



## **DETERMINATION**

<b>Case reference:</b>	<b>VAR 660</b>
<b>Admission Authority:</b>	<b>The governing body of St Mary's Roman Catholic Primary School, Gateshead</b>
<b>Date of decision:</b>	<b>13 July 2015</b>

### **Determination**

**In accordance with section 88E of the School Standards and Framework Act 1998, I reject the variation to the admission arrangements for September 2016 for St Mary's Roman Catholic Primary School, Gateshead, to add to the oversubscription criteria a priority for applications on behalf of the children of teachers employed at the school.**

### **The referral**

1. The governing body of St Mary's Roman Catholic Primary School (the school), located in the Whickham area of Gateshead Metropolitan Borough the local authority (the LA), has referred a variation to the Adjudicator concerning the admission arrangements for the school for September 2016. The variation sought is to introduce to the oversubscription criteria a priority for applications on behalf of the children of teachers employed at the school. The arrangements were determined on 15 October 2014.

### **Jurisdiction**

2. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which states that:

*“where an admission authority (a) have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, but (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined, the authority must [except in a case where the authority's proposed variations fall within any description of variations prescribed for the purposes of this section] (a) refer their proposed variations to the adjudicator, and (b) notify the appropriate bodies of the proposed variations”.*

3. I am satisfied that the proposed variation is within my jurisdiction.

### **Procedure**

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
  - the chair of governors' letter of referral of 1 May 2015 and accompanying documentation;
  - the determined arrangements for the school for 2016-17;
  - minutes of the meeting of the admissions sub-committee of the school's governing body held on 3 April 2015;
  - the LA's booklet, *Admission to Primary School (2015)*;
  - an email received on 15 May 2015 from the LA in response to my enquiries;
  - an email received on 12 June 2015 from the head teacher of the school in response to my further enquiries; and
  - a letter dated 26 June 2015 from the Director of the Education Service for the diocese of Hexham and Newcastle concerning the proposed variation.

I have also taken account of information I received during a meeting I convened at the school on 3 July 2015, attended by representatives of the school and the LA. The diocesan representative was unable to attend this meeting but submitted a written response for my consideration, as listed above.

### **Background**

6. The school is a voluntary aided Catholic primary school for pupils between the ages of four and eleven. There are about 210 pupils on roll. The most recent Ofsted inspection, in June 2013, judged the school to be good overall, and improving. The number of applications for places at the school is increasing, in line with the demographic trend across the LA, including the area in which the school is located. In the previous two rounds of applications, for 2014 and 2015, there have been rather more first choice preferences expressed than places available; places have been allocated up to oversubscription criterion 3 (2014) and 2 (2015) in the list following, and a distance tie-breaker has been applied within the criterion.

7. The oversubscription criteria in the determined arrangements for 2016-17 are (in summary):
  1. Looked after and previously looked after Catholic children
  2. Catholic children whose home address is within the parishes served by the school
  3. Catholic children whose home address is outside of the parishes served by the school
  4. Non-Catholic looked after and previously looked after children
  5. Children who are baptised or dedicated members of churches recognised by Churches Together in England
  6. Children who are members of other faith traditions
  7. Other children

The arrangements state that children who have an Education, Health and Care plan, or a statement of special educational needs that names the school, will be admitted.

### **The variation**

8. Following discussions in meetings of both the full governing body and the admissions sub-committee in February and April 2015, having previously determined the arrangements for admission in September 2016, the governing body applied for a variation to these arrangements, citing *“an unforeseen rise in the projected number of Category 2 applicants to enter Reception class in September 2016. This unexpected occurrence, which only came to light following research from outlying Early Years providers, seriously threatens the position of a number of key staff members at our school. As such, we are seeking to amend our policy, before it is made available to applicants, to safeguard the retention and recruitment of staff at school.”* Data collected by the school suggest that *“there will be a significant number of Category 2 children who will not gain a place at the school; this is the first time that this has ever happened. One such child affected is the daughter of a teacher at the school, who is a baptised Catholic, living within our parish boundaries.”*
9. The governing body therefore sought to add to the arrangements the following statement: *“Priority will be given to children of full-time members of teaching staff who have been employed at the school for two or more years and for new staff employed to a post where there is a significant skill shortage. For normal round admissions the date that will be used to assess this will be the closing date for applications (January 2016). For in-year applications, the date that will be used will be the date the application is made.”* The request for a variation then states that *“In the past two years we have had two instances where staff have been directly affected by their children not gaining places in the school. This has lead [sic] to one key member seeking employment elsewhere, and another to consider her future at the*

*school. Future projections suggest that this issue may affect a number of other key staff members over the next three years, with staff instability a cause of concern with the governing body.”*

10. Finally, in support of the proposed variation, the governing body raises the matter of the need to attract *“the best quality teaching staff to the school”* and contends that *“the assurance that their children will receive priority in admission categories”* is an issue that has been mentioned by recent applicants for leadership vacancies, concluding therefore that *“this is a serious issue in attracting staff to the school.”*

