



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3242

Objector: Two parents

Admission Authority: The Governing Body of St James the Great Roman Catholic Primary and Nursery School, Croydon

Date of decision: 22 November 2016

Determination

I have considered the admission arrangements for September 2017 determined by the governing body for St James the Great Roman Catholic Nursery and Primary School in Croydon in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find 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. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection was referred to the adjudicator by two parents, (the referrers), about the admission arrangements (the arrangements) for St James the Great Roman Catholic Primary and Nursery School, Croydon (the school), an academy school for children aged three to 11. The objection related to the admission arrangements for September 2016 and was made after the deadline for such objections and also after the deadline for objections to arrangements for September 2017. However, as a result of the objection the school's admission arrangements for September 2017 have been brought to my attention. When I looked at the arrangements I was of the view that they contained a number of matters which may not comply with the requirements concerning admission arrangements and I have therefore used my power under section 88(I)(5) to consider these arrangements further.

2. The local authority for the area in which the school is located is the London Borough of Croydon. The local authority is a party to this referral. The other party to the referral is the Roman Catholic Archdiocese of Southwark (the diocese) in its capacity as the religious authority for the school.

Jurisdiction

3. The terms of the Academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing body, which is the admission authority for the school, on that basis.
4. I am satisfied that it is within my jurisdiction to consider the determined arrangements for September 2017 using my power under section 88I of the Act as they have come to my attention. I have considered the arrangements as a whole.
5. My jurisdiction is limited to the determined arrangements and whether or not they conform with the requirements relating to admissions. Some of the matters of concern raised by the referrers relate to the way in which the arrangements may have been applied to applicants to the school and whether interviews were used as part of this. These matters are not within my jurisdiction. While the arrangements do not mention interviews, material on the school's website when I first reviewed it did in the form of a leaflet published by the Deanery of Croydon some years ago. The school has now removed this leaflet from its website. While I say no more about this matter in this determination as I am concerned only with the determined arrangements, I note for the avoidance of any doubt that interviews are prohibited by section 88A of the Act and by paragraph 1.9m) of the Code.

Procedure

6. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
7. The documents I have considered in reaching my decision include:
 - a. the referrers' letter and form of objection dated 25 July 2016 and subsequent correspondence;
 - b. the admission arrangements for September 2017 as displayed on the school's website on 11 August 2016;
 - c. the admission authority's response to the matters which I raised with it in a letter dated 1 September 2016;
 - d. the comments of the local authority and the diocese on these matters;

- e. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2016;
- f. a copy of the guidance to school governors on admissions issued by the diocese;
- g. a map of the area identifying relevant schools; and
- h. a copy of the minutes of the meeting at which the governing body of the school determined the arrangements.

I have also taken account of information received during a meeting I convened on 20 September 2016 at the school which was attended by the headteacher and representatives of the diocese and the local authority.

The Referral

- 8. The referrers wrote to the adjudicator following an unsuccessful application for a place at the school, an unsuccessful appeal against that decision and a reference to the Education Funding agency alleging maladministration concerning this appeal, which was partially upheld.
- 9. The referrers alleged that the school's admission arrangements for September 2016 breached the Code in a significant number of respects which included the priority given to children attending the school's nursery and failure on the part of the school to comply with guidance issued by its faith body.

Matters of Concern

- 10. When I looked at the arrangements for 2017 I was concerned that they may not meet the following requirements of the Code at:
 - (i) paragraph 14 concerning the clarity of what the school has published as its admission arrangements. The school website which I visited on 11 August 2016 contained a set of admission arrangements which:
 - a. were undated and so it was not clear to which year they referred;
 - b. were entitled "Admission Policy: Nursery and Main School" but referred in their body to priority given to children who have attended the school's nursery class, which cannot be relevant to admissions to the nursery itself;
 - c. referred to "*oversubscription in any of the above categories*" in relation to 7 categories of applicant. Oversubscription is a term used in the Code to describe the position if there are more applications than the number of places available at a school as a whole. I was concerned that the inaccurate use of the term made the arrangements unclear;

