



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA2880

Objector: A parent

Admission Authority: St. Joseph's College Edmund Rice Academy Trust,
Stoke-on-Trent

Date of decision: 24 September 2015

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for St Joseph's College for admissions in September 2016.

I have also considered the arrangements in accordance with section 88I(5) of the Act and there are matters which 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 make the revisions to 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 a parent (the objector) about the 2016 admission arrangements (the arrangements) for St. Joseph's College (the school). The objection raises issues related to the allocation of pastoral places, and the points system related to the religious practice requirements.

Jurisdiction

2. The terms of the academy agreement between the St. Joseph's College Edmund Rice Academy Trust (the trust) and the Secretary of State for Education require that the admissions policy and arrangements for the school are in accordance with admissions law as it applies to maintained schools. The arrangements were determined by the governing body on behalf of the academy trust which is the admission authority for the school on this basis.

3. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that it is within my jurisdiction to consider this objection. I have also used my power under section 88I of the Act to consider the

arrangements as a whole.

Procedure

4. In considering these matters 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 form of objection sent by the objector on 26 May and further clarification on 30 May 2015;
- b. a copy of the school's funding agreement;
- c. correspondence from Stoke-on-Trent City Council (the local authority) on 3 June and 2 July 2015;
- d. the school's response to the objection with attachments on 10 June 2015;
- e. a response from the Diocesan Education Service for the Archdiocese of Birmingham (the diocese) on 18 June 2015 with supporting documents including a letter to the school on 8 June 2015 ;
- f. further correspondence from the objector in the period 6 June to 4 August 2015;
- g. the draft admissions policy from the diocese sent on 3 July 2015;
- h. other draft admissions policies for secondary schools available on the diocesan website;
- i. further comments from the school in the period 2 July to 3 August 2015 including the revised arrangements and associated forms; and
- j. the minutes of a meeting held on 6 July 2015 between the school, the local authority and the diocese, sent by the school on 3 August 2015.

5. I arranged a meeting with the objector, and representatives of the school, the local authority and the diocese on 1 July 2015 (the meeting). Correspondence was submitted after the meeting as a result of my requests for further information and clarification, and this has been copied to the school, the local authority, the diocese and the objector as appropriate. I have considered the representations made to me at the meeting and the documentation and correspondence submitted before and after the meeting.

The Objection

6. The objection concerns whether or not the school's arrangements comply with the Code with respect to the absence of criteria for the consideration of pastoral places; the lack of clarity of the oversubscription criteria; and the religious practice requirements.

7. The objection to the 2016 arrangements included reference to the process followed by the school in applying its oversubscription criteria in a previous admission round. My role as adjudicator is to consider whether or not the arrangements comply with the Code and the law relating to admissions, but not the detail about any matters of process. Therefore, in this determination I do not consider concerns about the allocations process itself, nor any matters or details

related to individual applications or appeals.

Other Matters

8. In reviewing the arrangements as a whole I noticed that other matters appeared to contravene the requirements of the Code including lack of consultation by the admissions authority, the priority for looked after and previously looked after children not of the faith of the school, the lack of any priority for children of no faith, the published admission number (PAN) for Years 7 and 12, the sixth form arrangements, the religious practice form (RPF), and the priest's/ minister's reference form.

Background

9. The school converted to be a state-funded, independent academy school for boys and girls aged 11 to 19 years on 1 January 2011, replacing the predecessor voluntary aided school of the same name which ceased to be a maintained school on that date. The funding agreement confirms that the school has a planned capacity of 1,115 pupils including a sixth form of 400 places. As the predecessor school was a maintained grammar school designated as such under section 104 of the School Standards and Framework Act 1998 and the Education (Grammar School Designation) Order 1998, the school is permitted to continue to select its intake by reference to ability. The funding agreement confirms that the school *“shall be a selective school within the meaning of section 6(4) of the Academies Act 2010.”*

10. The funding agreement confirms that *“St Joseph's College Academy is a faith Academy.”* On its website, the school explains it was established by the Christian Brothers in 1932 and *“founded in Christian principles, the culture ... creates compassionate, confident, resilient and reflective learners with a strong sense of social justice. Students leave the college well-prepared for adulthood and with a strong sense of the role they must play to change the world for the better.”*

