objection;
  - d. the comments of the Catholic Diocese of Arundel and Brighton (the diocese) which is the school's faith body on the objection;
  - e. the LA's composite prospectus for parents seeking admission to schools in the area in September 2016;
  - 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;

- h. a copy of the determined arrangements; and
- i. documents relating to the prescribed alteration of the school to expand it with effect from September 2016.

### **The Objection**

- 5. The objection is to a number of aspects of the school's faith-based oversubscription criteria. The arrangements give priority to children who are baptised and practicing Catholics and the definition of practicing Catholic is based on the child's attendance at Mass. The objector considers that this is counter to the diocesan guidance and is not a common approach in admission arrangements in the area's Catholic schools. In the objector's view any priority based on attendance at Mass should be based on attendance by one parent or carer and the school's approach discriminates against particular groups including single parents and children with special needs. The objector does not refer to any particular provision of the Code in this regard, but I note that paragraph 1.38 of the Code requires that the admission authority of a school with a religious character such as St Joseph's **must** have regard to any guidance from the body or person representing the religious denomination (in this case the diocese) when constructing faith-based admission arrangements. The objector also argues that the school's arrangements do not make clear how long practise in terms of attendance at Mass must be sustained in order to gain priority for admissions. Paragraph 14 Code requires that admission arrangements **must** be clear and paragraph 1.37 requires that "*Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.*"

### **Other Matters**

- 6. When I reviewed the arrangements in the course of considering the objection I noted a number of ways – other than those raised in the objection – in which the arrangements appeared not to conform with the requirements relating to admissions as follows:
  - a. the arrangements include references to expecting parents to accept and uphold the Catholic character and ethos of the school and to welcoming applications from those who support the religious ethos of the school. Together, these statements could amount to conditionality in breach of paragraph 1.9a of the Code and to not admitting all who would like a place if the school had places available in breach of paragraphs 15d, 1.36 and 2.8 of the Code;
  - b. the arrangements appeared to suggest that all applicants should complete the school's supplementary information form (SIF) which is not the case and the SIF appeared to ask for information not necessary to apply the oversubscription criteria. This meant that the arrangements did not comply with paragraph 2.4 of the Code;

- c. the arrangements appeared not to give the required degree of priority to looked after and previously looked after children who are not baptised Catholics and thus to breach of paragraphs 1.7 and 1.37 of the Code; and
- d. the arrangements appeared to lack a final tie-breaker capable of separating two applicants who qualified equally for the final available place as required by paragraph 1.8.

## **Background**

7. The school is designated by the Secretary of State in accordance with the Act as a school with a Catholic religious character. It is accordingly entitled to set faith-based admission arrangements including faith-based oversubscription criteria. Up until and including 2015, the school has had a published admission number (PAN) of 60 at Reception (YR). The PAN for 2016 was also initially set at 60. Following the necessary statutory process which took place over the summer months, the school is to expand with effect from September 2016 and the school's website and the LA's composite prospectus both makes clear that it has 90 places available in YR in 2016. The school told me it consulted on its arrangements for 2016 but did not keep the relevant records.
8. The school's admission arrangements - including its SIF and a map showing the parishes whose residents gain priority for admission - are easy to find on its website accessed via the "About Us" tab on the homepage. The oversubscription criteria can be summarised as follows (references throughout to "the parish" are to the Catholic Parish of the Nativity of Our Lord):
  1. Baptised Catholic looked after and previously looked after children
  2. Baptised Catholic children with exceptional social or medical needs
  3. Baptised Catholic children who attend Mass and live in the parish
  4. Baptised Catholic children who attend Mass and live outside the parish
  5. Other baptised Catholic children who live in the parish
  6. Other baptised Catholic children
  7. Non-baptised children who are in the process of becoming members of the Catholic church
  8. Other looked after and previously looked after children
  9. Other children with exceptional social and medical needs
  10. Children who are members of Eastern Orthodox Churches
  11. Children who are members of other Christian denominations