- d. did not state clearly when distance from the school is used to decide between otherwise equally qualified applicants, only that this is “*when appropriate*”, which results in a lack of clarity as to the allocation of places at the point when the published admission number (PAN) is reached;
- e. were unclear as to the nature of “pastoral benefit” used to give priority and the need being met to which this related; and
- f. were unclear as to the reason for what appeared to be two “oversubscription” criteria concerning those resident in the same named parishes;
- (ii) paragraph 1.36 concerning the duty of schools with a religious character to admit all those who apply for a place if one is available, since they stated that “*admission is normally restricted to baptised Catholic children who have one or both parents who are committed, practicing members of the Catholic church*” and that “*if insufficient applications are received in respect of baptised Catholic children, the Governing Body will admit children who are baptised or who are being brought up according to the beliefs of another Christian denomination*”. This statement also appeared to conflict with the provisions of the oversubscription criteria themselves and suggested that the school might not give the degree of priority required by paragraph 1.37 to looked after and previously looked after children who are not Catholics;
- (iii) paragraph 15d) and paragraph 2.4 concerning the process of making applications for a place at the school since they required applicants to have completed a registration form which is not part of this prescribed process. The arrangements stated that those who have “*registered an interest*” will be sent the school’s supplementary information form (SIF). Both the “registration for Admission” form and the SIF asked for information which does not have a direct bearing on the application of the school’s oversubscription criteria and may fail to comply with paragraph 2.4 of the Code;
- (iv) paragraph 2.5 because birth certificates were requested prior to the offer of a place;
- (v) paragraph 2.16 because they did not contain a statement which conforms to that which is required concerning deferred or part-time entry;
- (vi) paragraph 2.17 because they did not set out the process for requesting admission outside the normal age group, as required there;
- (vii) paragraph 1.6 concerning the admission of children with a statement of special educational needs or Education, Health and Care plan since they implied that there is a condition placed on such admissions; and

(viii) paragraph 1.37 which requires that admission authorities for schools with a religious character enable parents to understand how any faith-based criteria will be reasonably satisfied since neither the arrangements themselves nor the SIF whose information is used to assess religious practice stated what frequency and duration of practice is required.

11. I also raised with the school at the meeting which I held that I was concerned that it may be failing to comply with the requirement in paragraph 1.38 that admission authorities for schools designated as having a religious character must have regard to any guidance from the body or person representing the religion when constructing any faith-based admission arrangements. I explained that I had concerns about the extent to which the school's arrangements comply with this requirement in respect of measures of religious practice, and in the priority given to those worshiping in named parishes. In addition, I raised with the school my concern that the priority given to children who had attended the school's nursery may make the arrangements unfair in contravention of paragraph 14. I invited comments from all of the parties on each of these matters.

Background

12. St James the Great Roman Catholic Primary and Nursery School is a successful and heavily oversubscribed school in Thornton Heath in Croydon. The school has a PAN of 60 and for September 2016 there were 220 applications of which 91 were first preferences. It was judged as outstanding when it was last inspected by Ofsted, in October 2012. There has been a recent change in Headship at the school.

13. The admission arrangements for the school which I found on its website when I looked there were undated and said that they were the "Admission Policy: Nursery and Main School". The arrangements say that there are 60 places "*at age rising five*" and 52 part-time nursery places and that "*admission to the Nursery Class does not automatically allow admission to the Main School. Such admissions are subject to applicants continuing to meet the criteria for admissions.*"

14. The arrangements are set out as a single set of arrangements for both the nursery and the school. They provide that if there are more applications than places, these will be allocated "*after the admission of children with a statement of special educational need where the school has been consulted*" in accordance with a list of "categories" which can be summarised as follows and for which I have adopted the numbering used in the arrangements:

1a. looked after and previously looked after Catholic children;

1b. practicing Catholic children whose parents attend Mass in one of two named Catholic parishes;

2. Catholic children one of whose parents attends Mass weekly in other Catholic parishes;
3. Catholic children;
4. Other looked after and previously looked after children;
5. Children of other Christian denominations of which parents are committed practising members;
6. Other children;
7. Late applications.