11. The Year 7 arrangements at the time the objection was made said that the school *“will admit up to 150”* and that *“St Joseph's College has no designated catchment area and will consider applications from any local authority.”* To be considered for a place, pupils must pass the Governors' entrance test which will take place on 25 and 26 September 2015. Parents will be informed by 9 October 2015 whether their child has passed the entrance test so as to allow parents sufficient time to make informed decisions about their school preferences before the closing date for secondary applications on 31 October 2015. Applicants who pass the test will also be sent a copy of the RPF to be returned to the school by 2 November 2015. The arrangements state that the RPF is required for all the oversubscription criteria except 1, 5 and 7.

12. If there are more Year 7 applications than the 150 places available, the arrangements stated that places will be prioritised according to the oversubscription criteria which I have summarised below:

- 1) Baptised Catholic looked after children and previously looked after children;

- 2) Children with a sibling at the school at the time of admission either in Years 7 to 11 or in the sixth form having attended for at least four years and have scored at least 7 points on the RPF. This criterion applies to all denominations - Catholic, non-Catholic Christian and non-Christian;
- 3) Seven pastoral places for baptised Catholic children who are unable, with good reason, to satisfy the requirements of criterion 5 in full;
- 4) Children of staff who have scored at least 7 points on the RPF. This criterion applies to all denominations - Catholic, non-Catholic Christian and non-Christian;
- 5) A minimum of 120 and a maximum of 130 places for baptised Catholic children allocated on practice of faith using the points system;
- 6) Christian looked after children and previously looked after children;
- 7) A minimum of 15 and a maximum of 23 places for Christian children allocated on practice of faith using the points system;
- 8) Non-Christian looked after children and previously looked after children
- 9) A minimum of 5 and maximum of 7 places for non-Christian children allocated on practice of faith using the points system.

The tie break was stated to be *“equal division of whoever lives closest within an inner catchment area and outer catchment area (if an odd number of places are available in the tie break, one place is awarded from the inner catchment area first followed by equal division).”*

13. The sixth form arrangements published on the school’s website at the time of the objection stated that the admission number for students from other schools will be a minimum of 55 each year. Students will only be admitted if, in the judgement of the Sixth Form team, a suitable course is available for them that is appropriate and meets their needs. Applicants must gain at least three B grades and three C grades at GCSE, including at least a grade C in English and in Mathematics. At a lower point, the sixth form arrangements also said that *“if there is oversubscription (i.e. over 120 students from other schools have applied to join year 12 by the applications deadline)” the criteria for selection*” will be as follows:

- 1) Looked after children will be given first priority;
- 2) Distance from the applicant’s home address to the front door of the brothers’ house on the main site will be used to decide which 120 applicants will be made an offer of a place. *“Distance will be measured as the crow flies using the U.K. postcode mapping system.”*

Consideration of Factors

14. The objection about the 2016 arrangements and further correspondence was initially not clear as the objector had used references to an earlier version of the Code and exemplified her concerns by using details of an unsuccessful appeal for a place at the school for admission in September 2015. At the meeting on 1 July 2015 it became apparent that the matters of concern to the objector about the arrangements for admissions to Year 7 in September 2016 were the lack of criteria or benchmarks for the consideration of pastoral places prioritised at oversubscription

criterion 3, and that the points system associated with the religious practice requirements and the faith-based oversubscription criteria are complex and hard to understand.

15. As a school designated as having a religious character, paragraph 1.36 of the Code permits the school to use *“faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed”*. Paragraph 1.38 states clearly that the admission authority *“**must** have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based admission arrangements, to the extent that the guidance complies with the mandatory provisions and guidelines of this Code. They **must** also 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.”*

16. Although the school’s funding agreement states that *“the relevant faith body is the Trustees of the property held in connection with the English Province of the Congregation of the Christian Brothers”* the school said in its response of 10 July 2015 that the Christian Brothers are the trustees of the school *“but it is the Diocese of Birmingham who provide us with our mandate for being an RC school and so they are the body we consult with for our criteria.”*

