



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA2875

Referrer: A member of the public

Admission Authority: The governing body of St Cuthbert Mayne Junior School, Hemel Hempstead

Date of decision: 18 August 2015

Determination

In accordance with section 88 I(5) of the School Standards and Framework Act 1998, I determine that there are matters that do not conform with the requirements relating to admission arrangements for September 2015 and for September 2016 determined by the governing body of St Cuthbert Mayne Junior School.

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 arrangements within two months of the date of publication of this determination.

The referral

1. Under section 88I(5) of the School Standards and Framework Act 1998, (the Act), a matter has been referred to the adjudicator 19 May 2015 about the admission arrangements (the arrangements) for St Cuthbert Mayne Junior School (the school), a voluntary aided Catholic school for children aged 7 – 11 in Hemel Hempstead, Hertfordshire, in the Archdiocese of Westminster (the diocese) for September 2015. The local authority (LA) for the area is Hertfordshire County Council. The referral concerns the consultation that took place in 2014 before changes were made to the arrangements for September 2015. It also concerns the addition of an oversubscription criterion that gives priority to children who were baptised before they reached one year of age.

Jurisdiction

2. This is a voluntary aided school and the governing body of St Cuthbert Mayne Junior School is the admission authority. The 2015 arrangements were determined on 27 February 2014 by the governing body. The 2016 arrangements were determined on 26 February 2015. The referral for the 2015 arrangements was not made until 19 May 2015 because the referrer was unaware that the arrangements had changed. It was not possible to take this referral as an objection because the deadline for objections to be made about 2015 arrangements was 30 June 2014. Having had the arrangements brought to my attention I have used my power under section 88 I(5) of the Act

to review the arrangements for 2015 as a whole and I have also considered the arrangements that have been determined for September 2016.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code). The documents I have considered in reaching my decision include:

- a. the referral;
- b. the school's responses to the referral and supporting documents;
- c. the LA's comments on the referral;
- d. the diocesan comments on the referral;
- e. the LA's composite prospectus for parents seeking admission to schools in the area in September 2015; and
- f. the minutes of the meeting of the school's governing body held on 27 February 2014 when the governing body determined the arrangements for 2015 and on 26 February 2015 when the governing body determined the arrangements for 2016.

The referral

4. The admission authority is said not to have complied with the consultation requirements in the Code regarding changes to the oversubscription criteria and did not publish on the school's website a copy of their full proposed admission arrangements either before the determination or afterwards.

5. The new oversubscription criterion that was introduced giving priority to children baptised before their first birthday is not reasonable, objective or procedurally fair and disadvantages unfairly children from a particular social group.

Background

6. St Cuthbert Mayne Junior School takes children aged 7 – 11. The school has a published admission number (PAN) of 60 for Year 3, which is its normal year for admissions. The school says in its arrangements that it "*works closely with St. Rose's Infant School, which is our linked infant school. However, the two schools have separate application processes, and admission to St Rose's does not guarantee admission to St. Cuthbert Mayne*". The infant school also has a PAN of 60. In its submissions to me the school says that it also takes Catholic children from the local area who have been unable to gain a place at a local Catholic primary school.

7. For admissions in September 2015, the LA confirmed that there were 85 applications received for the school and of these 68 were first preference applications. Against the criteria shown below, 60 places have been allocated, 24 have been allocated under criterion 2 (siblings) and 36 under criterion 3

(local children).

8. The oversubscription criteria for both the 2015 and 2016 arrangements are as follows:

1. Catholic looked after children and previously looked after children
2. Practising baptised Catholic children who will have a sibling at the school at the time of admission
3. Practising baptised Catholic children resident in the local serving parishes
4. Other practising baptised Catholics
5. Baptised Catholics resident in the local serving parishes
6. Other baptised Catholics
7. Other looked after and previously looked after children
8. Other children with siblings in the school
9. Catechumens and members of other Eastern Christian churches
10. Practising Christians of other denominations whose parents wish them to have a Catholic education
11. Christians of other denominations
12. Children from non-Christian faiths whose parents wish them to have a Catholic education
13. Other children from non-Christian faiths whose parents wish them to have a Catholic education
14. Any other applicant

within each of the oversubscription categories priority will be given in the following order to children who are:

- i) children of staff (teaching and non-teaching) at St Cuthbert Mayne school who live at the same home address
- ii) pupils of St Rose's Infant School baptised before their first birthday
- iii) others baptised before their first birthday
- iv) pupils of St Rose's Infant School

Consideration of Factors

9. The referral concerns two matters, the first is the consultation that took place about the change to the 2015 arrangements and the second is the

introduction of the new criterion that requires baptism to take place before a child's first birthday.

