



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA2602

Objector: A member of the public

Admission Authority: The Governing Body of St Joseph's Catholic Primary School, Epsom.

Date of decision: 26 June 2014

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body of St Joseph's Catholic Primary School, Epsom.

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 as quickly as possible.

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 member of the public, the objector, about the admission arrangements (the arrangements) for St Joseph's Catholic Primary School, (the school), a voluntary aided school for pupils of age range 4-11 years for September 2015. The objection is to the oversubscription criteria, particularly that which specifies worship at St Joseph's Church (the church) and the supplementary information form (SIF) which, the objector contends, breach the School Admissions Code (the Code) in a number of ways in that they are not reasonable, clear or procedurally fair, are discriminatory and do not comply with relevant legislation.

Jurisdiction

2. 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 objector submitted the objection to these determined arrangements on 22 April 2014. The objector has met the condition of regulation 24 of the School

Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012, which requires that any person or body making an objection who wishes to remain anonymous must provide their name and address so that they are known to the Office of the Schools Adjudicator. 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.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the Code.

4. The documents I have considered in reaching my decision include:

- the objector's email of objection dated 22 April 2014 and subsequent correspondence;
- the school's response to the objection and supporting documents;
- the response of the faith body, the Diocese of Arundel and Brighton (the diocese);
- Surrey County Council's, the local authority, (the LA) composite prospectus for parents seeking admission to schools in the area in September 2014;
- a map of the area identifying relevant schools;
- confirmation of when consultation on the arrangements last took place;
- copies of the minutes of the meeting of the governing body at which the arrangements were determined;
- a copy of the determined arrangements;
- the latest report by Ofsted into provision and standards at the school (July 2013); and
- the inspection report by the diocese of Denominational Education under Section 48 of the Education Act 2005 (October 2013).

5. I have also taken account of information received during a meeting I convened on 5 June 2014 at the school.

The Objection

6. The objector argues that the oversubscription criterion which specifies worship at the church breaches the Code in a number of ways.

7. First with reference to paragraph 1.9 which identifies "*It is for admission*

*authorities to formulate their admission arrangements, but they **must not**....”*
include:

- I. Ability - that it imposes a measure of the ability of parents to organise weekly visits to church for their child (1.9d);
 - II. Financial support – that there is pressure on parents to pay a contribution as it is expected when attending mass (1.9e);
 - III. Discrimination – that weekly attendance at mass may disadvantage children or families with special educational needs or a disability (1.9h);
 - IV. Interviewing – that the parish team interview parents when the parents seek a signature to show attendance at mass (1.9m);
 - V. Voluntary contributions – that parents are asked for voluntary contributions both directly and via Gift Aid as part of the church attendance required for priority in the admission criteria (1.9n).
8. Second, the objector raises matters of the SIF;
- I. The use of attendance slips requires additional information (2.4). It asks for the names, addresses and religions of both parents.
 - II. The additional notes to support the use of the SIF are unclear (1.4)
9. In addition the objector raises the following breaches of the Code at paragraph 1.8 *“Oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.”*
- I. Discrimination -
 - a. Those who prefer to attend ethnic chaplaincies are disadvantaged, that is families from ethnic minorities;
 - b. families who live in other parishes may attend the church favouring the more mobile and affluent;
 - c. families who live further away and do not have a car will be disadvantaged.
 - II. Transparency -
 - a. The role of the parish priest is unclear, for example the school does not show membership of the admissions committee;
 - b. There is no opportunity for parent to see any comment the priest might make about the family on the SIF.
10. The objector also argues that the school has not paid due regard to the

guidance from the diocese (1.38) which advises, for example, that criteria should involve residency in a parish not worship at a particular church.

11. The objector raises other matters, for example about other schools' oversubscription arrangements, the nearby private kindergarten and a community dispute which are outside of my jurisdiction and on which I make no further comment.