17. The diocese confirmed in its response of 18 June 2015 that *“no consultation on how the school measures practice of faith has been undertaken with the Diocese.”* The diocese said that it had given general guidance in January to all diocesan schools *“based on the requirements of the revised Code”* and had sent an email to all schools at the end of April to remind them *“that to comply with the Code [at paragraph 1.47] they needed to submit their determined 2016/17 policy by 1 May.”* The diocese said it first had sight of the school’s arrangements on 1 May 2015, and wrote to the school on 8 June 2015 with a list of *“specific and potentially serious concerns”* which it considered would *“need to be addressed as a matter of urgency.”* The school met with the local authority and the diocese on 6 July 2015 to resolve the issues identified in the letter of concern from the diocese and also the matters that had been discussed in the meeting I convened on 1 July 2015, and a copy of the revised 2016 arrangements was provided on 15 July 2015 after ratification by the admissions committee. However, as the school had not consulted with the diocese about *“how membership or practice of the faith is to be demonstrated”* at the time the objection was made, this was clearly a breach of the Code at paragraph 1.38.

18. The first matter of concern to the objector was the absence of criteria for the consideration of pastoral places. The objector said she had asked about the criteria for a pastoral place and was told by the school there were no criteria or benchmarks and that applications are assessed individually. The objector said that without any criteria families may find it difficult to prepare an application for a pastoral place, and she questioned how the school assesses the merits of an application for a pastoral place if there are no criteria or benchmarks for comparison.

19. Pastoral places were prioritised at oversubscription criterion 3 and refer to criterion 5. To seek priority for a pastoral place, families would have to refer to criterion 5, the points system, and to the definitions of “pastoral place” and “baptised

Catholic” in the “notes” section of the arrangements. I note that criterion 3 says pastoral places are for *“baptised Catholic children who are unable, with good reason, to satisfy the requirements of criterion 5 in full.”* Whereas note 6 states that *“pastoral places are only available when there is a compelling reason why compliance with the requirements under criterion 5 cannot be fulfilled.”* I consider that parents may be confused by the use of “good” in criterion 3 and “compelling” in note 6 to describe the reason for not meeting the requirements in full. Furthermore, to describe a reason as “good” appears to me to introduce an element of subjectivity, and the use of “compelling” may be more strongly subjective than “good”.

20. In its response to the objection on 10 June 2015, the school confirmed that the admissions committee of the governing body considers the applications which ask to be considered against the terms for pastoral places and that an officer of the local authority always attends and observes the meeting. From the data provided, in 2014 of the 12 applicants asking to be considered for one of the seven pastoral places, only four places were allocated, and in 2015 only four of the 11 applicants were allocated a pastoral place. The school also confirmed that pastoral places are not reserved for single parents, that each case is considered on its individual merits. However, without any clear assessment criteria or benchmarks, there is the risk that an element of subjectivity may be involved in making decisions regarding pastoral places.

21. The response from the diocese of 18 June 2015 also comments on the risk of decisions about pastoral places being subjective. I note that the diocese suggests that such decisions about pastoral places may be more appropriate for the family’s parish priest, rather than the admissions committee, but to ensure that such decisions would be objective and consistent, the school would still need to provide guidance about the assessment criteria. At the meeting the school said that it was looking at removing pastoral places because it was difficult to provide clear and objective assessment criteria for the allocation of pastoral places. I consider that clear guidance with respect to the priority for pastoral places in criterion 3 is required to comply with 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. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”* In addition, I conclude that criterion 3 breaches paragraph 1.8 which requires that *“oversubscription criteria **must** be ... clear, objective, and procedurally fair.”* On this basis I uphold the first aspect of the objection. I acknowledge that the revised 2016 arrangements no longer include as one of the oversubscription criteria any priority for pastoral places.

23. The second aspect of concern to the objector is that the points system, the religious practice requirements and the oversubscription criteria are complex and hard to understand, and may disadvantage children from single parent families. The objector explained further in her letter of 5 June 2015, and in the meeting, that the points system is not fair to all children because some single parent families may not be able to secure maximum points, particularly those having to work weekend shifts, and those without grandparents nearby, as these families may not have the child care or the flexibility to attend Mass every or most weeks, or to be involved in church activities.

