



DETERMINATION

Case reference:	ADA 2841
Objector:	A member of the public
Admission Authority:	The governing body of St Mary Magdalen's Catholic Primary School, Mortlake, Richmond upon Thames
Date of decision:	24 June 2015

Determination

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

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.

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.

The Objection

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 member of the public (the objector), about the admission arrangements (the arrangements) for St Mary Magdalen's Catholic Primary School (the school), a voluntary aided Roman Catholic primary school in Mortlake for pupils aged 4 to 11 years, in the London Borough of Richmond upon Thames, the local authority (the LA).

2. The objection is that the Supplementary Information Form (the SIF) contains a number of inconsistencies when compared to information contained in the oversubscription criteria and there is a lack of guidance about what information parents and priests should provide. This may prevent parents from being able to understand easily how faith based oversubscription criteria might be satisfied. The matters relate to: the definition of regular attendance at Mass; the lack of a direct request for the priest to endorse a parent's self-declaration and the inclusion of a section for the priest to add comments; a comment box for parents to add further information to the application but with no guidance about what factors may be relevant; and finally that there is no indication of how a priest or parent should provide actual evidence of attendance at Mass. As a result the arrangements may contravene paragraphs 1.37 and 2.4 of the School Admissions Code (the Code).

3. The objection has been made by a member of the public who wishes to remain anonymous. The party has met the condition of paragraph 24 of the School Admissions (Admission Arrangements and Co-ordination of Admissions Arrangements) (England) Regulations 2012 by providing their name and address to the Office of the Schools Adjudicator.

Jurisdiction

4. These arrangements were determined under section 88C of the Act by the school's governing body, which is the admission authority for the school. The objector submitted the objection to these determined arrangements on 15 March 2015. 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.

5. I have also used my power under section 88I of the Act to consider the arrangements for 2016 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:

- the objection dated 15 March 2015 and further comments dated 11 April 2015;
- the school's response to the objection dated 16 April 2015; and emails dated 17 May 2015 providing further information that I requested at the meeting at the school;
- comments from the Education Commission of the Catholic Archdiocese of Southwark, (the diocese) which is the faith body for the school, setting out its response to the objection a letter dated 30 March 2015, together with a copy of "Diocesan Admissions Guidance 2012";
- the LA's composite prospectus for parents seeking admission to primary schools in September 2015;
- the LA's comment on the objection dated 17 April 2015; and further response to my enquiry, dated 12 May 2015;
- minutes of meetings of the governing body held on 23 October 2014 at which changes were agreed to the policy document "*Delegation to the Admissions Committee*"; and on 5 February 2015 when it was noted that the Admissions Committee would meet on 24 February 2015;
- minutes of meetings of the Admissions Committee held on 24 and 25 February 2015 at which the arrangements for admission to the school in September 2016 were discussed and determined; and
- the determined arrangements for admission to the school in September 2016.

8. I have also taken account of all information, data and maps received during the meeting I convened at the school on 5 May 2015 and the further information that was provided subsequently. The meeting was attended by representatives from the school, the diocese and the LA.

The Objection

9. The objection is that there are inconsistencies between the provisions of the oversubscription criteria and the notes to those criteria on the one hand and the questions asked on the SIF on the other and that this may prevent parents from being able to understand easily how faith based oversubscription criteria may be reasonably satisfied as required by paragraph 1.37 of the Code. The matters concerned include:

- i. the definition of regular attendance at Mass;
- ii. the lack of a direct request for the priest to endorse the parent's self-declaration and the inclusion of a section for a priest to comment. The objector says as the SIF is returned directly to the school parents will be not be able to confirm that the comments are accurate or relevant to their application. The objector also raises a concern that such comments may be subjective yet may influence consideration of applications which the objector considers would breach paragraph 2.4 of the Code which says, "*In some cases, admission authorities will need to ask for supplementary information forms in order to process applications. If they do so, they **must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability...*"
- iii. the inclusion of a comment box for parents to add any other unspecified information they consider may be relevant to the application. The arrangements provide no indication about how this information might be used to make decisions about the allocation of places; and
- iv. a lack of information about how a family or priest might provide evidence of attendance at Mass.

Other Matters

10. Having reviewed the arrangements as a whole for admission to the school in September 2016, I considered other issues which may contravene the Code. These were a lack of clarity about: the admission of applicants when the school is not oversubscribed; the admission of looked after and previously looked after children; and the admission of children whose statements of special educational needs (SEN) or Education, Health and Care (EHC) plans name the school.