Background

12. The school is increasing in size to become a two form of entry primary school which is sited next to the church. The school was found to be 'good' when visited last by Ofsted and is oversubscribed. The inspection of denominational education in October 2013 found the school to be outstanding. It reported on the ethnicity of pupils as *"Around half of the pupils are White British and there are a number of families from the Philippines, Brazil, Spain and Italy represented. A high number of pupils speak English as an additional language with only a small percentage of these being at an early stage of language development."*

13. The oversubscription criteria are, in summary:

1. Baptised Catholic looked after children or previously looked after children.
2. Baptised Catholic children who practise at St. Joseph's Catholic Church, Epsom.
3. Baptised Catholic children who practise their faith in another Catholic Parish.
4. Other baptised Catholic children.
5. Other looked after children or previously looked after children
6. Children who are members of Eastern Orthodox Churches.
7. Children of families who are members of other Christian denominations that are part of Churches Together in England.
8. Children who are members of other faiths.
9. Any other children.

Priority within the Oversubscription Criteria:

The governors will apply the following cascading order of priorities within any of the above criteria when applications exceed the number of places available and it is necessary to decide between applications through a priority ranking:

- i. Exceptional social or medical need which make the school particularly suitable for the child in question. Strong and relevant evidence must be provided by an appropriate professional authority (e.g. qualified medical practitioner, education welfare officer, social worker or priest).

- ii. For Oversubscription Criteria 2 or 3 above - The strength of evidence of practice of the faith as demonstrated by the level of the family's mass attendance on Sundays. This evidence must be provided by the parent/carer and be endorsed by a priest at the church(es) where the family normally worship. Applications will be ranked in the order shown on the Supplementary Information Form i.e. firstly those attending mass weekly or at least 3 times a month, then once or twice a month, then less than once a month, then those who do not attend.

Consideration of factors

14. I have considered the objections in turn.

15. 1.9 d) selection by ability: The objector argues that organising frequent attendance at mass is a test of the ability of the parent. The admission arrangements of the school state that pupils will be admitted "without reference to ability or aptitude".

16. Sub paragraph 1.9 (d) is intended to prevent selection by ability of the child. The objector is placing too broad an interpretation on 'ability' in this context. I do not uphold this part of the objection.

17. 1.9 e) *"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 objector has submitted evidence to show that the church requests donations both for the church and the school. The Gift Aid notice on the church website indicates this; reference is also made to amounts of money collected at mass.

18. The objector argues that, as attendance at the church and frequency of worship there are essential for admission to the school, these requests for payment place a financial burden on parents and therefore breach the Code.

19. The diocese responds, *"Both St Joseph's (as a voluntary aided school) and the parish (like any other) need to raise funds. Gift Aid is a facility that allows a further 25p to be added by the Government to donations. The collections taken in church and donations to the school are all voluntary; there is no tie to the admissions process."* The school is of a similar view.

20. This particular sub paragraph of the Code says that schools may not give priority *"on the basis of any practical or financial support parents may give"*. I agree with the objector that attendance at the church and frequency of worship there are essential for admission to the school and that donations are sought during these visits; I do not find however that admission is based on these payments for it is possible to attend the requisite number of masses without payment and the admission authority would not know which parents had made donations.

21. The objector further argues that these financial matters breach the Code at 1.9 n) as admission authorities may not *"request financial*

contributions (either in the form of voluntary contributions, donations or deposits (even if refundable) as any part of the admissions process”.

22. Clearly voluntary contributions are collected by the church; the school does not request them. However, the contributions are shared with the school and the arrangements are such that a child will not get a place unless they attend mass at least three times a month. For September 2014 all places went to applicants with the maximum designated attendance at mass. There is then a very close link between the requesting by the church of voluntary contributions, for example when the collection bag is passed to worshippers, and obtaining a place at the school.

23. I note that this sub paragraph was intended to deal with other matters where contributions might be requested, for example a fee to take a test. However in this case a parent will not get admission to the school unless they attend at least three times a month a place where they will be asked for a voluntary contribution. The notice on the church’s website links parish / school as recipients of donations and says specifically that school donations will be made to “the Governors fund”. The governors are the admission authority. I consider it may be arguable that this situation is in breach of the Code but am minded that it contributes rather to the findings on transparency and objectivity which follow later in this determination.

24. The objector argues that weekly attendance at mass may disadvantage children or families with special educational needs or a disability and be in breach of the Code at paragraph 1.9 h).

25. The school argues that the arrangements do not discriminate against families with special needs because:

- pupils with a statement of special educational needs naming the school are admitted under a different procedure;
- because the church is accessible and has disabled access;
- because priority within each criterion is given to exceptional social or medical need.

