



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA3111, ADA3122, ADA3176

**Objector:** A number of parents

**Admission Authority:** The Governing Body of St Katharine's C.E. (VA) Primary School, Bournemouth

**Date of decision:** 11 August 2016

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objections to the admission arrangements for September 2017 determined by the governing body for St Katharine's C.E. (VA) Primary School, Bournemouth.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), three objections have been referred to the adjudicator by parents, the objectors, about the admission arrangements (the arrangements) for admission in September 2017 to St Katharine's C.E. (VA) Primary School, (the school), a voluntary aided (VA) primary school for boys and girls aged 4 to 11 in Bournemouth. The objections refer to the removal, in the oversubscription criteria, of the criterion relating to church attendance without due consultation.
2. The local authority (LA) for the area in which the school is located is Bournemouth Borough Council. The LA is a party to this objection. Other parties to the objection are the school, the diocese of Winchester (the diocese) and the objectors.

### **Jurisdiction**

3. 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 objectors submitted the objections to these determined arrangements on 28 April 2016, 1 May 2016 and 5 May 2016 respectively. Two of the objectors have asked to have their identity kept from the other parties and they have met the requirement of regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of their names and addresses to me. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are 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:
  - a) the objectors' forms of objection dated 28 April 2016, 1 May 2016 and 5 May 2016;
  - b) the school's response to the objections, supporting documents and subsequent correspondence;
  - c) the LA's response to the objections and supporting documents;
  - d) the LA's composite prospectus for parents seeking admission to schools in the area in September 2016;
  - e) maps of the area;
  - f) the response of the diocese to the objections and its guidance for admissions;
  - g) confirmation of when consultation on the arrangements last took place;
  - h) copies of the minutes of the meeting of the governing body at which the arrangements were determined; and
  - i) a copy of the determined arrangements.

## **The Objection**

6. The objections refer to the removal of the oversubscription criterion which relates to church attendance. This criterion was removed by the governing body without the consultation usually required by the Code when changes are proposed to be made to admission arrangements. The school removed the criterion by way of a variation made in response to a determination made by the adjudicator in January 2016. The objectors suggest that the school has acted in way contrary to the Code, paragraph 1.44 of the Code which states that *"When changes are proposed to admission arrangements, all admission authorities must consult on their arrangements."*

## **Background**

7. The school is a VA Church of England primary school for pupils aged 4 to 11. The school's published admission number (PAN) for entry to the school at reception (YR) is 60 and it is oversubscribed with 145 applications for places in 2016, 85 of which were first preferences. The school currently has 498 pupils on roll and a capacity of 496.

8. The school last consulted on its admission arrangements between December 2014 and February 2015 for admissions in September 2016. The arrangements were determined by the governing body and duly published in line with the Code. Subsequently, the governing body determined that the arrangements should remain the same for admission in September 2017. The school admission appeals panel referred the arrangements to the Office of the Schools Adjudicator (OSA) in August 2015 and the subsequent determination ADA3054 was published in January 2016. The oversubscription criteria in arrangements under scrutiny by the adjudicator in ADA3054 can be summarised as follows:
  - a. Looked after and previously looked after children;
  - b. Catchment area children who have serious, medical, physical or psychological conditions;
  - c. Children with siblings attending the school;
  - d. Catchment area children with a parent who is an active member of:
    - i. The four churches whose parishes form the catchment area, specifically St Katharine's with St Nicholas, All Saints and St Christopher's; or
    - ii. A Christian church included in the list of Christian churches who requests admission on denominational grounds and provides relevant evidence. (*six other churches are named in the list.*)
  - e. Other catchment area children
  - f. Other children
9. The adjudicator determined that these criteria did not conform with the Code at three points in the arrangements, as follows:
  - I. In the arrangements, '*an active member of the church*' was defined as some-one "*attending worship at one of the churches at least twice a month for the previous two years before the deadline for admissions*". The supplementary information form (SIF) asked parents to make this statement and the priest to sign the SIF to confirm this. The referral to the OSA drew the adjudicator's attention to the fact that in exceptional circumstances, for example in the case of illness, the school allowed some discretion on the part of the priest to sign the form when the attendance had not fulfilled this criterion. The adjudicator determined that this discretion would be reasonable but it should be clearly defined in the arrangements so that everyone reading them would know that there was this element of discretion and also that the school should provide guidance (also published) to the

priests in their use of this discretion when signing the SIF. The adjudicator determined that the arrangements did not conform with paragraph 1.8 and 1.37 of the Code which state that “*Oversubscription criteria **must** be reasonable, clear, objective and procedurally fair*” and “*Admission authorities **must** ensure that parents can easily understand how any faith based criteria will be reasonable satisfied*”.