11. The SIF also appeared to contravene paragraph 2.4 of the Code by requesting the gender of the child, information about both parents; a work telephone number; and information about occasional or irregular attendance at Mass. The SIF also appeared unclear in contravention of paragraphs 14, 1.8 and 1.37 in relation to the information requested from non-Catholic ministers about applications from children of other Christian denominations.

Background

12. The school is designated as having a religious character and it is permitted to use faith-based oversubscription criteria and to allocate places by reference to faith

when oversubscribed. The governing body has elected to include faith based oversubscription criteria in its arrangements and has had regard to the guidance provided by the diocese. It has consulted the diocese about how membership or practice of the faith is to be demonstrated by applicants. The diocese has confirmed that the governing body is conscientious in reviewing and consulting on the school's arrangements and has shown that it is concerned to ensure that the arrangements are fair, transparent, objective and compliant with the Code.

13. The oversubscription criteria for 2016 provide the following order of priority:

“1. Looked after Catholic children or looked after children in the care of Catholic families and previously looked after Catholic children who have been adopted or who have become subject to a child arrangements order or special guardianship order.

2. Baptised Catholic children who have a sibling in the school at the time of admission, where one or both parents/carers are practising members of the Catholic faith.

3. Baptised Catholic children where one or both parents/carers are practising members of the Catholic faith.

4. Other baptised Catholic children with a sibling in the school at the time of admission.

5. Other baptised Catholic children.

6. Other looked after children and other previously looked after children who have been adopted or who have become subject to a child arrangements order or special guardianship order.

7. Children who are members of other Christian denominations with a sibling in the school at the time of admission. Evidence of membership of the Church should be provided.

8. Children who are members of other Christian denominations. Evidence of membership of the Church should be provided.

9. Any other child with a sibling in the school at the time of admission.

10. Any other applicant.

In the case of oversubscription in any of the categories 1-10 above, places will be awarded in the following order of priority:-

1. Children with special medical needs or social grounds for attending the school. A letter from a doctor or other appropriately qualified professional, stating the reason why the school is necessary for the child, must accompany the application.

2. *Children living closest to the school by road and publicly maintained footpath, as measured by the London Borough of Richmond upon Thames Geographical Information System.*

3. *Where the last remaining place is to be allocated and two or more children are deemed to live at the same distance from the school, the place will be decided by the drawing of lots."*

Notes to the oversubscription criteria say: "By "practising members of the Catholic faith" we mean at least one parent/carer and the children attend Mass on Sundays and holy days of obligation as a central part of their lives. Missing Mass more than once a month would not be deemed regular practice."

14. As noted above, the arrangements include an element of priority, after the admission of all baptised Catholics, for children of other Christian denominations. The school is permitted to give such priority, but in practice has been oversubscribed with Catholic children for several years, as have the majority of Catholic primary schools in the LA area. The school has a published admission number of 30 for admission to the reception class, for September 2016. In order to meet the demand for places in the local area, the school admitted 60 pupils in both 2011 and 2014 and new accommodation had to be added to the existing school building to accommodate the 60 additional pupils. There are now approximately 270 pupils on roll.

15. When I reviewed the school's website in April 2015, I found that information about admissions for entry to the school in 2016 was easy to find via the tab on the homepage "Parents" and under the sub-heading "Admissions". The arrangements, including the SIF, for 2015 and 2016 were available.

Consideration of factors

16. I will consider each point within the objection against the requirements of the Code, taking into account the views expressed by the objector, the school, the diocese and the LA. In response to the objection, the school said that its intention was to be as clear and transparent as possible when determining its arrangements; and that despite a high level of oversubscription each year there were generally very few appeals, only three or four each year. The governing body had taken this fact as evidence that the arrangements were sufficiently clear for parents.

17. In the first part of the objection, the objector notes that oversubscription criteria 2 and 3 require parents to be practising members of the Catholic faith. Explanatory notes define "practising" and outline the school's expectations about attendance each week and on holy days of obligation, going on to say "*Missing Mass more than once a month would not be deemed regular practice*". The inference which can be drawn from this statement is that a family which did not attend Mass once a month would still meet the school's definition of "practising". The objector contends that this is inconsistent with information on the SIF which defines regular attendance as "*every Saturday evening or Sunday*" with no reference to any possibility that it might be acceptable to miss a Mass up to once per month; and with no reference as to how attendance on holy days of obligation will be counted.

18. I noted that the current SIF asks parents to answer the question:

“How often do you attend mass?”