The arrangements go on to say that *“If there is oversubscription in any of the above categories”*, places would be allocated in accordance with a list of seven further “criteria” in an order of priority which is:

- a. siblings (as defined);
 - b. *“families resident in”* the parishes of the two previously named Catholic churches;
 - c. pastoral benefit to be derived from attendance at the school for a child resident in the two named parishes;
 - d. medical or social factors necessitating attendance at the school;
 - e. children at the school’s nursery class who are resident in the two named parishes;
 - f. *“residency in”* the two named parishes;
 - g. all other children in the relevant category.
15. Explanatory notes provided as part of the arrangements say that *“Pastoral benefit is defined as an identified need reported to the school at the time of application evidenced by a relevant person confirming that a specific need can best be met by admission to St James the Great School.”*

Consideration of Case

16. The school, the diocese and the local authority have provided me with their comments on some of the concerns which I have raised. Each was also represented at the meeting which I held. The local authority said that it too was concerned about many of the points which I had raised, and the diocese told me that it had raised with the school concerns about its admission arrangements and its admission process following its investigation of a complaint which had been made to it by the referrers in the wake of their failure to secure a place at the school.
17. I deal first with the question of the overall clarity of the arrangements together with the priority given to children who have attended the school’s

nursery as they are linked. In this context, I note that the school's written response was provided by the new headteacher, with the assistance of his predecessor. It provided amongst other things information which I had requested about the allocation of places for each of the three years 2014 to 2016.

18. The admission arrangements for the nursery and the school itself have been elided for reasons which the school has not been able to explain to me. There is duplication of the priority based on residence in the named parishes in the list of criteria (at "b" and "f" above). The school has told me that one of these versions of the residency priority "*relates to Nursery families and one to new families*", but not which is which. I am far from certain that even if this distinction were spelled out in the arrangements that they would then be clear. As written, the arrangements give priority to all those living in the two named parishes (under "b"). However, a subsequent priority ("e") then gives priority to a sub-set of such children, who are those living in the same area who attend the nursery. This in turn is followed at "f" with a further reference to all who live in the parishes. It is simply not possible to apply these arrangements to a group of children and this means that they are not clear and do not conform with paragraph 14. On the face of it, it appears that the arrangements have not been applied as they have been written, and so while this falls into the area of the application of the arrangements and therefore beyond my jurisdiction, this is not acceptable.
19. The school wishes me to accept that there is no confusion arising from having a single set of admission arrangements which are said to apply both to admissions to the school's nursery class and to the school itself, saying that they are "identical" but that it was willing to separate them. However, I cannot see the presence in these arrangements of a priority for children in the nursery class as anything other than unclear for anyone reading them in connection with admission to that same nursery class. For anyone reading the arrangements in connection with admissions to the main school it must introduce a lack of clarity that the arrangements are said to apply to both, since this cannot be the case. I have also pointed out above why it does not seem possible to apply the seven criteria "a" to "g" in the order set out in any meaningful way. The arrangements for the nursery and the school are self-evidently not identical and should not be set out as such. They are not clear and so breach paragraph 14 of the Code.
20. At the meeting which I held I pointed out that the information provided in the school's earlier written response showed that of the 60 places available in each year, only the following numbers of children who had not been at the school's nursery had secured places:

2016: 11

2015: 10

2014: 9

21. The data showed that in the years 2016, 2015 and 2014 respectively, 32, 24 and 20 children attending the nursery had been admitted as siblings of older children at the school and that a further 17, 26 and 31 had been admitted from the nursery who did not have an older sibling at the school. I asked the school to provide me with a breakdown of how places for September 2016 had been allocated against each of the categories and oversubscription criteria in its admission arrangements, but it has not done so. Because of the way the arrangements are drafted combined with the school's failure to provide me with details about how places have been allocated, it is not clear how much priority is in fact given to children who have attended the nursery. The school has not told me, for example, whether it admitted all those who sought priority under category 2 and some of those falling under category 3 or only some of those applying under category 2.

22. The Code at paragraph 1.39Ba) permits schools to give priority to children attending a nursery class which is part of the school if they are in receipt of the early years pupil premium, the pupil premium or the service premium. The school's arrangements do not do this, but give priority to all children at the nursery living in two named parishes and while there is no prohibition on such a practice, admission arrangements must nevertheless conform to the other requirements of the Code including the requirement that they be fair in paragraph 14, as I pointed out to the school at the meeting which I held.