12. Children who are members of other faiths
13. Any Other children
9. The arrangements provide that where the PAN is reached and exceeded within an oversubscription category, places will be allocated as follows:
- a. to children with a sibling at the school and then
  - b. for criteria 3, 4, 5, 6 and 7 priority will be given to those who attend Mass most frequently;
  - c. for oversubscription criteria 10, 11 or 12 priority will be given to those who attend religious services most frequently, and then;
  - d. by distance from the home to the school.
10. The school was oversubscribed for places in 2015 and received 119 applications of which 63 were first preference applications. There were no applications for places on the basis of meeting criteria 1 or 2. The school was able to admit every child who wanted a place and qualified against criteria 3 and 4 and there were no applications on the basis of meeting criteria 5 – 10 inclusive. One child was allocated a place on the basis of meeting criterion 11, there were no applications for a place against criterion 12 and the last child to be admitted fell within the category of any other children and lived just under one kilometre from the school.

### **Consideration of Factors**

11. I deal first with the point raised by the objector regarding taking account of the attendance of the child rather than a parent at Mass. Priority for admission to the school under several of its oversubscription categories is based on attendance at Mass by the child. The objector argues that taking account of the attendance of the child rather than of a carer or parent is counter to the guidance provided by the diocese and that it is not common practice across the deanery in which the school is located. The objector also argues that taking account of the child's attendance at Mass discriminates against a number of groups.
12. In its response the diocese has said "*We would agree that rather than the child's attendance, it would be better to use the level of family's Mass attendance and to include a suitable clarification in the "Notes" section of the policy, as outlined in the model policy in the Diocesan Guidance*". The guidance provided by the diocese says at paragraph 2.4 "*In the case of schools that also include practice as a criterion, evidence of the frequency of attendance at Mass of the applicant or the applicant's family will be required.[my underlining]*" A note in the guidance makes clear that references to families are to be read as satisfied by the attendance of a single parent or carer. The objector had also drawn attention to the fact that an approach based on the child's attendance was not common practice in the deanery and, in this

context, quoted another part of the diocesan guidance which states: *“It is good practice for schools in a locality (e.g. in a deanery) to develop, where possible, a common SIF and an admission policy element that also has a common format. This will help parents, priests and any other stakeholders in the admissions process.”* I note that while the diocese has said in response to the objection that it would be better to use the family’s Mass attendance, the guidance actually refers to the attendance of the family (by which is meant a parent or carer) or the child. The school’s approach may or may not be common practice across the Catholic deanery in which it is located, but there is no requirement that the school should adopt the same approach as others. The oversubscription criteria do follow the core principles set out in the diocesan guidance that priority should be based on baptism and Mass attendance and the SIF follows the same format as one of the model SIFs in the guidance. Moreover, paragraph 1.10 is clear that it is for the admission authority to determine its arrangements in the light of its local circumstances. The guidance also explicitly allows for different approaches to take account of the different circumstances of different schools. I do not consider that the school has failed to have regard to the guidance or that the fact that its approach may be different from that of other schools is a breach of the Code. I do not uphold this aspect of the objection.

13. I turn next to the question of whether the school’s approach discriminates against single parent families, those with special needs, those who work at weekends, ethnic minority families who attend ethnic chaplaincies and those who do not wish to take small children to Mass and/or cannot afford child care to attend a weekend Mass. The arrangements are based on the attendance of the child, but a child of this age would inevitably be accompanied to Mass. I therefore do not see the relevance of the objector’s point about childcare and dismiss this. A child of this age requires care at the weekend whatever the circumstances of the parent or carer and I do not consider that attending Mass three times a month – which is the level required to gain the highest degree of priority based on attendance at Mass – is so onerous that it is unfair to the groups listed by the objector. So far as those who do not wish to take small children to Mass are concerned, there may well be parents who would rather not do this, but that does not make the school’s arrangements unfair. The school has said in response to the objection that it plans to change its arrangements for 2017 so that they are based on attendance by a parent or carer. This is a matter for the school subject to the required consultation. The arrangements for 2017 are not yet determined and not within my jurisdiction. I am concerned with the arrangements for 2016 which are based on the child’s attendance and I do not uphold this aspect of the objection.

