



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA2985

**Objector:** Suffolk County Council

**Admission Authority:** The academy trust for St Louis Catholic Academy, Newmarket, Suffolk

**Date of decision:** 9 October 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 trust for St Louis Catholic Academy, Suffolk.**

**I have also considered the arrangements in accordance with section 88I(5). I determine there are other matters that do not conform with the requirements relating to admission arrangements.**

**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 this determination.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998 (the Act), an objection has been referred to the adjudicator by Suffolk County Council (the objector and local authority), about the admission arrangements for September 2016 (the arrangements) for St Louis Catholic Academy (the school), an academy primary school for children aged between 3 and 11 years. The objection is to giving priority in the oversubscription criteria to children who have attended the nursery at the school.

### **Jurisdiction**

2. 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 academy trust, the admission authority for the school, on that basis. These arrangements were determined under section 88C of the Act by the school's governing

body, which is the admission authority for the school. 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. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

### **Procedure**

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
  - a. the objector's form of objection dated 29 June 2015;
  - b. the school's response to the objection, supporting documents and subsequent communications;
  - c. information from the Diocese of East Anglia (the diocese), which is the relevant faith body, on its guidance to schools;
  - d. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2016;
  - e. confirmation of when consultation on the arrangements last took place;
  - f. copies of the minutes of the meetings at which the governing body of the school discussed and determined the arrangements; and
  - g. a copy of the determined arrangements for 2016 sent to me.

### **The Objection**

5. The arrangements give priority in the oversubscription criteria to children who have attended the nursery that is part of the school. The objection is that this makes attending the nursery almost a prerequisite for being allocated a place at the school and this is unfair to those who cannot or do not wish to attend the nursery and so the arrangements do not conform with paragraphs 1.9e and 1.39B of the Code.

### **Other Matters**

6. In the course of considering the objection I reviewed the arrangements as a whole. The arrangements appeared not to conform with the requirements relating to admissions in various matters particularly relating to paragraphs 14, 1.8 and 1.9 of the Code. The information on admissions on the school's website was unclear. This included only out of date policies being available; information on children who have a statement of educational need or an education, health and care plan being inconsistent; information on children looked after and children previously looked after in the oversubscription criteria being inaccurate; and the oversubscription criteria being unnecessarily complex and including requirements which may not comply with the Code.
7. There is also information requested on the school's supplementary information form (SIF) which is not required to apply to the school's

oversubscription criteria and all applicants are requested to complete the form even if the information is not relevant to their application and this may not comply with paragraph 2.4 of the Code.

## Background

8. St Louis Catholic Academy is an academy primary school in Newmarket in Suffolk. It converted to become an academy on 1 April 2013 replacing the previous school. The governing body is the trust for the school. The school has a published admission number (PAN) of 45. All places at the school were allocated for September 2014 and September 2015 with ten on time applicants refused a place for 2015.
9. The oversubscription criteria are:
  - 1) *“Baptised Catholic Looked After (children in care), or Previously Looked After (children who were looked after, but ceased to be so because they were adopted or became subject to a child arrangements order or special guardianship order, immediately following having been looked after) children.*
    - a. *Children from the Nursery and have a Sibling (Brother or Sister, including step siblings, foster siblings & adopted siblings) who attends the school at school entry.*
    - b. *Children from the Nursery without a sibling. (Brother or Sister, including step siblings, foster siblings & adopted siblings)*
    - c. *Children who have a Sibling (Brother or Sister, including step siblings, foster siblings & adopted siblings) who attends the school at school entry.*
    - d. *All other applicants*
  - 2) *Baptised Catholic children.*
    - a. *Children from the Nursery and have a Sibling (Brother or Sister, including step siblings, foster siblings & adopted siblings) who attends the school at school entry.*
    - b. *Children from the Nursery without a sibling. (Brother or Sister, including step siblings, foster siblings & adopted siblings)*
    - c. *Children who have a Sibling (Brother or Sister, including step siblings, foster siblings & adopted siblings) who attends the school at school entry.*
    - d. *All other applicants*
  - 3) *All other Looked After (children in care), or Previously Looked After (children who were looked after, but ceased to be so because they were adopted or became subject to a child arrangements order or special guardianship order, immediately following having been looked after) children.*
    - a. *Children from the Nursery and have a Sibling (Brother or Sister, including step siblings, foster siblings & adopted siblings) who attends the school at school entry.*
    - b. *Children from the Nursery without a sibling. (Brother or Sister, including step siblings, foster siblings & adopted siblings)*