23. The school has told me that the numbers of children given above were admitted as siblings and were also attending the nursery. The sibling priority applies within the arrangements to a category of child of whom there are too many for the places available. I have not been told by the school which category was involved when the sibling priority was invoked. After siblings from the nursery were admitted, the balance of remaining places and how they were allocated was, in the last three years:

	<u>2014</u>	<u>2015</u>	<u>2016</u>
remaining places	28	36	40
nursery children	17(61%)	26(72%)	31(78%)
other children	11(39%)	10(28%)	9 (22%)

24. The nursery has 52 children in attendance, and in the last three years, 51 (in 2014), 50 (in 2015) and 49 (in 2016) of these have secured a place at the school. That is to say, one, then two, and then three children did not transfer from the nursery into the school, and remaining places have to all intents and purposes been those left when the nursery children and possibly any other siblings have been admitted. As noted above, I cannot, in the absence of clear information from the school know whether category "1b", "2" or category "3" places were the point at which the criteria "a" to "g" were being applied in order to produce the pattern of admissions set out

above. So I cannot be certain that the inclusion of a priority for all those living in the two named parishes who have attended the nursery is the sole cause or only partly the cause, but it is the case that relatively few children who did not attend the nursery have secured places. Given the level of oversubscription of the school, parents who have not secured a place at its nursery, or who did not wish to have such a place, may have a very slim chance of securing a place there unless there is already an older sibling in attendance.

25. The arrangements also say that *“There is no right of appeal where a Nursery place has not been offered.”* Any mistake or unfairness in such admission cannot therefore be rectified by contrast with applications for Reception where there must be an independent appeal. This combined with the high degree of priority for children who have attended the nursery makes the arrangements unfair.
26. The arrangements place too great a premium on securing a place in the nursery in order to secure one at the school. This cannot be fair to parents of otherwise eligible children who do not wish their children to go to the nursery or who have not been able to secure a place there. I am of the view that the arrangements are unfair to these groups and so are in breach of paragraph 14 of the Code.
27. I move now to consider other aspects of the arrangements. Paragraph 15b) of the Code states that *“Admission authorities must set (‘determine’) admission arrangements annually.”* Admission arrangements which appear undated on a school’s website cannot therefore be clear as to their application to anyone reading them since for most of any calendar year admission arrangements for more than one school year are current. The school has accepted this *“oversight”*, but the arrangements which were published on its website when I looked there on 11 August 2016 were unclear as a result of being undated, and so were in breach of paragraph 14 of the Code.
28. The term *“oversubscription”* is used by the school concerning the individual groups of children who are given priority as a result of being defined within the arrangements. These groups are in fact oversubscription criteria which have their effect only when the school as a whole is oversubscribed. The need for this condition to be present is particularly important in the case of faith schools, since these may only give priority on the grounds of faith when this is the case. The Code contains this definition of the term *“oversubscription”*, as referred to above, and it must render arrangements unclear when it is used to describe a different circumstance which is not therefore *“oversubscription”*. The school has said it is willing to use different phraseology, but as determined the arrangements are unclear and fail to comply with paragraph 14 of the Code.
29. The school wishes me to believe otherwise, but I cannot see that it is possible to read the arrangements and know with certainty when priority for a place will be given on the basis of the distance of the child’s home to the school. The arrangements mention the use of distance in the criteria listed above as *“e”*, *“f”* and *“g”*, but they also introduce this list of criteria by

saying that distance is used “where appropriate”, which is imprecise and could have a variety of meanings attached to it. As a result, the arrangements are in my view unclear, and fail to comply with paragraph 14 of the Code.

30. The school and the diocese have both written to me on the question of “pastoral benefit”, the definition of which as it is employed by the school is given above. I had been concerned that this may not meet the Code’s stated requirement that admission arrangements are clear and also, as discussed at the meeting which I held that oversubscription criteria “**must be reasonable, clear, objective, procedurally fair**” as required by paragraph 1.8. I have considered it also against the requirement of paragraph 1.16, which has the following to say about medical and social need:

*“If admission authorities decide to use social and medical need as an oversubscription criterion, they **must** set out in their arrangements how they will define this need and give clear details about what supporting evidence will be required (e.g. a letter from a doctor or social worker) and then make consistent decisions on the evidence provided.”*