Regular attendance at Mass (i.e. every Saturday evening or Sunday)

Occasional attendance at Mass (i.e. once or twice a month).

Irregular attendance at Mass (i.e. less than once a month)”

19. At the meeting in the school, I discussed the content of the SIF and the notes to the arrangements which inform parents, *“Missing Mass more than once a month would not be deemed regular practice.”* I enquired whether the governors had intended to imply that missing Mass once a month was acceptable as “regular practice” and intended to fall within its definition of “practising”. If so, a parent might expect to see an appropriate box to tick *“3 times per month”* as one of the options. The school confirmed that it had been the governors’ intention, when drafting the arrangements, to recognise that while attendance at Mass every week was desirable, this was not always possible for families to manage but that missing Mass more than once a month would not be acceptable.

20. I also enquired about the expectation of attendance at Mass on holy days. In its response to the objection the school said that the obligation to attend Mass on holy days is the same as the obligation to attend weekly Mass and this is why no distinction is drawn between the two. At the meeting in the school it was confirmed that Canon Law states that on Sundays and other holy days the faithful are obliged to participate in Mass and that any Catholic family would be fully aware of this. The diocese advised me that in this parish the Church endeavoured to celebrate holy days on Sundays wherever possible.

21. When we considered the presentation of the oversubscription criteria and the SIF together the school readily acknowledged there is a lack of consistency and that the arrangements as a whole are accordingly not clear and are open to differing interpretations. This may cause parents to be uncertain about what the admission authority requires and I have therefore concluded that the arrangements do not comply with the requirements set out in paragraph 1.37 of the Code which states, *“Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.....”*; and I uphold this aspect of the objection.

22. Since the meeting, the school has provided a copy of a proposed new SIF which asks:

“How often do you attend Mass?”

Regular attendance at Mass (as defined in our Admissions Policy)

Occasional attendance at Mass (i.e. once or twice a month)

Irregular attendance at Mass (i.e. less than once a month)”

23. I consider under 'Other Matters' the issue of the request for information from parents about occasional or irregular attendance. So far as the question about regular attendance is concerned, this now relates directly to the definition in the oversubscription criteria given above.

24. The second aspect of the objection is that the arrangements require a parent to make a declaration about the regularity and duration of attendance at Mass and the objector contends that the priest is not directed to endorse that declaration. The school refutes this point and says in its response that the priest's declaration performs the function of endorsing what the parent has self-declared. Parents must indicate their level of attendance at Mass and then the priest is required to complete a tick box to indicate the level of Mass attendance.

25. There is space on the SIF for a priest to add comments, after which the SIF must be sent directly to the school. The objector says parents have no opportunity to confirm whether or not the comments are accurate or relevant to their application and that any subjective comments may contravene the requirements of paragraph 2.4 of the Code, cited above. The objector has expressed concern that there is no guidance to indicate what sort of information the priest should provide, nor any indication about how this information might be used by the school to make decisions about the allocation of places. The school said that the priest is invited to describe how he knows the applicants through their attendance at Mass and to comment on the frequency of that attendance. The section allows the priest to share with the admission authority, information that may only be known to him and which may have affected the applicants ability to attend Mass, such as a family illness. When I suggested at the meeting in the school that in the event of illness preventing attendance at Mass, it was likely that parents would themselves have made a comment in the parent's comment box, the school reflected and agreed that would be the most likely course of events.

26. The diocese said that this section of the SIF does not follow diocesan guidance which says that any comments made by the priest should relate only to attendance at Mass. In the view of the diocese the section on page 2 of the SIF for completion by the priest should read, "*Please comment, if appropriate, only to clarify the Mass attendance above.*" The LA's view is that it would be helpful to qualify the areas for a priest to comment on in relation to attendance at Church." *How long has the child attended church?..... Are there valid reasons why attendance has not been regular?"*

27. The school accepted that further guidance was required for priests about how to complete the SIF, acknowledging there was currently a lack of transparency about how applications would be processed using the information from parents and priests. The arrangements lack the requisite clarity for parents and therefore contravene paragraph 1.8 of the Code which says, "*Oversubscription criteria **must be reasonable, clear, objective, procedurally fair.....***" and for this reason I uphold this aspect of the objection. However I found no evidence that the admission authority had contravened the requirements of paragraph 2.4 of the Code by using subjective information.