14. The objector rightly noted that the arrangements do not specify any period for which attendance at Mass must be sustained in order to gain priority for a place. The LA has said that it considers that the objector has raised a valid point and that it has asked the school to review this aspect of its arrangements for 2017. The diocese has said that it does

not believe that it is necessary to stipulate a time period for Mass attendance as there are many variables as to why practice may differ between people, not least the individual's own faith journey. The diocesan guidance says "*Priests should not confirm the frequency of attendance at Sunday Mass unless it has continued for a period of time. Exceptions to this would be families who have moved into the parish recently, in which case there may be a need for the Priest of the previous parish to complete the form as well, or new arrivals to the country or those who have recently been received into the Church.*" Different levels of priority are afforded for admission to the school depending on frequency of Mass attendance with some priority afforded to those who attend but do so less than once a month. It would not be possible for a Priest to know that someone's pattern of attendance was less than once a month unless the period was of at least several months' duration. Moreover, without a period specified there is a risk that different Priests could interpret the arrangements in different ways. The school has not commented on this aspect of the objection. The arrangements are not clear and not objective and do not conform with paragraph 14 of the Code. They also fail to meet the requirements of paragraph 1.37 as parents would not be able to look at the arrangements and understand whether their own practice will or will not gain their child a particular level of priority. I uphold this aspect of the objection.

## Other Matters

15. Looked after and previously looked after children: The definition of looked after and previously looked after children used in the arrangements is not in line with the definition used in the Code. First, the arrangements refer only to children who are in the care of a local authority whereas, as paragraph 1.7 of and footnote 16 to the Code make clear, a looked after child also includes a child who is being provided with accommodation by a local authority in the exercise of its social services functions and a previously looked after child also includes a child who was previously provided with accommodation by a local authority in the exercise of its social services functions. Second, the arrangements refer to "residence orders", which have been replaced with "child arrangements orders".
16. The arrangements afford a degree of priority at criterion 7 to children who were not baptised Catholics but who together with a non-baptised parent are enrolled on a programme to become members of the Catholic Church. The priority given in such cases is higher than that given to looked after and previously looked after children who are not baptised Catholics. Paragraph 1.37 of the Code makes clear that "*Where any element of priority is given in relation to children not of the faith [admission authorities] **must** give priority to looked after children and previously looked after children not of the faith above other children not of the faith.*" I note in this context that the diocesan guidance makes clear that the test of membership of the Catholic Church is baptism or reception into the Church. The guidance also does suggest that children who are not baptised Catholics, but are the

children of those preparing to be received can be given a higher priority than looked after or previously looked after children who are not Catholics. In this regard, the guidance conflicts with a mandatory provision of the Code and this means that the school is not bound by the requirement in paragraph 1.38 of the Code to have regard to the guidance. The school has provided me with a draft set of arrangements for 2017 in which the references to looked after and previously looked children have been brought into line with the wording in the Code and in which the required priority is given to looked after and previously looked after children who are not Catholics. However, the arrangements for 2016 at the time of completing this determination have not been revised and do not conform with the Code and must be revised accordingly.

17. Admission of children with statements of Special Educational Need (SEN) and Education Health and Care (EHC) plans: Statements of SEN are being replaced with EHC plans. Children with EHC plans which name a school must be admitted to that school. The arrangements do mention statements of SEN but not EHC plans. Second, the reference to statements of SEN is not in the main body of the arrangements but in note j on the penultimate page. This may mean that parents do not realise that such children must be admitted and that this may also have an effect on the number of places available for other children. A more prominent statement would be clearer. In relation to the lack of a reference to children with EHC plans the arrangements are not clear as required by paragraph 14 of the Code and must be amended.
  