24. As part of the issue about the oversubscription criteria, the objector expressed a specific concern that the children of staff of any denomination at criterion 4 have a higher priority than baptised Catholic children who are prioritised at criterion 5. Priority for the children of staff is permitted by paragraph 1.39 of the Code, and I note that the arrangements use exactly the same wording as paragraph 1.39. However, the objector had obtained the 2015 allocations data in a freedom of information request, and found that baptised Catholic children had needed at least 10 points to be allocated a place at the school, whereas in the 2016 arrangements the children of staff would only need to have at least seven points.

25. However, when I looked at the 2015 allocations data, I noticed that places for the children of staff were missing from the analysis I was aware that the school said in its response of 10 July 2015 that the 2016 arrangements were determined by the governing body on 26 February 2015 and uploaded to the school's website on 9 March 2015. The school added that it had consulted on "*the updated arrangements.*" I compared the 2016 arrangements with those of the 2015 admission round to ascertain the nature of the "updates" and found that priority for the children of staff had been included as a new, fourth oversubscription criteria in the 2016 arrangements.

26. In the meeting I asked for any evidence that the school had consulted on the change before the 2016 arrangements had been determined. I referred to paragraph 15(b) of the Code which states clearly that "*where changes are proposed to admission arrangements, the admission authority **must** first publicly consult on those arrangements.*" The school said in its response of 10 July 2015 that the local authority had been consulted by email on 20 January 2015, but in the meeting the local authority representative did not seem aware of any consultation about the change to the arrangements having taken place. In the same document, the school also said that the diocese had been consulted by email "*resent*" on 1 May 2015. However, this would mean that the diocese was consulted after the 2016 arrangements had already been determined on 26 February 2015, and after the deadline for completion of the consultation process. Paragraph 15(b) of the Code states "*for admission arrangements for entry in September 2016, consultation **must** be for a minimum of 8 weeks and **must** be completed by 1 March 2015.*" I note that the diocese wrote to the school on 8 June 2015, expressing concern that as neither the diocese nor the local authority had been consulted before the change was introduced, the school "*appears to be in breach of either section 1.42 of the Code if they [sic] have not undertaken a full consultation or section 1.44 of the Code if they have consulted, but failed to consult with the Diocese and the local authority.*"

27. The Code is clear that when changes to the arrangements are proposed, the school must comply with the consultation requirements detailed at paragraphs 1.42 to 1.45. In particular, paragraph 1.44 specifies the other parties, in addition to the local authority and the diocese, which **must** be consulted: the parents of children between the ages of two and eighteen; other persons in the area who may have an interest; all other admission authorities in the area; and adjoining neighbouring local authorities. Merely publishing the proposed arrangements on the school's website is not sufficient to satisfy the requirements of paragraph 1.44 as interested parties would not be aware of the consultation taking place and should not have to compare and contrast two sets of arrangements for themselves in order to work out the

changes proposed before being able to comment. As there is no evidence that the school had consulted any of the parties specified in paragraph 1.44, the school had deprived anyone from commenting about the changes to the arrangements before they were determined. The change was not lawfully made and therefore the priority for the children of staff must be removed. I acknowledge that the revised 2016 arrangements no longer include in the oversubscription criteria any priority for the children of staff.

28. The objector had expressed the broader concern that the points system, the religious practice requirements and the oversubscription criteria are complex and hard to understand.

29. I noticed that in the introductory paragraphs of the arrangements the school states clearly that *“St Joseph's College has no designated catchment area and will consider applications from any local authority.”* Yet, the tie break is stated to be *“equal division of whoever lives closest within an inner catchment area and outer catchment area (if an odd number of places are available in the tie break, one place is awarded from the inner catchment area first followed by equal division).”* However, the notes section refers instead to inner post code areas (any address with an ST4 or ST5 postcode) and outer post code areas (any address outside the ST4 and ST5 postcodes). I find the arrangements are confusing because it is not clear whether or not there is a catchment area, the terminology used is not consistent, and it is not clear from the wording how the tie break would operate. This lack of clarity is a breach of paragraph 14 of the Code which requires that *“admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are ...clear.”*