- II. The 2016 arrangements had been amended to include a new explanatory note to try to explain the discretion which could be used by priests in some circumstances. This note introduced the new term “*regular worshipper*”. Without a definition of this term in the arrangements the adjudicator determined that it did not conform with paragraph 1.37 of the Code because, parents would not easily understand how faith based criteria would be reasonable satisfied;
- III. In a change from the 2015 arrangements, the 2016 arrangements specified ten churches where it was possible to meet the active church membership requirements. Previously this had been possible in any church acknowledged by Churches together in England. The adjudicator determined that this did not comply with paragraph 14 of the Code which reads that “*In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.*” The determination states that the change was unfair to two distinct groups of families; those living in the area who had been attending a church which was not one of the ten named and those who move into the area from elsewhere where they had attended another church.

10. In addition, the determination outlined other areas of the arrangements which did not conform with the Code; that is; the definition of looked after and previously looked after children; and, the inclusion of a tie breaker. In relation to these latter matters, the arrangements have been varied in order to conform with the Code and they are not germane to the objection or to this determination.

11. By virtue of section 88K of the Act, the adjudicator’s decision is binding on the admission authority which is required to revise its arrangements in order to conform with the Code by a specified date. In this case, the date of 28 February 2016 was specified. Paragraph 3.6 of the Code explains that determined arrangements can be varied in order to give effect to a determination made by the adjudicator. Where arrangements are varied in these circumstances, the requirements as to consultation normally required before admission arrangements can be changed do not apply. The school’s governing body therefore met and resolved to vary the arrangements on 22 February 2016. The

governing body agreed revised arrangements which remove the criterion relating to church attendance. The arrangements accordingly now make no reference to church attendance.

12. The three objections consider the removal of any reference to church attendance in the arrangements without consultation is unfair and cited paragraph 1.44 of the Code. I have also considered whether the new arrangements meet the core requirements of paragraph 14 that all admission arrangements must be clear, objective and fair.

### **Consideration of Case**

13. The objections are from parents who attend churches regularly and who express dismay that church attendance has been removed from the arrangements without consultation and at such short notice. They each refer to the section of the Code which deals with consultation during the process of determining arrangements. One objector has been attending a named church since her daughter's christening and the parents have planned for many years for their daughter to go to a Church of England school. The objector makes the point that as the family live some distance from the school, albeit still within the catchment area, their child is unlikely to be offered a place at the school because the school is heavily oversubscribed and priority for admission would be given to children living nearer without reference to church attendance. The objector considers the removal of the criteria in February 2016 for the admission process which, for admission in September 2017 begins in September 2016 does not provide sufficient time for the family to re-plan their child's education. Another objector comes from a mixed faith family where the parents, a Muslim and a Christian, have made the specific decision for the family to attend a Church of England church and have looked forward to their daughter attending the school. They too live some distance from the school and admission is unlikely on distance grounds. These objectors make the point that the governors of the school debated these decisions without consultation and that the decision was eventually made by secret ballot.
14. In her response the chair of governors states that the changes to the arrangements were made following the publication of determination ADA3054 in January 2016. She reports that they were made in order to comply with the Code. She explains that she consulted the diocese and acted upon their advice to remove the church attendance criteria from the arrangements.
15. The diocese responded and said that the change in the arrangements was in response to the previous adjudication. The diocese expressed the view that they *"are entirely satisfied that the school acted appropriately in making the change in response to advice given, and that they are also upholding the Trust Deed of the school, which outlines that education was to be provided for the children within the*

*parish.*” The diocese was informed of the ongoing discussions and was made aware of the subsequent letter to parents and the publication of the amended arrangements on the school’s website.