28. In the third aspect the objector says that the SIF contains space for the parents to add "*other information that may be relevant*", but there is no indication as to what sort of information the school requires. The objector is concerned that parents might provide information which is not relevant to the oversubscription criteria but which could then be taken into account by the admission authority in contravention of paragraph 1.7 of the Code, which requires that places are allocated according to the oversubscription criteria. In addition, it might mean that the school would take account of subjective information provided by parents in contravention of paragraphs 1.4 and 1.8 of the Code and that parents cannot easily understand how faith-based criteria will be reasonably satisfied as required by paragraph 1.37 of the Code. In its response the school said, "*From the design of the form, with the comments box positioned directly below the boxes that the applicant is invited to use to indicate Mass attendance, the governors' expectation is that the invitation to add any relevant information would be directly linked to Mass attendance.*"

29. When I reviewed the SIF I also concluded that this is what the admission authority was seeking. However, I also accept that a parent who is unfamiliar with the admissions process may be less certain about what is required, why it is needed, and how such additional information might be used by the school to assess priority for admission. On this point the school said in its response, "*Governors only use the information in the parent's comments, in conjunction with other evidence, where it is relevant to the application of oversubscription criteria.....*".

30. The diocese commented that the parent's box on page 1 should read, "*Please add here any other information you may feel is relevant to this application in relation to the school's admissions policy in respect of exceptional medical, social or pastoral needs of your child that make only this school suitable for them. Strong and relevant evidence must be provided by an appropriate professional authority (e.g. qualified medical practitioner, education welfare officer, social worker or priest).*" The LA said that it would be helpful to guide parents by adding, "*any information you may feel is relevant in regard to religious practice. e.g. why attendance may not be weekly.*"

31. In my view there needs to be greater clarity about the purpose of the comment box on the SIF and about how the information may be used by the school. At present there is no guidance for parents and therefore the arrangements lack clarity for parents. This contravenes paragraphs 1.4, 1.8 and 1.37 of the Code and for this reason I uphold this part of the objection.

32. The school says it is proposing to amend the arrangements to state, "*A declaration of the level of the family's Mass attendance on Sundays over a period of three years must be provided by the parent/carer and be endorsed by a priest at the church(es) where the family normally worship.*"

33. In the final aspect of the objection, the objector says that neither the Code nor the SIF indicate how the family or priest might provide the required "*evidence of the level of the family's Mass attendance*". The objector argued that this suggests that a subjective judgement of attendance is acceptable, or reliance on memory alone, rather than, for example, an attendance register or another form of concrete evidence and goes on to say: "*It is unreasonable to expect a priest to remember whether an individual family has ever missed mass more than once in a single month*"

over the previous 3 year period, so only an attendance register, or equivalent, could constitute proper “evidence” and ensure that families aren’t unfairly excluded on the basis of a priest’s subjective judgement.”

34. At the meeting we considered how parents might provide evidence of attendance at Mass. The notes to the arrangements state, *“Evidence of the level of the family’s Mass attendance on Sundays over a period of three years must be provided by the parents/carers and be endorsed by a priest.....”* After a discussion about the difficulty of providing any standard form of written evidence and about the consistency of approaches taken in different parishes, it was agreed that instead of a request for ‘evidence’ parents might make a ‘self-declaration’ about the family’s attendance at Mass and this declaration would then be confirmed, or not, by the priest. At present the arrangements may cause parents to be uncertain about how they might comply with the request for “evidence of attendance” and I have therefore concluded that the arrangements do not comply with the requirements laid out in paragraph 1.37 of the Code, cited above. I note that both diocese and school were confident that assessments made by parish priests would be reliable as a means of verifying or not, the declarations made by parents.

Other Matters

35. Having reviewed the arrangements as a whole for admission to the school in September 2016, I considered other issues which may contravene the Code. These include the requirement for further information to provide greater clarity for parents. Paragraph 1.6 of the Code says *“If the school is not oversubscribed all applicants **must** be offered a place....”* It is good practice to state this so that all parents are made aware of this fact.

36. The notes to the arrangements explain that the admission of children with statements of special educational needs (SEN) or Education, Health and Care (EHC) plans is dealt with through a separate procedure. However it should be stated more clearly that all children whose statement of SEN or EHC plan names the school **must** be admitted. The proposed arrangements now state in the preamble, *“We also welcome applications from children who are in receipt of an Education, Health and Care Plan.”* In my opinion it would be even clearer to parents if the arrangements stated that a child whose statement of SEN or EHC Plan names the school will be admitted and will count towards the published admission number.