31. It is clear to me from what the diocese has had to say on this matter that the purpose of “pastoral benefit” as it is employed in the arrangements is to meet a need which is in the nature of a social need for a child. Paragraph 1.16 does not limit such need to that which would be recognised by a social worker, since this is given as an example and not as a condition. So it is possible for a social need to be recognised as a “pastoral need” if the requirements of paragraph 1.16 are met. The arrangements currently do not do so in my view because they do not provide sufficiently clear details of the type of need involved, since “an identified need” does not provide a definition of the need being catered for, or of what supporting evidence would be required, since “evidenced by a relevant person” is not clear in the way that “a letter from a doctor or social worker” is. As a result, I do not consider the arrangements, as currently drafted are clear, and so they breach paragraph 14 and 1.8 of the Code.
32. The school has told me that the statements in the introduction to its arrangements that “*admission is normally restricted to baptised Catholic children who have one or both parents who are committed, practising members of the Catholic Church*” is a reflection of the heavy oversubscription for places, which has resulted in all places being allocated on the basis of faith. That may be the case, but it is one thing for a school to provide this information to parents considering applying for a place as helpful context, and quite another for it to make such a statement prominently in the introductory paragraph to its arrangements. Here, in my view, the two statements act to inhibit applications for places from all but baptised Catholics and those belonging to other Christian denominations, since they are the only two groups mentioned. By contrast, the Code makes it abundantly clear in paragraph 1.36 that faith schools “*are required to offer every child who applies, whether of the faith, another faith or no faith, a place at the school if there are places available*”. The school’s arrangements make no statement to that effect, but rather give the opposite impression, and so breach this provision of the Code. Of equally

great concern is the fact that the statement does not reflect the arrangements which – quite properly – give priority after all Catholics to looked after and previously looked after children who are not Catholic. This is a clear requirement of paragraph 1.37 of the Code.

33. The introductory paragraph to the admission arrangements says:

“Copies of the child’s birth and baptismal certificates are required at the time the Registration Form is submitted. If baptism takes place after the Registration Form is submitted, a copy of the certificate must be provided to the school.”

When the school wrote to me it said that *“to secure a degree of forward planning parents are permitted to register their childrens’ (sic) names at the school as early as they wish. Whilst this has no bearing on ultimate admissions, the school does forward a SIF to these parents at the start of their respective admissions round to check their continued interest in securing a place.”*

34. I do not accept that a school has any need for the kind of forward planning referred to here, or that the arrangements simply “permit” parents to register with the school. What the arrangements say is:

“Under our Admission Policy, those who have registered an interest with the school will be sent a supplementary information form in the academic year proceeding (sic) the proposed year of entry.....The form provides an opportunity to present information about any special factors or circumstances the family would wish to have taken into account.....Supplementary forms are also available from the school on request.”

35. I will consider the SIF itself below. The local authority commented on the Registration Form saying that it did not make sufficiently clear that the ‘normal’ process for applying for a place at the school was by submission of the local authority common application form (CAF). I take a dimmer view. The acknowledgement slip sent by the school to a parent completing the Registration Form says *“Where this is for future admissions, you will be contacted regarding the next stage of the admissions process in due course.”* In addition to that given above, the arrangements also say that:

“The Governing Body of St James the Great School is responsible for all admissions” and

“Valid applications are those for which all required paperwork has been received at the school on or before the published closing date for submission. For Reception admissions, this date will be in line with the Pan London closing date for the receipt of the Common Application form”

36. I have no doubt, given the wording which appears in the arrangements themselves and on the acknowledgement slip, that parents are likely to see the completion of the Registration Form as effectively essential if a

place at the school is to be secured. The above is the only reference made anywhere in the school's admission arrangements to the CAF and the SIF says no more than that *"In order to make a valid application, you must also submit a Common Application form to your home local authority."*

Paragraph 15d) of the Code makes clear that the procedure for applying for a place at a school is that *"parents apply to the local authority in which they live for places at their preferred schools."*

37. The school's arrangements set out what is essentially a parallel process which in my view contravenes paragraph 15d of the Code.

38. The Registration Form asks for the following details:

(i) the names of both parents;

(ii) the child's date and place of baptism;

(iii) the names, dates of birth and school attended by any siblings and

(iv) copies of the child's birth and baptismal certificates.

Paragraph 2.4 of the Code says:

*"Admission authorities....**must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria" and that "admission authorities..... **must not** ask, or use supplementary forms that ask, for...*

a) *any personal detail about parents and families...such as....marital ...status..."*

39. If the school knows the names of both parents, it has personal details that will reveal, or could reveal, their marital status. The names of both parents are not needed in order to progress an application and should not be requested. Similarly, a child's date and place of baptism may reveal a country of origin. This is not needed in addition to the baptism certificate and should not be sought. The details requested about siblings is not needed as this is supplied by the parent when completing the online common application form (CAF) used by all London Boroughs and should not be sought. Each of these matters contravenes paragraph 2.4 of the Code.