30. Paragraph 1.37 of the Code specifies that the admission authority *“**must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.”* The school invites applicants who have passed the entry test to complete and return the RPF which is used for the assessment of practice of the faith regarding all the oversubscription criteria except 1, 5 and 7. However, this is confusing as criterion 5 and 7 both say that children will be *“allocated on practice of faith using the points system.”* This lack of clarity with respect to the use of the RPF with the oversubscription criteria is a breach of paragraph 14 of the Code but also contravenes the Code at paragraph 1.8 which requires that *“oversubscription criteria **must** be ...clear.”*

31. The arrangements state that *“evidence for assessing practice of faith will be gathered from the religious practice form which includes a declaration of the pattern of religious practice to be completed by the parent(s). A robust audit of these declarations will be carried out by the school who will contact the applicant family's priest or minister of religion to confirm the pattern of religious practice.”* However, the RPF is not included in the 2016 arrangements. I accept that at the time of the objection, the school's website displayed a priest's reference form, RPF and an information sheet detailing how points would be allocated on the basis of the answers given on the RPF, but all these forms related to a previous admission round. Footnote 4 to paragraph 5 of the Code states that admission arrangements includes the *“criteria and supplementary information to be used in deciding on the allocation of school places.”* The school confirmed in the meeting that none of these

documents had been updated for the 2016 arrangements, and thus had not been made available at the time the 2016 arrangements were determined.

32. As the 2016 arrangements published at the time of the objection did not include the updated forms, I am not persuaded that parents would have sufficient information to “*easily understand how any faith-based criteria will be reasonably satisfied*” which contravenes paragraph 1.37 of the Code. I acknowledge that a copy of the updated priest’s/ minister’s reference form was provided by the school on 6 July and that the updated RPF and information sheet about the points system was included in the revised arrangements received by me on 19 July 2015.

33. The arrangements state that *the most simple and common understanding of practice for a Catholic is to observe the Church’s precept of attending Mass on Sundays*. The arrangements state further that the RPF “*sets out a simple points system which gives highest priority to pupils from families who attend Sunday Mass every or most weeks over a substantial period of time*” which is explained in note 2 as meaning “*at least three years*” but there is no indication from when the three year period should start.

34. During the meeting the school said it was the governing body which had decided that “*at least three years*” was a long enough time to demonstrate commitment to the faith. As already explained above, the governing body did not have regard to any guidance from the diocese when constructing the arrangements and had not consulted with the diocese “*when deciding how membership or practice of the faith is to be demonstrated*” which contravenes the mandatory requirements specified in paragraph 1.38 of the Code.

35. Note 1 in the arrangements says that “*the obligation to attend Sunday Mass also includes Saturday evening Mass*” which implies attendance at Sunday Mass and the Saturday evening Mass. This may be confusing for parents and needs to be amended as the obligation is to attend Mass on Sunday or the Saturday evening Mass, but not both.

36. The arrangements also state that the religious practice of applicants from other faiths will also be assessed according to frequency of attendance at their place of worship and that “*highest priority will be given to families from all faith groups whose frequency of attendance at Mass or place of worship is every or most weeks (10 points)*.” However, this statement does not make clear whether or not applicants from other faiths must also attend “*over a substantial period of time*” in other words, for three years, and this requires further clarification.

37. I note that the arrangements also state that “*a child and a parent who are [sic] or who have gone through the process of RCIC/RCIA, and have been accepted into the Catholic Church on or before the date of entry into the school, will be treated as Catholic.*” The Rite of Christian Initiation of Children (RCIC) and the Rite of Christian Initiation of Adults (RCIA) are the processes by which persons can “*come into full communion with the Catholic Church*” or in other words, become a Catholic. However, this statement is ambiguous because it is not clear whether the child and parent will be treated as “*baptised Catholics*” or “*practising Catholics*” and it is also not clear whether the requirement to have attended Mass or place of worship every

or most weeks for at least three years also applies. I asked at the meeting whether the child and parent newly initiated into the Catholic Church through RCIC/RCIA would also have to have attended Sunday/Saturday evening Mass every or most weeks for three years to be regarded as practising and therefore have the “*highest priority*” but the school’s answer was unclear. This lack of clarity contravenes paragraph 14 of the Code.