37. The school has faith-based oversubscription criteria and priority is given in the arrangements to Catholic applicants. This is permitted by paragraph 1.37 of the Code which says *“Admission authorities for faith schools may give priority to all looked after children and previously looked after children whether or not of the faith, but they **must** give priority to looked after children and previously looked after children of the faith before other children of the faith. Where any element of priority is given in relation to children not of the faith they **must** give priority to looked after children and previously looked after children not of the faith above other children not of the faith.* The school has chosen not to give first priority to all looked after children. The first oversubscription criterion must therefore only apply to Catholic children.

38. However, oversubscription criterion 1 says, “*Looked after Catholic children or looked after children in the care of Catholic families and previously looked after Catholic children who have been adopted or who have become subject to a child arrangements order or special guardianship order.*” The oversubscription criterion as written refers to two groups of children, Catholic looked after children and another group of looked after children “*in the care of Catholic families*” who may or may not be of the Catholic faith. If the looked after children in the care of Catholic families are not of the Catholic faith they have to be considered under oversubscription criterion 6 which gives priority, after all other Catholic applicants, to other looked after children who are not of the faith, “*Other looked after children and other previously looked after children who have been adopted or who have become subject to a child arrangements order or special guardianship order*”.

39. Paragraph 2.4 of the Code permits an admission authority to ask for additional information in order to process applications. It says, “*If they do so, they must only use supplementary forms that request additional information that has a direct bearing on decisions about oversubscription criteria.....*” However, the SIF asks for information about whether a family’s attendance at Mass is occasional or irregular, although there is no priority in the oversubscription criteria for any pattern of attendance other than regular practice as defined in the arrangements. The wording on the SIF must be revised as the only germane information relates to whether the family does or does not attend Mass regularly, as defined in the notes to the oversubscription criteria. The school has already indicated its intention to remove those aspects of the SIF that ask for information that is not required in order to apply the oversubscription criteria.

40. The Code does not forbid admission authorities from asking about a child’s gender. However, the common application form (CAF) used by the LA records the gender of an applicant. In paragraph 2.4 of Code it says that admission authorities may need to ask for supplementary information in order to process applications. “*If they do so, they **must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria...*” The school’s own oversubscription criteria are not gender specific and therefore this information should not be requested on the SIF. In my view the requirement of the Code is contravened. This request has been removed in the proposed amendment to the arrangements.

41. The SIF requests the names of both parents, although only one parent is required to sign the form. It has since been amended and now refers to “*Parent or guardian name.*”

42. A work telephone number is requested but admission authorities must not consider the occupational status of the parents of an applicant for admission as set out in paragraph 1.9f. The proposed amendment now refers to an ‘alternative number’.

43. Information on the operation of the waiting list for places is clear but it also needs to inform parents that precedence must be given to looked after children, previously looked after children and pupils placed at the school under the Fair Access Protocol as laid out in paragraph 2.14 of the Code.

44. The current SIF asks in relation to applications from children of other Christian denominations for their religious ministers to provide, “....*any further information you feel may be relevant to this application.....*” This requirement lacks clarity about what information is relevant and may cause concern to parents about how such information might be used to prioritise applications. It contravenes paragraph 1.8 of the Code and must be removed. I note that in the proposed amendment it has been removed from the SIF by the admission authority leaving a provision for the minister to certify that the child is or is not a member of the relevant denominational community.

45. The school has readily accepted that changes are required and has already confirmed in writing its intention to make such changes. I have therefore referred to the ‘proposed amendments’ where relevant above.

Conclusion

46. Having considered each aspect of the objection I have concluded that in the matters raised about the clarity of the arrangements and the inconsistencies between the oversubscription criteria and the SIF I am persuaded by the arguments put forward by the objector that the requirements of the Code have been contravened. For the reasons given above I therefore uphold each aspect of the objection.

47. I have also considered the arrangements as a whole for admission to the school in September 2016 and have concluded that there are matters within arrangements as a whole that do not comply with the Code. These include the provision of more detailed and clearer information about: the admission of children with statements of special educational needs and children who are looked after or previously looked after; and the need for further guidance to non-Catholic ministers about the completion of the SIF. There are requests for information on the SIF that is not required in order to apply the oversubscription criteria and which are prohibited by the Code. The items which must be removed are the information requested about irregular or occasional attendance; the gender of the child; information about both parents; and the request for a work telephone number.

Determination

48. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body of St Mary Magdalen’s Catholic Primary School, Mortlake, for admissions in September 2016.

49. 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.

50. 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.

Date: 24 June 2015

Signed:

Schools Adjudicator: Mrs Carol Parsons