16. The extraordinary meeting of the governing body on 22 February 2016 is well documented. Eleven governors were present. The chair of governors proposed the removal of criterion four (church attendance) and explained that it was recommended by the diocese. She explained that of the 150 schools in the diocese only four use church criteria in their arrangements. Governors commented that they understood that church criteria were allowed and that the criterion relating to church attendance was not the reason the policy was not compliant. Other governors felt that the policy did not reflect the trust deed of the school which states that the school is for children living in the parish rather than those attending the church. The local priest raised concerns for the families who had been going to church for the last few years and whether or not they would feel let down. Governors were reminded that it was their responsibility to make sure that the arrangements are compliant with the Code.
17. Due to the “*sensitive nature of the decision*”, it was agreed to put the proposal to a secret ballot and this was conducted by the Clerk to the Governors. The ballot resulted in a majority vote to remove the church criteria (7-4).
18. The LA, in its response, stated that it would not object to the removal of religious criteria but made no further comment on the objections.
19. The school was clearly right to take action in response to determination ADA3054 to vary its arrangements so that they would conform with the Code. The section of the Code which deals with the consultation process, as referred to by the objectors; (paragraphs 1.42 to 1.45) applies to requirements during the process of determination of arrangements and not to variations of the arrangements which occur after determination and publication. The governors were correct, therefore, that a full consultation at this stage is not required in order to make the amendments and they did not contravene paragraph 1.42 to 1.45 of the Code. I therefore do not uphold this element of the objection.
20. While the objectors did not refer to any other Code provisions, I have considered the objections against the requirements of paragraph 14 of the Code which states that “*In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.*” This paragraph is relevant whenever the arrangements are being considered.
21. The objections refer only to the criterion which has been removed from the arrangements and which related to church attendance. It was not, of course, for the adjudicator in ADA3054 to specify how the admission authority should amend its arrangements to conform with the Code; still

less to specify what the varied arrangements should provide. The adjudicator set out the ways in which the arrangements did not conform, but did not say that the inclusion of a criterion or criteria giving priority on the basis of attendance at worship was contrary to the Code. Indeed, the Code specifically permits a school with a religious character such as this one to have faith-based oversubscription criteria. I say this because it is clear that the school in varying its arrangements in order to conform with Code was not restricted to doing so only by varying them as it did. It could have chosen other ways to vary the arrangements which would have retained some priority for admission based on attendance at worship but which still addressed the findings in ADA3054. The governors chose not to take this course of action and following discussion with the diocese agreed to remove the whole criterion related to church attendance.

22. The question which remains is whether the amended arrangements are fair, clear and objective. They are now published as follows;

- 1) *“Looked after children or children who were previously looked after.*
- 2) *Children living in the Catchment Area who have a serious medical, physical or psychological condition which makes it essential that the child attends the preferred school rather than any other.*
- 3) *Children who, at the time of proposed admission, have a sibling attending the school.*
- 4) *Children living in the Catchment Area of the school*
- 5) *Other children”*

Appropriate definitions are included and relate to looked after and previously looked after children, serious medical, physical or psychological condition, Catchment Area and siblings.

23. The three points made by the adjudicator in the previous determination all related to the criteria relating to church attendance and the removal of this criterion has therefore addressed each of these issues. Parents are able to look at the arrangements and understand easily how places for the school will be allocated. They are therefore clear. They are similarly objective; they contain no unacceptable elements of subjective judgement.

24. I am of the view that the removal of the church attendance criterion could not be said to be “unfair”. The change in the arrangements will adversely affect some pupils and parents who have made choices based on arrangement as previously set out. All oversubscription criteria have the effect of benefitting some children at the expense of others in terms of priority for places at a school. It is an unfortunate but inescapable fact that when a school is popular and oversubscribed not

all who would like to attend will be able to do so. The previous determination drew the governors' attention to the fact that these arrangements did not comply with the Code and were therefore unlawful. Changes therefore had to be made and there is no obligation on the school to put in place arrangements which will reduce the impact on parents and pupils who had made choices on the basis of previously determined arrangements.

25. Whilst the objectors will be disappointed that church attendance has been removed from the criteria it is now the case that they can understand exactly how places will be allocated. The arrangements now conform with the Code and are fair and objective.

### **Summary of Findings**

26. The governing body revised the arrangements in February 2016 following a determination by an adjudicator. This was in line with paragraph 3.6 of the Code. This paragraph does not require consultation to be undertaken before the arrangements are varied and therefore I do not uphold this element of the objections. The resulting amended arrangements are clear, fair and objective and they conform with the Code.

### **Determination**

27. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objections to the admission arrangements for September 2017 determined by the governing body for St Katharine's C.E. (VA) primary school, Bournemouth.

Dated: 11 August 2016

Signed:

Schools Adjudicator: Ann Talboys