38. As points are allocated with respect to the regularity of attendance at Mass or other place of worship, which are then used in prioritising places at the school, the lack of clarity and consistency related to attendance at Mass/other place of worship is a further breach of paragraphs 1.8 and 14 of the Code.

39. The arrangements state that for Catholics only, an additional point will be available for “*commitment to Catholic education for a substantial period of time.*” The arrangements state clearly at note 2 that “*substantial period of time*” means “*at least three years*” but as there is no guidance about the meaning of the term “*commitment to Catholic education*” this lack of clarity in the arrangements is a further breach of paragraphs 1.8 and 14 of the Code. I note that the RPF asks the name of the current primary school so it would seem that the additional point for commitment to Catholic education would be awarded if the school attended is a Catholic primary school, but as the arrangements do not have any feeder schools and paragraph 1.9(b) of the Code states that admission authorities “*must not take into account any previous schools attended, unless it is a named feeder school.*” The question on the RPF about the primary school attended is asking for information not needed to apply the oversubscription criteria and therefore contravenes paragraph 2.4 of the Code which permits forms that request additional information “*only when it has a direct bearing on decisions about oversubscription criteria.*”

40. Also for Catholics only, there is an additional point for “*family involvement in church or religious related activity.*” The arrangements explain that in terms of religious practice, “*family is normally to be regarded as a practising Catholic family where at least one parent is a practising Catholic and is doing his or her best to hand on the faith to his or her child. Sometimes a different pattern of practice may be judged to be equivalent e.g. a grandparent or other appropriate extended family member may take on the responsibility to hand on the faith to the child.*” Note 3 states that “*the Governors can only consider family involvement in activities which are faith based (i.e. organised by, for or on behalf of the church/ religious community). The following is not an exhaustive list but such activities for parents and/or children might include: long term (at least 2 years) altar server, member of a church youth group, choir or folk group, reader at church, extraordinary minister of the Eucharist.*”

41. It seems to me that the activities identified in the arrangements at note 3 may be described as service activities. The local authority in its response of 3 June 2015 said that “*the issue of Catholic service is something we have raised with the school as a potential cause for concern. As the local authority, however, we have not given advice to the school in determining the Catholic credentials of applicants, but have instead suggested ... the Archdiocese ... may offer an appropriate lead.*”

42. The Code at paragraph 1.9(i) prohibits the prioritisation of children on the basis of activities other than for the permitted exception that schools 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.”* Therefore, unless the religious activities have been laid out by the faith body, which in this case is the diocese, then such activities would contravene paragraph 1.9(i).

43. The diocese has provided guidance to schools by means of model admission policies on its website and I have reviewed the model policies and the supplementary information forms that were available. The model policies refer to children being baptised Catholic and to the frequency of Mass attendance, but none of the documents include Catholic service activities. As I have found no evidence that the faith body has laid out the service activities identified at note 3 in the arrangements, I conclude that these activities are not within the exceptions permitted by paragraph 1.9(i) of the Code, and therefore the additional point for such activities is not lawful.

44. As well as being complex and hard to understand, the objector also said that the points system, the religious practice requirements and the oversubscription criteria may disadvantage children from single parent families due the lack of flexibility associated with work commitments and child care implications may prevent them from attending Mass every or most weeks or being involved in church activities.

45. The diocese in its response of 18 June 2015 offered the opinion that the oversubscription criteria are complex. In the earlier letter to the school of 8 June 2015, the diocese also expressed the view that the arrangements are *“not reasonable”* and in some sections go *“beyond fair in the demands ... placed on parents to enable their children to be awarded additional points within the admission criteria. The diocese said that “the school’s arrangements advise that practising Catholic families who are awarded additional points for practising will be given higher priority than families who do not meet that obligation, but gives no allowance for “impossibility” where the physical attendance at Mass is not possible due to the family’s specific circumstances. It is possible that a family could be deemed to be practising Catholic even if they do not attend Mass, but this judgement should be made by the family’s parish priest who is knowledgeable of their individual situation.”*

46. As the arrangements lack clarity on a range of matters, and because the religious practice requirements go beyond what is set out by the relevant faith body, I uphold the second part of the objection.