18. References to expecting parents to accept and uphold the Catholic character and ethos of the school and to welcoming applications from those of other denominations or faiths who support the religious ethos of the school: Paragraph 2.8 of the Code states that "*With the exception of designated grammar schools, all maintained schools, including schools designated with a religious character, that have enough places available **must** offer a place to every child who has applied for one, without condition or the use of any oversubscription criteria*" [my underlining]. The same point is made in paragraphs 15d and 1.36 of the Code. The two statements in the arrangements referred to above taken together may suggest that if the school were not oversubscribed, it would only admit, or wish to admit, children whose parents were willing to uphold the school's religious character and who were of another denomination or faith and supported the religious ethos of the school. The wording used – by referring to those of other denominations or faiths – could also lead a parent who had no religious faith to think that an application for his or her child would not be welcome. The wording could thus amount to a condition and would not be in conformity with the Code. In relation to this matter, the diocese has said "*As the Catholic ethos and character are so important to Catholic schools, there is an expectation that parents will indeed accept and uphold these. The Diocese does not believe that the wording in St Joseph's policy implies any condition. Additionally, the reference to the ethos and Catholic character of the school is in the 'contextual*



*preamble to the policy; it is not in the SIF (which the parent is asked to sign). However, we have provided the school with a potential (and perhaps 'softer' alternative way of phrasing the 'expectation'".*

19. There is no doubt that the religious ethos and character of a school with such a designation will be of the greatest importance to that school. However, the Code is – as noted above – absolutely clear in the requirements imposed on these schools as on all others. The draft arrangements for 2017 do not say that parents are expected to accept and uphold the Catholic ethos of the school. Instead, they say that: *"The governors "ask all parents applying for a place here to respect [its religious] ethos and its importance to the school community. This does not affect the right of parents who are not Catholics to apply for and be considered for a place here"*. Later on, the draft arrangements do retain the reference to welcoming applications from those of other denominations and faiths who support the religious ethos of the school which, as noted above, could serve to exclude those who do not have a religious faith. As noted above, I am concerned with the arrangements for 2016. The school's arrangements for 2016 have not been changed. I determine that they not conform with the Code and must be revised.
  
20. The school's supplementary information form (SIF): The school is permitted to use a SIF to seek information which is not available on the common application form (CAF) and which is necessary to apply the oversubscription criteria. However, the admission policy document and the SIF itself both state that to apply for a place at the school, applicants should complete the SIF and that, if they do not, *"it is likely that governors will only be able to rank the application within the last, ie "Any other children" criterion"*. The website goes further and says: *"Please note that there are two forms to be filled in for applications to our school ....and the Supplementary Information Form (SIF) which is available in PDF format below and must be returned to us at St Joseph's Catholic Primary School"* These statements are not accurate. Information about whether a child is looked after or previously looked will be on the LA's common application form (CAF). This means that a parent or carer seeking a place under criterion 8 would not need to complete the SIF.
  
21. The diocese has acknowledged that the wording used in the admission policy document and the SIF were those suggested by it and has explained that: *"The Diocese, in the wording suggested to schools, was mindful that different schools would have different criteria and what was being aimed at was to try and have terminology that could be utilised in different schools' arrangements to achieve a level of commonality and thus make it easier for parents. That is why the words 'should' and 'likely' are carefully used. Additionally, we believe that it is a fair statement to say that some LAs, even though they have responsibility for coordination, do not go as far as they should (in our view) to encourage parents/carers to complete school SIFs. As a result, there is plenty of anecdotal evidence from schools where some parents complete the CAF but not a SIF and therefore miss out on a*

*place....The word 'ALL' is being used to differentiate between other parts of the SIF (where eg only Catholics have to complete the section. The current wording on the SIF is a balance of highlighting to parents that it was not mandatory to fill out the SIF but to still encourage them to complete a SIF (so that applicants would not miss out on a place if they did not complete a SIF)."* The diocese goes on to ask if I would be content with a different form of words which is: *"While it is not mandatory to complete a Supplementary Information Form (SIF), if the school does not receive a completed SIF, governors can only rank applications based on information on the CAF. This could result in applicants receiving a lower priority ranking."* I have no jurisdiction to comment on proposed forms of words.