- c. *Children who have a Sibling (Brother or Sister, including step siblings, foster siblings & adopted siblings) who attends the school at school entry.*
  - d. *All other applicants*
- 4) *Other baptised children whose parents wish their child to have a Catholic education and who are willing for him/her to participate in the religious teaching and life of the school, in the following order of priority: -*
  - a. *Children from the Nursery and have a Sibling (Brother or Sister, including step siblings, foster siblings & adopted siblings) who attends the school at school entry.*
  - b. *Children from the Nursery without a sibling. (Brother or Sister, including step siblings, foster siblings & adopted siblings)*
  - c. *Children who have a Sibling (Brother or Sister, including step siblings, foster siblings & adopted siblings) who attends the school at school entry.*
  - d. *All other applicants*
- 5) *Other children whose parents wish their child to have a Catholic education and who are willing for him/her to participate in the religious teaching and life of the school, in the following order of priority: -*
  - a. *Children from the Nursery and have a Sibling (Brother or Sister, including step siblings, foster siblings & adopted siblings) who attends the school at school entry.*
  - b. *Children from the Nursery without a sibling. (Brother or Sister, including step siblings, foster siblings & adopted siblings)*
  - c. *Children who have a Sibling (Brother or Sister, including step siblings, foster siblings & adopted siblings) who attends the school at school entry.*
  - d. *All other applicants*
- 6) *Children whose health or social conditions would in the view of the Governors benefit from attendance at St. Louis Catholic Academy. Written evidence from a medical or social professional will be required.*
- 7) *All other applicants.”*

## **Consideration of Factors**

10. The number of places at the nursery is 39. The local authority points out in its objection that the difference between the school's PAN of 45 and the number of nursery places only leaves six places. The local authority said, *“We believe that these criteria unfairly disadvantage parents/carers who do not want to or cannot send their child to the nursery therefore leaving them with little or no chance of getting a place. It could also be intimated that for one child families and/or first child applications to the school it appears that attendance at the nursery will virtually be a prerequisite to getting admission in the reception class, and could therefore easily be considered to be unfair.*

*We believe parents should be able to consider their preference for nursery provision separately.”*

11. The local authority brought its concern about the priority given to attendance at the nursery as part of the oversubscription criteria to the school’s attention prior to making its objection. The school explained to me that it continued to use attendance at the nursery in its oversubscription criteria as it treats the nursery as an intrinsic part of the school so that the children get a good start on which the school builds. *“This provides consistency and continuity of educational provision to ensure that they are well prepared for Key Stage 1 and beyond. All children are given the opportunity to apply for Nursery, with the over-subscription criteria of Faith & Siblings in school at date of entry.”*
12. The Code does not prohibit giving priority to a child attending a nursery provision, but it does require arrangements to be fair as in paragraph 14 which says, *“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 objector specifically referred to paragraphs 1.9e and 1.39B of the Code. Paragraph 1.9e is that admission authorities **must not** *“give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including any religious authority. The exception to this is where parents pay optional nursery fees to the school or school-run nursery, for additional hours on top of their 15-hour funded early education, where children from the school nursery class or school-run nursery are given priority for admission to Reception.”*
13. Priority for children who attend a nursery is permitted in paragraph 1.39B which says, *“Admission authorities may give priority in their oversubscription criteria to children eligible for the early years pupil premium, the pupil premium or the service premium who:*
  - a) are in a nursery class which is part of the school; or*
  - b) attend a nursery that is established and run by the school.**The nursery **must** be named in the admission arrangements and its selection must be transparent and made on reasonable grounds.”* As the school has not used this permission to give priority to children who are eligible for the early years’ pupil premium then the arrangements do not fulfil the requirements of these paragraphs; the priority given by the school is for any child who has attended the nursery and not one who is eligible for the early years’ pupil premium. In these circumstances the terms of paragraphs 1.9e and 1.39B are not met.
14. The school says clearly on its website that parents of children who attend the nursery must apply for a place at the school and that attending the nursery does not guarantee a place at the school. The arrangements are designed, however, to encourage attendance at the nursery. It is whether this is fair and reasonable that I will explore in more detail.

15. There were 82 on-time preferences expressed for this school for September 2015 of which 46 were first preferences. The school has explained to me that for 2014 and 2015 all of those who were allocated places would have been allocated places whether the nursery criteria had been used or not. This is because the number of applicants who make the school their first preference has been similar to the PAN. If the school were further oversubscribed then attendance at the nursery would become increasingly important to the allocation of places at the school and children may be denied a place at the school because they did not attend the nursery.
16. The admission arrangements for the nursery are not publically available. The school has told me that the arrangements are the same as those for the school without the oversubscription criteria referring to the nursery. Nursery education is not compulsory education. Attending it is an activity. Paragraph 1.9i of the Code says that admission authorities **must not**, "*prioritise children on the basis of their own or their parents' past or current hobbies or activities (schools which have been designated as having a religious character may take account of religious activities, as laid out by the body or person representing the religion or religious denomination).*" Attendance at the nursery is not a religious activity laid out by the faith body. By prioritising children who have attended the nursery the school is taking account of past activities and thus does not conform with the Code.
17. Paragraph 1.8 of the Code says, "*Oversubscription criteria **must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.***" A parent may have a variety of reasons for their child not attending the nursery and to make attendance part of the oversubscription criteria is not reasonable or fair. It would be quite possible for a parent to investigate applying for the school and then discover that because their child had not attended the nursery that they would not be able to fulfil the admission criteria and therefore have a reasonable chance of being allocated a place. This is not fair or reasonable. The Code requires that arrangements are fair and reasonable with specific mandatory requirements in paragraphs 14 and 1.8. I uphold the objection.