Other matters

47. In reviewing the arrangements I noticed that there were other aspects that appeared not to comply with the requirements relating to admission arrangements. I raised with the school the aspects below which appeared to me to contravene the Code and could be amended immediately by the school as a permitted variation under paragraph 3.6 of the Code. I offered the school the opportunity to make the amendments to comply with the Code, and agreed to note the progress in my determination.

48. Paragraph 1.7 of the Code requires that the highest priority in the school's arrangements **must** be given to *"looked after children and all previously looked after children."* As a school designated as having a religious character, paragraph 1.37 permits the school to *"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 arrangements contravened paragraph 1.37 of the Code because siblings (at criterion 2) and the children of staff (criterion 4) of *"all denominations - Catholic, non-Catholic Christian and non-Christian"* were prioritised before baptised Catholic children (criterion 5) so that children not of the Catholic faith had a higher priority than children of the faith. The arrangements also prioritised Christian looked after and previously looked after children (criterion 6) before non-Christian looked after and previously looked after children (criterion 8) which was a further breach of paragraph 1.37 because all other looked after and previously looked after children **must** be prioritised before any other children not of the Catholic faith. I acknowledge that the revised arrangements prioritise all non-Catholic looked after and previously looked after children after Catholic looked after and previously looked after children, baptised Catholic children with a sibling at the school, and other baptised Catholic children.

49. The oversubscription criteria prioritise only on the basis of faith. However, the school is required by paragraph 1.36 of the Code to admit applicants of another faith and no faith if there are sufficient places available. The last oversubscription criteria should therefore be for "other children" to encompass children of another faith and no faith. I acknowledge that the final oversubscription criterion in the revised arrangements now prioritises *"other non-Christian children"* but it may be helpful to use the term "other children" in order to avoid uncertainty for families about whether or not "non-Christian" means children of another faith and/or of no faith and the limitation of *"7 places"* needs to be removed.

50. Paragraph 1.2 of the Code states that *"as part of determining their admission arrangements, all admission authorities **must** set an admission number for each relevant age group"*. The PAN is the number of school places that the admission authority must offer in each relevant age group which for this school is Year 7 and Year 12. Therefore, the PAN needs to be clearly stated, but the Year 7 arrangements stated that the school will admit *"up to 150"* which is ambiguous. Furthermore, the Year 12 PAN is unclear because at the start of the sixth form arrangements it is stated to be 55, but at a later point it appears to be 120. The school agreed to review the PANs for each relevant year group. I acknowledge that in the revised arrangements sent on 15 July 2015, the PAN for Year 7 is clearly stated to be 150 and the Year 12 PAN is 55.

51. Other aspects of the sixth form arrangements that did not comply with the Code included:

- i. the first oversubscription criterion only gives priority to looked after children, but paragraph 1.7 of the Code states clearly that *"the highest priority **must** be given to looked after children and all previously looked after children."* In the revised arrangements I acknowledge that the first oversubscription criterion now includes previously looked after children; and

ii. the other oversubscription criterion prioritises all other applicants on the basis of distance, but it is not clear that priority will be given to applicants living nearest to the school. Furthermore, there is no tie breaker to decide who would have the higher priority for admission if the distance between two applicant's homes and the school is the same. I acknowledge that in the revised arrangements it is clear that priority will be given on the basis of the shortest distance, and that the final tie breaker will be random allocation conducted by the local authority using a computerised system.

52. External students applying to the sixth form are required to complete an application form. However, the form does not comply with the Code as follows:

i. Paragraph 2.4 of the Code permits forms that request additional information *"only when it has a direct bearing on decisions about oversubscription criteria."* Requests for information about the applicant's gender, religion, sibling(s) at the school, primary school attended, career plans, and personal information about the parents or guardians must therefore be removed from the form as this information is not required to operate the oversubscription criteria. I acknowledge that the amended application form does not require this additional information;

ii. The requirement for students to bring a copy of their latest report to a course discussion meeting (if mock grades are not available) contravened paragraph 1.9(g) of the Code which states that admission authorities ***"must not take account of reports from previous schools..."*** This request has been removed from the amended form;

iii. The requirement for students to list hobbies, extracurricular activities, responsibilities and positions held contravened paragraph 1.9(i) of the Code which states that admission authorities ***"must not prioritise children on the basis of their own ... past or current hobbies or activities"*** and also contravened paragraph 2.4 as this information was not required to operate the oversubscription criteria. I acknowledge that the amended form does not include this requirement; and

iv. Either the applicant or a parent may be expected to sign the form, but both signatures must not be required. The amended form now makes clear that it should be signed by either the student or parent.