22. The school in the draft arrangements for 2017 include the revised form of words suggested by the diocese and quoted above, but the references to "All" applicants completing Part 1 remain. For 2016, the SIF, policy document and relevant section of the website together make up the admission arrangements for the school. They do not conform with the requirements relating to admissions and must be revised.
23. In addition, the SIF seeks proof of address which is also covered by the CAF. The school has pointed out in its response that the CAF is not made available to the school and rightly made the point that it cannot be as schools are not told the order of parental preferences. It has also explained that it has received fraudulent applications in the past. Information about proof of address is not the same as the entire CAF and can be shared if necessary. The Code is clear that SIFS can only be used to request additional information. The arrangements do not conform with the Code and must be revised.
24. The SIF also asks for information which is not necessary to apply the oversubscription criteria. First, it asks which Mass is attended by the child whereas the relevant oversubscription criteria do not require attendance at any particular Sunday/Saturday evening vigil Mass and there is a separate provision on the SIF to confirm that the requirement to attend Sunday/Saturday evening vigil Mass has been met. Second, it asks about the parish children live in. The arrangements give priority to baptised Catholic children who live in the parish of the Nativity of Our Lord and can therefore legitimately ask if a baptised Catholic child lives in that parish. There is no particular priority given to those who live in other parishes and therefore no justification for asking about this. In its response the school has said that *"The reason for requesting the Parish information is simply to enable the SIF to be sent to the appropriate catholic priest or other religion representative. For example it is not unusual for a person to reside in the Parish of the Nativity of Our Lord but to attend mass in another parish."* This is a reason for asking where a family worships – it cannot justify asking about where they live if they do not live in the parish of the Nativity of Our Lord. The diocese in its response gives a different explanation for the question saying it *"believes that asking what parish the applicant lives in is a*

*valid question when seeking to know whether the applicant lives in the parish(es) named within the oversubscription criteria. It is used in that form because ...the desire is to make SIFs as common in format as possible in order to make it easier for parents.”* It is indeed helpful to parents if schools use consistent forms. However, this cannot justify a breach of the Code. In any case, the school’s SIF is customised with the name of the school and by saying in the question about which parish the child lives in “*eg The Nativity of Our Lord, Redhill*” The arrangements do not conform with the Code and must be revised.

25. The arrangements when I saw them provided that if PAN is reached within any oversubscription category applications would be ranked on the basis of having a sibling at the school, frequency of attendance at Mass or, for applicants of another faith, attendance at religious service and then on the basis of distance from the school. The arrangements also dealt with the possible situation in which two applicants who live in the same block of flats qualify equally for the final available place. However, the arrangements made no provision for a situation in which two children who live in houses which are equidistant from the school qualify equally for the final available place. The arrangements did not accordingly meet the requirement of paragraph 1.8 of the Code for a final tie-breaker to separate applicants in such circumstances. The draft arrangements for 2017 do include such a final tie-breaker. The arrangements for 2016 continue not to include a final tie-breaker capable of separating two applicants who live in houses equidistant from the school and must be revised.

## **Conclusion**

26. I have partially upheld the objection for the reasons given in this determination and I have also identified a number of other ways in which the arrangements do not conform with the Code. Paragraph 3.1 of the Code provides that where an adjudicator determines that arrangements do not conform with the requirements relating to admissions, the admission authority **must** revise the arrangements within two months of the decision unless an alternative timescale is specified by the adjudicator. I have considered whether it would be practicable for the school to change its arrangements in time for the deadline for applications for places for September 2016 which is 15 January 2016. In relation to the lack of a specified time for which Mass attendance has to be sustained, I do not consider that it would be practicable to make this change in time for applications to be made by 15 January 2016. Some parents will already have applied and others will be planning to do so on the basis of the arrangements as they stand now. The school will need to revised its oversubscription criteria and develop a New SIF. I have accordingly decided that the arrangements should be revised by 28 February 2016. I have explained that the school has proposed some other changes to its arrangements for 2017 but not for 2016. These changes could be made in time for the deadline for applications for 2016 and I do not understand why the school has not proposed this.

## **Determination**

27. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body of St Joseph's Catholic Primary School, Redhill, Surrey for September 2016.
28. I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.
29. 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 unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 28 February 2016.

Dated: 3 November 2015

Signed:

Schools Adjudicator: Shan Scott