10. I shall deal with the consultation first. The school said that it sent its proposed admission arrangements to the LA on 13 December 2013 and the LA confirmed that it placed these arrangements on its consultation website from 1 January 2014 until 28 February 2014. The school also sent a copy of the proposed arrangements to the diocese and to St Rose's Infant School marked for the attention of the governing body. The school said that it considers that by sending the revised draft to the local authority to be placed on the consultation website it fulfilled its responsibilities within paragraphs 1.42 to 1.45 of the Code. The governing body received two responses, one from the LA and one from the diocese. The governing body considered the responses at its meeting on 27 February 2014 and determined the arrangements including the changes that it had proposed.

11. Paragraph 1.43 of the Code says that for admission arrangements for 2015 and 2016 "*consultation **must** be for a minimum of eight weeks and **must** be completed by 1 March 2015*". The proposals were placed on the LA website from 1 January 2014 until 28 February 2014. The eight weeks minimum period was completed on the 26th February, which was the day before the governing body determined the arrangements. In this respect therefore, the school complied with the eight week minimum period for consultation.

12. Paragraph 1.44 of the Code sets out with whom the school **must** consult. One of these groups is "*parents of children between the ages of two and eighteen*". The school believes that by sending its proposed arrangements to the LA for display on its website fulfilled this requirement. The absence of any responses from parents concerning the change strongly suggests that parents were unaware that they needed to look at this website to find out about potential changes. The lack of responses might have been expected to cause the governors to question whether they had met the requirements for consultation.

13. The school is responsible for consultation and cannot delegate this to the LA in its entirety. Paragraph 1.45 of the code says that "*for the duration of the consultation period, the admission authority **must** publish a copy of the full proposed admission arrangements on their website...*" This does not appear to have been done. The school wrote to its feeder infant school and enclosed the proposed new arrangements marked for the attention of the governing body. The school did not ask its feeder infant school to inform its parents that there was a consultation available and where it was to be found. The school did not inform its own parents through its weekly newsletter and advise them to look at the changes proposed. Given that the school says that it recruits from other local schools, it did not communicate with parents at these other schools. It did not send information about the consultation to local playgroups and nurseries to inform parents who have children who had not yet reached school age and who might wish to apply for a place at the school in the future. The Code is not specific about how consultation is carried out but it is specific about who needs to be included in the consultation and I do not consider that this consultation complied with the requirement of the Code to consult with

parents.

14. Following the consultation period and the determination of the changes by the governing body, the changes were not placed on the school's website until October 2014. Paragraph 1.47 of the code says that "*once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and publish a copy of the determined arrangements on their website for the whole of the year*". The school did not comply with this paragraph of the Code as the determined arrangements were not posted until much later in the year. The 2015 admission arrangements were taken down from the website during the year in contravention of the Code but were subsequently reinstated. In August 2015, the 2014, 2015 and 2016 arrangements could be found by clicking on the "key information" tab on the school website's homepage. It was not obvious that this was a tab that could be clicked and it would be helpful to have a link from the more obvious "parent information" tab at the top of the web page.

15. I shall now turn to the changes that were made to the arrangements. There were two additions; the first was to add a priority within each criterion for children of staff. The Code in paragraph 1.39 permits admission authorities to give priority to children of staff at the school and provided that the priority is only given to staff at the school and there is clarity about which staff are included this criterion and proper consultation about its introduction has taken place, this complies with the Code.

16. The second change is about the requirements concerning baptism. The governing body has decided that it wishes to change the definition of baptism that it uses. Before the change there was no time period attached to baptism and all that was required was the evidence that baptism had taken place. The arrangements now give priority to children who have been baptised before their first birthday. In the minutes of the admissions committee meeting where this was discussed in January 2014 before going to the full governing body, there is a note that governors had become concerned about late baptisms. This is the only reason given for the proposed change and no further detail has been provided.

17. Paragraph 1.38 of the Code says "*admission authorities for schools designated as having a religious character **must** have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based admission arrangements...*" I looked for the diocesan guidance on admissions on its website and find that this has been withdrawn pending review. There is a summary available dated 2008 that says "*where there are sufficient Catholic places, schools should not use a higher test than 'Catholic'. A higher test of 'practising Catholic' may be used where there is an absolute shortage of places, recognised by the diocese. The only acceptable test of 'practising Catholic' is frequency of attendance at Mass as demonstrated on the diocesan priest's reference form..... It is for a priest to determine whether an applicant is practising..... Information relating to practice may not be sought from anyone other than the appropriate priest..... No additional information, not relevant to attendance at Mass, may be sought from any other person (except in*

relation to a criterion which gives a higher priority to those with a specific social, pastoral or medical need for a place at the school).”

18. The summary does not specifically refer to baptism but the diocese expects schools to use the test of “practising Catholic” that it describes in cases of oversubscription and that “no additional information” may be sought if it is not relevant to attendance at Mass. The school has decided to go beyond the “*acceptable test of practising Catholic*” and has introduced a higher test in respect of baptism. In order to implement this criterion it must seek additional information from a family. The reason the school has given for introducing this new criterion is because the governors have “a concern about cases of late baptism”. I have been shown no evidence of what this concern is and the impact that it may or may not have on the school.