53. The religious practice form available on the school's website at the time of the objection did not comply with the code in the following respects:

i. The requirement to attach a passport sized photograph of the applicant to the form did not comply with paragraph 1.9(o) of the Code which states that admission authorities ***"must not request photographs of a child for any part of the admissions process, other than as proof of identity when sitting a selection test."*** I acknowledge that this requirement has been removed from the updated form;

ii. Paragraph 2.4 of the Code permits forms that request additional information *"only when it has a direct bearing on decisions about oversubscription criteria."* A practising Catholic family has *"at least one parent who is a*

practising Catholic” therefore the form must not ask for the details and religion of both parents. This section has been removed entirely from the form;

iii. The requirement for the date and place/parish of First Communion and Confirmation must be removed as Baptism is the only sacrament referred to in the oversubscription criteria. I acknowledge that the form has been appropriately amended regarding this matter;

iv. The form requires both parents to sign a declaration that *“if my/our son/daughter is awarded a place”* I/we will *“fully support the ethos of the school as outlined in the prospectus and abide by the school rules and regulations.”* Paragraph 2.4 of the Code states clearly that admission authorities **“must not ...use ... forms that ask for (d) parents to agree to support the ethos of the school in a practical way and (e) both parents to sign the form.”** I acknowledge that the requirement for both parents to sign the form has been removed from the amended form and that the declaration has been modified appropriately.

54. The priest’s/minister’s reference form available on the school’s website at the time of the objection does not comply with the Code as follows:

- The form provides a space for a child’s passport sized photograph to be attached. The space for a photograph of the child must therefore be removed from the form as this breaches paragraph 1.9(o) of the Code. Since the meeting the school has amended the form to remove the space for a photograph; and
- The form also provides space for the priest or minister to add additional comments but no guidance is provided about what comments might be appropriate, and it is not clear how any comments would be used by the committee when assessing the application. The space for comments must be removed as this could lead to the exercise of discretion which would contravene paragraph 14 of the Code which requires that *“the practices and the criteria used to decide the allocation of school places are... objective.”*

Conclusion

55. The lack of clear guidance in the arrangements for families seeking priority for a pastoral place makes oversubscription criterion 3 unclear, which contravenes the requirement of paragraph 1.8 of the Code that *“oversubscription criteria **must** be ... clear, objective, and procedurally fair.”* Accordingly, the arrangements are unclear which contravenes paragraph 14 of the Code 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. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”* I uphold the first part of the objection.

56. The points system, religious practice requirements and oversubscription criteria are complex and may be hard for parents to understand, and the religious practice form and priest’s/minister’s reference form had not been updated to support the arrangements at the time the objection was made. The admissions authority

failed to consult before making a change to the arrangements, in breach of paragraphs 1.42 to 1.45 and 15(b) of the Code, and failed to consult the diocese as the relevant faith body when deciding how membership or practice of the faith is to be demonstrated, in breach of paragraph 1.38 of the Code. Furthermore, the religious practice requirements appear to go beyond the guidance of the relevant religious authority and may disadvantage some families in particular circumstances. Accordingly, I uphold the second part of the objection.

57. In addition, while I was reviewing the arrangements I noticed that there were other aspects that appeared not to comply with the requirements relating to admission arrangements, so I used my power under s88I of the Act to review the arrangements as a whole for full compliance with the Code. I acknowledge that the school, the local authority and the diocese have worked together promptly to make many of the amendments necessary to improve the clarity of the 2016 arrangements and supporting forms, but some aspects still do not comply with the requirements relating to admission arrangements.

Determination

58. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for St Joseph's College for admissions in September 2016.

59. I have also considered the arrangements in accordance with section 88I(5) of the Act and there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

60. 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 make the remaining revisions to its admission arrangements within two months of the date of this determination.

Dated: 24 September 2015

Signed:

Schools Adjudicator: Ms Cecilia Galloway