### **Other matters**

18. I considered the arrangements as a whole and came to the view that there were other parts that did not conform with the Code and should be addressed. I will refer particularly to paragraphs 1.8 (see above) and 14 of the Code which says, "*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. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.***"

19. When I looked at the school's website in July 2015 it appeared to be out of date as there were no arrangements for 2015 or 2016 but had arrangements for 2013. Paragraph 1.47 of the Code says, "*Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website displaying them for the whole offer year (the school year in which offers for places are made).*" I note that the arrangements for 2015 are now available on the school's website but the arrangements for 2016 are still not available. The supplementary information form (SIF) is not available on the school's website and is required as part of the arrangements. The school does not conform with the Code in the matter of publishing its arrangements.
20. The school provides a summary of the arrangements on its admission page on its website. This is helpful as the arrangements are complex but the summary has no reference to previously looked after children. Children who have been looked after or who have been previously **must** have priority in the oversubscription criteria as required by paragraph 1.7 of the Code. The summary on the website is inaccurate and therefore unclear and needs to be amended.
21. The admissions page on the school's website says that a child with a statement of educational need which names the school will be allocated a place. The 2016 arrangements provided to me refer to a child with an education, health and care plan (EHCP) naming the school being allocated a place but makes no reference to a statement of educational need. As EHCPs are replacing statements of educational need and it is probable that no reception aged child will now have a statement of educational need, but the wording used by the school is inconsistent and this makes the arrangements unclear for parents.
22. The arrangements include in priorities 4 and 5 children of parents, "*who are willing for him/her to participate in the religious teaching and life of the school.*" This is unacceptable as it sets a condition of future behaviour as an admissions criterion. This is not reasonable or objective and so does not conform to paragraph 1.8 of the Code.
23. Paragraph 2.4 of the Code gives permission for the use of a SIF but says if a school uses a SIF it "***must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria.*" The arrangements give the impression that every applicant needs to complete the SIF. Priorities 3, 5 and 7 in the admission arrangements do not require the information requested in the SIF to be applied and therefore not all applicants should be required to complete the SIF. The SIF also asks for evidence of address, such as a utility bill and a copy of the birth certificate. These are not required to fulfil any of the oversubscription criteria and so cannot be requested.

24. The SIF also specifies the ‘*original*’ birth certificate. This does not conform with paragraph 2.4 and may also not comply with paragraph 2.5 of the Code which says, “*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 which would include information about the child’s parents.***” These matters do not comply with the Code.
25. Paragraph 14 requires arrangements to be clear and says that “*Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*” This is often achieved through simplicity. The arrangements here have seven oversubscription criteria and five of them have four subsections. These reduce the clarity of the arrangements and could mislead parents considering applying for a place at the school. Including the four sub-criteria within priority 1 (for baptised Catholic looked after and previously looked after children), for example, implies that the school believes there could be more than 45 looked after and previously looked after children for whom a place is sought, so their priority must be established. This is unnecessary and confusing as the school rarely, or ever, has an application for a baptised Catholic child who is looked after or has been previously looked after. Priority 3 for looked after and previously looked after children also has had no or very few applications and it is unnecessary and misleading to have four sub-categories to establish priority. The arrangements are unnecessarily complicated and this reduces their clarity with the risk of making them misleading; they do not meet the Code’s requirement in paragraph 14 for arrangements to be clear.

## **Conclusion**

26. I uphold the objection to the priority given in the oversubscription criteria to those who have attended the nursery at the school. This is because it is unreasonable and unfair to allocate places on the basis of an optional activity before the child is of compulsory school age and so the arrangements do not conform with the Code.
27. I have also considered the arrangements as a whole for admissions to the school in September 2016 and have concluded that aspects of the arrangements detailed above do not comply with the Code. With regard to all matters of non-compliance the Code requires the admission authority to revise its admission arrangements within two months.

## **Determination**

28. 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 trust for St Louis Catholic Academy, Suffolk.



29. I have also considered the arrangements in accordance with section 88I(5). I determine there are other matters that do not conform with the requirements relating to admission arrangements.

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

Dated: 9 October 2015

Signed:

Schools Adjudicator: Mrs Deborah Pritchard