### **Consideration of Factors**

11. Among the factors I have considered are the following: whether there has been a “major change in circumstances” since the arrangements were determined that has resulted in the admission authority seeking a variation and whether the proposed variation would address the problems arising from any such change in circumstances; the pattern of admissions in the recent past, and projected pupil numbers in the area; the availability of alternative provision and the impact of the proposed variation on other schools; responses from relevant bodies to notification of the proposed variation; and whether the proposed variation would comply with the Code.
12. The proposed variation would be permitted in the circumstances in which paragraph 1.39 in the Code allows admission authorities to *“give priority in their oversubscription criteria to children of staff”*, Data show there is likely to be a rise in the number of applications to the school, and that within this there may be a significant increase in category 2 applications, which could result in the distance tie-break imposing closer limits on allocated places than has previously been the case. The exact effect of this demographic change is, however, not entirely predictable; it is speculative to state that any change in application numbers or patterns will affect a child of a teacher at the school, since applications have not yet been made and so the distance cut-off point for applicants within category 2, for example, cannot be predicted with certainty. The anticipated increase in category 2 applications may well be likely to affect the family mentioned in the school’s request, but no stronger statement than that can be advanced at this time.
13. Data suggest there may be 39 applications for September 2016 that would be considered under category 2; while this is potentially a significant rise compared with previous years, and one which may result in increased levels of disappointment among applicants within that category, it is not an uncommon situation at a time of increasing applications for reception places nationwide, and in itself is not to my mind a “major change in circumstances” for this school since the arrangements were determined. Indeed, the origin of the school’s request at this time is more to do with a postulated change in circumstances for one parent who is a member of the teaching staff

than for its whole constituency. Reference made in the meeting at the school to other members of staff who may be affected in the future is, again, speculative and I am considering the arrangements for 2016 only.

14. The view of the LA, expressed in an email to me, is that it has *"no objection to the school's proposal"* and, in the meeting, the LA did not express concern that the variation, if allowed, would have a serious impact on the allocation of places in other nearby schools. During the meeting I was informed by a representative of the LA that, although the allocation of reception places in the locality of the school *"has always been tight"*, additional reception places are planned at other local schools, including some provision for applicants seeking a Catholic education, and that the LA is confident of being able to accommodate requests for places in September 2016, if not necessarily meeting all first preferences. Again, therefore, I would argue that there has been no "major change in circumstances" either for the school or for its locality in general. The school's comments quoted above show that the situation that has given rise to the request for a variation had been known about *"for the past two years"*, and the school could therefore have consulted on its arrangements for 2016 before determining them.
15. Despite the LA's view that this variation would not be likely to cause problems with the allocation of places in September 2016, paragraph 3.7 in the Code, referencing paragraph 1.44, makes it clear that other admission authorities, parents of young children in the locality and any other local persons or organisations with a legitimate interest should have been notified of this proposed variation, along with the body representing the religious denomination of the school, so that they could express any views that might be taken into account when considering the proposal. The school has not been able to provide me with any evidence that such notifications were made and agreed that there had been no formal contact with other schools, parents or other potentially interested parties. Although the LA told me in an email that it had *"discussed this issue on a number of occasions with the head teacher"* and, as noted above, had no objection to the proposal, the LA representative stated during the meeting that he had not realised the school intended to pursue this matter *"seriously"* until informed of the meeting I had convened. When the LA's representative enquired whether the head teacher had taken the opportunity to raise the proposed variation at a cluster meeting of local head teachers, for example, the reply was that it had been discussed *"off the record"*, but had not been a formal agenda item.
16. The position with regard to the diocese presents a clear divergence of views. In an email dated 12 June, the head teacher informed me that *"there were discussions between school and the Diocesan Director ... also the Diocesan Deputy Director ... in face to face meetings."* The diocese was unable to attend the meeting at the school; in this meeting, when I asked the school about the diocese's position, I was told it supported the proposed variation. However, a letter from the diocesan director of education, dated 26 June, is unequivocal in stating

that *“the school had not discussed with us their intention of bringing this matter up with the Schools Adjudicator”* and quotes the diocesan memorandum of understanding with schools which, in point 26, states that *“The school will not change its admissions criteria without the consent of the Diocesan Department for Education.”* The letter goes on to say that *“The diocese has not given its consent for this variation to the 2016/17 policy.”* The diocese also questions the extent to which the school had shared its proposal with the community and, with regard to parents of children at the school, says *“we would maintain that they ought to have the opportunity to express their views before such a variation is agreed.”*

17. It seems to me that at the very least there have been misunderstandings between the school, the LA and the diocese concerning both the school’s intention to request a variation and the proper process for doing so. There are clear differences of opinion about what exactly was known by whom, and when. What I can state with certainty, however, is that the school had not made appropriate interested parties formally aware of its proposed variation as required by paragraph 3.6 of the Code and had not clearly communicated its intentions to approach the adjudicator to either the LA or the diocese.
18. When I brought this point to the school’s attention, its representatives seemed unaware of the need to have informed other parties of their proposed variation. In further discussion, it emerged that, should the variation be refused, the school intends to conduct a full and formal consultation, as required by the Code, on their arrangements for 2017-18 with a view to introducing the priority for teachers’ children at that point. Having been advised by both the LA and the diocese that the governing body had missed the opportunity to consult on the 2016-17 arrangements by the time they became aware of the potential increase in category 2 applications, the school acknowledged that it had then identified the possibility of requesting a variation as an apparently straightforward interim measure for the 2016 arrangements. Unfortunately, the process laid out in the Code for seeking a variation was not followed.

## **Conclusion**

19. I have argued above that the school was not faced with a “major change in circumstances” for admissions in September 2016. Furthermore, the school did not inform other parties specified by the Code who might have wished to express a view about its proposed variation; it did not make its intentions clear to the LA; and it did not secure the agreement of the diocese to the change it sought, as required by that body. For these reasons, I reject the request for a variation in the school’s admission arrangements for 2016-17.

## **Determination**

19. In accordance with section 88E of the School Standards and Framework Act 1998, I reject the variation to the admission arrangements for September 2016 for St Mary's Roman Catholic Primary School, Gateshead, to add to the oversubscription criteria a priority for applications on behalf of the children of teachers employed at the school.

Date: 13 July 2015

Signed:

Schools Adjudicator: Andrew Bennett