40. Paragraph 2.5 of the Code says that *"Once a place has been offered, admission authorities may ask for proof of birth date, but **must not** ask for a 'long' birth certificate or other documents that would include information about the child's parents."*

41. The request for copies of the child's birth certificates is a contravention of this stipulation.

42. It was one of the complaints made by the referrers that they were unable to obtain a copy of the school's SIF from its website and so were required

to visit the school in order to do so. The diocese in investigating their complaint encountered the same situation, and I was able to see but not to download a SIF when I visited the school's website on 11 August 2016. This SIF asks for details of both parents to be given and for both to sign the form. It asks for information about length of attendance at Mass, and about the child's date and place of baptism and if the parents are on the electoral roll at the place of residence. As with the Registration Form, each of these is not permitted under paragraphs 2.4 and 2.5 of the Code. It is not acceptable that parents should have to visit the school to obtain a copy of the SIF. I was also concerned that the copy of the SIF sent to me by the school when it replied to my concerns about its admission arrangements did not match that which I had seen on its website in requiring only one parental signature, but I was offered no explanation for this discrepancy when I raised it at the meeting with the school.

43. Paragraph 2.16 of the Code requires the admission arrangements of schools with a normal year of admission at Reception (Year R) to include a statement that explains the entitlements and options in respect of full and part-time attendance available to parents if a child has been offered a place there. The arrangements do not do so, but include a statement that *"reception admissions take place at the start of the academic year"*, which does not accord with what arrangements are required to state. The arrangements therefore fail to comply with paragraph 2.16 of the Code.
44. Paragraph 2.17 requires all admission authorities to make clear in their admission arrangements the process for requesting admission out of the normal age group. The arrangements do not do so, and fail to comply with this requirement.
45. The arrangements state that the admission of children with a statement of special educational need takes place *"where the school has been consulted in regard to naming the school"*. Paragraph 1.6 of the Code states:

*"All children whose statement of special educational needs (SEN) or Education, Health and Care (EHC) plan names the school **must** be admitted."*

46. Of course, consulting a school before naming it is part of the relevant process, but the requirement for a school to admit the child named in the statement or EHC plan is not conditional on its having been consulted. The arrangements fail to comply with what is required under paragraph 1.6.

47. Paragraph 1.37 of the Code states:

*"Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied."*

The school gives priority to applicants *"who have one or both parents who are baptised Catholics and who attend Sunday Mass every weekat either St Andrew's, Thornton Heath or St Bartholomew's, Norbury."* Explanatory notes say that:

“Practice will be demonstrated by:

- *The child’s and family’s religious practice as shown by the Supplementary Information Form and any other information supplied.*
- *The consistency of the family’s religious practice as shown on the Supplementary Information Form and by the Priest’s reference.”*

48. The school has told me that its faith based criterion is clearly set out in the above wording. However, the arrangements contain no information as to the duration of religious practice which is required. The SIF which the school sent to me did not do so either, but included a “Parish Reference Request” which is a form to be completed by the parish priest. This form allows the priest to certify Mass attendance for the child, their mother and their father (separately) at one of five levels of frequency, and for one of four periods of duration. It also allows the priest to add *“any additional information which you feel may help the Governors”* and allows the priest to certify how well he knows the child, mother and father (separately) at one of five levels. Both these latter inclusions in the form, which forms part of the SIF, have no bearing on the application of any of the oversubscription criteria in the school’s arrangements, which say nothing about the five levels of frequency or the four periods of duration and the effect they would have on a child’s priority for a place at the school. The arrangements say that priority is given to those attending Mass weekly and any requested information need go no further than seeking confirmation of such practice. The arrangements refer to the duration of practice as “consistency”, but say nothing about the duration of practice required for an application to be given priority and so are unclear and breach provisions in paragraphs 14, 1.8 and 1.37 of the Code as a result. The request for the information set out above via the SIF breaches paragraph 2.4 of the Code which stipulates that any such information must have a direct bearing on decisions about oversubscription criteria, and as the arrangements are set out they contain no oversubscription criteria for which this information is necessary.

49. At the meeting which I held, the diocese confirmed that its view was that how duration of practice gave priority to applicants must be stated in the school’s arrangements. It has provided me with a copy of its “Guidance on School Admissions” to schools for which it is the relevant faith body. This has the following to say:

(i) *“It ismost important that published admission arrangements make it clear how membership or practice is to be demonstrated in line with Diocesan guidance.”*

(ii) *“Where schools are consistently heavily oversubscribed with Catholic children, governing bodies may give a higher priority to children from families who are able to demonstrate their commitment to the faith by their frequency of attendance at Sunday Mass”. ...They should ask the priest to confirm one of the following:”* followed by four stated frequencies of attendance.