19. Paragraph 1.38 of the Code also says the admission authority for a school with a religious character “**must** consult with the body or person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated”. The school consulted with the diocese over its arrangements and the diocesan response picked up on several issues but made no comment about the change to the requirement concerning baptism. In its response to my enquiries the school said “*the diocese has confirmed that it is permissible to give additional priority to children baptised before a certain age in accordance with Canon 867 of the Code of Canon Law*”. In a response to my enquiry about this referral, the diocesan education officer responded that she “*had been to the school and discussed these matters with them and fully supported the response sent by the school*”.

20. I am satisfied that the school has consulted with the diocese as it is required to do by the Code and that the diocese responded. The published diocesan guidance quoted above does not appear to support the school’s use of a more stringent test concerning baptism but I note that the detailed guidance has been withdrawn and is being reviewed. The diocesan written response to this referral says that it fully supports the school’s response. The Code requires a school to have regard to diocesan guidance. In this case the school has discussed the matter with the diocese and has the support of the diocesan representative for its arrangements and in this respect I conclude that the school has had regard to the diocesan guidance and has consulted with the relevant person concerning how membership or practice of the faith is to be demonstrated.

21. Paragraph 1.8 of the Code requires admission arrangements to be “*reasonable, clear, objective and procedurally fair and..... not disadvantage unfairly a child from a particular social or racial group*”. I have discussed the introduction of the new criterion for baptism in the context of diocesan advice. I have not found any evidence that the criterion is unreasonable, unclear or not objective. Nor have I found evidence that it is procedurally unfair.

22. I then considered whether a group of children is being disadvantaged. The parents of the children currently attending the infant school will have had a reasonable expectation that their children would transfer to the linked junior school. The PANs are the same and both the schools are Catholic schools. I

acknowledge that the school says that its admission arrangements are separate and there can be no guarantees of a place but I do not think this removes the reasonable parental expectation of a smooth transfer from one school to the next with the cohort of peers in a class.

23. Parents whose child had passed the baptism test to gain a place at the infant school, but who then does not pass the baptism test at the junior school because the rules have been changed, will feel that they have been treated unfairly because they did not have prior knowledge of this decision when they accepted a place at the infant school. Parents aware of the rule change in future will be able to decide about an application to the infant school with a full knowledge of the matter. The current cohort and the following two cohorts of children leaving the infant school were unaware of the change when they applied. If their child does not meet the changed baptism criterion and does not have a sibling in the junior school they will need to consider an alternative school for their child. I have already concluded that the consultation on the change did not meet the requirements of the Code as the school had failed to consult properly with parents and these factors together lead me to conclude that there is a small group of children for whom this change is unfair.

24. The arrangements for 2016 have been determined without further consultation because they are the same as the 2015 arrangements. My view on the 2016 arrangements is the same as my view on the 2015 arrangements.

Conclusion

25. I have looked carefully at the submissions made by the referrer, the school and the LA. I have also considered the relevant paragraphs in the Code. I set out the oversubscription criteria in paragraph 8 above. The school has 14 oversubscription criteria together with 4 sub criteria in order to allocate 30 available places. In my conclusions I begin by commenting that this is a very complex set of criteria to achieve this task.

26. I have concluded that the consultation on the arrangements did not comply with the Code. The change to the definition of baptism so that a child is given priority if he or she was baptised before their first birthday is not in line with the guidance from the diocese as it is summarised on the diocesan website. However, the change has been supported by the diocesan representative and the detailed diocesan guidance has been withdrawn from the website pending review. On this basis I have concluded that the school has had regard to the available guidance from the diocese and it has consulted with the diocese as required and that it does not contravene the Code in this respect.

27. I considered whether or not the change to the arrangements was fair. In general I did not find evidence of unfairness but I concluded that the children who are already attending the infant school and who were baptised after their first birthday have been treated unfairly by this change. They had a reasonable expectation that they could have obtained a place at the linked junior school.

28. The school has already allocated places for September 2015 using the changed criterion. The admissions authority needs to address the issues

raised and consider how it can mitigate the unfairness that it has created within the 2015 and the 2016 arrangements. The Code requires an admission authority to revise its arrangements within two months unless an alternative timescale is specified. This is a matter that needs to be addressed quickly and I consider that it is reasonable for this to be achieved within two months of the publication of this determination.

Determination

29. In accordance with section 88 I(5) of the School Standards and Framework Act 1998, I determine that there are matters that do not conform with the requirements relating to admission arrangements for September 2015 and for September 2016 determined by the governing body of St Cuthbert Mayne Junior School.

30. 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 arrangements within two months of the date of publication of this determination.

Dated: 18 August 2015

Signed:

Schools Adjudicator: David Lennard Jones