(iii) The model admissions policy included in the guidance provides for these four levels of attendance to be taken into account “as demonstrated by the family’s Mass attendance on Sundays over a period of 3 years.... Applications will be ranked in the order shown on the Supplementary Form; firstly those who attend Mass weekly, then once or twice a month etc”.

50. It is evident to me that it is not possible for a parent to look at the school’s arrangements and to have a clear understanding whether or not their application would be given priority since they do not state how frequency of practice will be taken into account, and because they make no statement at all concerning a required duration of practice. The arrangements fail to comply with what paragraph 1.37 of the Code requires.

51. Paragraph 1.38 of the Code places a requirement on the admission authority for a school with a religious character to “have regard to” any guidance provided to it by the relevant faith body when constructing any faith-based oversubscription criteria “to the extent that the guidance complies with the mandatory provisions and guidelines of this Code”. Admission authorities may depart from such guidance, but may not do so lightly. The judgement of Cobb J in the London Oratory case ([2015] EWHC 1012 (Admin)) gives the terms under which they may do so within the law. Essentially, they may do so only if they have objectively proper reasons for which there is an evidential basis. The school’s arrangements depart from those which the guidance of the diocese require it to determine, subject to this provision, in having no required duration of practice and in employing different measures of frequency of practice to those set out in it. The school has given me no reasons for this departure and as a consequence I am of the view that it is in breach of paragraph 1.38 of the Code.

52. I also raised at the meeting the priority given in the arrangements to those worshipping in two named parishes and contrasted this with the diocesan guidance which states that:

“Giving priority for those worshipping in a named parish must not be used.”

53. The diocese confirmed to me that its guidance forbids priority being given on the basis of an applicant’s place of worship, but allows priority based on their place of residence in relation to ecclesiastical parishes. The school has given me no reason for its departure on this matter from the guidance of the diocese, and as a result I am not convinced that it has had regard to that guidance as it is bound to do. Consequently, I am of the view that this constitutes a further breach of paragraph 1.38 of the Code.

Summary of Findings

54. I have explained in the foregoing paragraphs why I have come to the view that the arrangements fail to comply with what the Code requires:

- a. in paragraph 14 because the priority given to children who attending the school's nursery makes them unfair;
- b. in paragraph 14 of the Code because they are unclear as a result of not stating the year to which they apply, because arrangements which can only apply to the school are also given as the arrangements for the nursery, because they use the term "oversubscription" inaccurately, and because they fail to explain when distance from the school is used to distinguish between candidates;
- c. in paragraphs 14 and 1.8 because the priority given on the grounds of "pastoral benefit" is not adequately described and neither is what would be needed as supporting evidence for it;
- d. in paragraph 1.36 since a statement is included in the arrangements which appears to contradict the duty of all admission authorities to admit all those applying for a place at a school which is not oversubscribed;
- e. in paragraph 15d) because the use of a Registration Form does not conform to the statutory process for making an application for a place at a school as set out there;
- f. in paragraphs 2.4 and 2.5 because both the Registration Form and the SIF ask for information which is not permitted;
- g. in paragraphs 2.16 and 2.17 because the required statements concerning part-time admissions and applications for places out of the normal year group are not contained within the arrangements;
- h. in paragraph 1.6 because the arrangements appear to place a condition on the admission of children with a statement of SEN or EHC which names the school;
- i. in paragraphs 14, 1.8 and 1.37 because its faith-based oversubscription criteria are not clear and because it is not possible for a parent to look at the arrangements and to understand easily how the faith-based oversubscription criteria will reasonably be satisfied;
- j. in paragraph 1.38 because the school has been unable to give reasons for its departure from the guidance of its faith body concerning the construction of faith-based oversubscription criteria which it uses, and so cannot be said to have had regard to that guidance.

Determination

55. I have considered the admission arrangements for September 2017 determined by the governing body for St James the Great Roman Catholic Nursery and Primary School in Croydon in accordance with section 88(5) of the School Standards and Framework act 1998 and find there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

56. 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: 22 November 2016

Signed:

Schools Adjudicator: Dr B.C. Slater