26. This last statement is within the model policy of the diocese. However the criterion in the model policy to which this priority applies has residence in the parish not worship at a particular church. So, in the diocesan model, a child resident in the parish with exceptional social or medical needs would be prioritised after children of the faith who are looked after or previously looked after. At the school however, a child would then have to be worshipping at the church to have the priority applied. As a consequence, a baptised Catholic child resident in the parish but unable to practice at the church because of a medical or social need would be considered under criterion 4, ‘Other baptised Catholic children’ and prioritised within that criterion. This may not be what the admission authority intended but it is what has occurred. I find then that these arrangements may disadvantage families with a disability or special educational needs and do not comply with the Code at paragraph 1.9 h).

27. Interviewing – that the parish team interview parents when the parents seek a signature to show attendance at mass (1.9m). The school asserts that the role of the parish team is only to verify attendance. I accept that some conversation may take place during this interaction but there is no evidence that this constitutes an interview. I do not uphold this part of the objection. However I comment further on the use of the attendance slip when considering the supplementary information form.

28. The objector raises matters of the SIF;

I. The use of attendance slips require additional information (2.4) that are used for consideration of the SIF; it asks for the names, addresses and religions of both parents; and

II. the additional notes to support the use of the SIF are unclear (1.4).

29. I share the view of the diocese that the use by the church of a means to verify attendance is not a breach. However the SIF asks for details of both parents when paragraph 2.4 indicates that the signature of one parent and therefore one parent's details are sufficient.

30. I do further find the SIF and accompanying notes not as clear as they might be, the criteria refer to the child worshipping at the church and the notes refer to family. At my meeting I asked what was intended and the school indicated that the child should worship.

31. Family members are defined in the notes as parents and siblings. However a parent looking at the over subscription criterion might think a child who attended with a family member for example a grandparent would meet the criterion but the notes would indicate not.

32. In addition the SIF has no place for the comments of the priest to verify attendance. The school's explanation is that it more efficient for all concerned for the school to receive the forms from the parents then to "batch up" the forms and then send them off to priest rather than parents make individual appointments. This may be more efficient but it is less transparent; parents do not have the opportunity to see what, if anything, the priest may have indicated about them or their attendance at the church. The school explained that if the parents' view of attendance and the church were inconsistent one of the parish team would speak with the parents. I find this process does not meet the required test for transparency and clarity in the process and is in breach of the Code.

33. The objector raises the involvement of the priest in the admission process and other matters as a breach of the Code at 1.38 "*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 oversubscription criteria.*"

34. The diocesan guidance is that priests should not be part of the admission committee for a school. I have scrutinised minutes of admission

committee at the school and find he is not. I do not uphold this part of the objection.

35. The guidance from the diocese is that criterion should say 'resident in the parish' not worship at a particular church; it says

"Residence in a parish allows for worship elsewhere, e.g. ethnic chaplaincies. Governing bodies should not require worship in a particular parish because:

- Those attending ethnic chaplaincies may claim discrimination under the Equality Act. Not all chaplaincies have a church or permanent base, but they are a 'parish community' for a significant number of Catholic families. For the purposes of admission arrangements, an ethnic chaplaincy should be considered as a parish.*
- Families in parishes where there is no school may leave their parish to worship in the named parish, so increasing their chances of a place. This favours the more mobile and has an adverse effect on the life of some parishes;*
- There is no requirement for this in Canon Law."*

36. These matters of discrimination are raised by the objector and he adds that families who live in other parishes may attend the church favouring the more mobile and affluent families who live further away and those who do not have a car will be disadvantaged. In addition members of ethnic communities may prefer to attend an ethnic chaplaincy or not want to take a very young child to mass.

37. The school's response is that the church *"hosts a mass in Portuguese each Sunday. Otherwise our ethnic communities practise as one at St Joseph's"*.

38. The school had no evidence that the ethnic communities resident in the parish did indeed all worship at the church. I agree with the diocese and the objector in this matter that there is the possibility of discrimination in these arrangements.

39. The guidance also gives a model SIF that includes a space for priest comments.

40. In my meeting at the school, the governors attributed the difference between their policy and that of the diocese to an administrative error as they had not seen the diocese's response to their admission arrangements. They said had they done so they would have considered the policy and aligned it with the guidance both in the matter of the oversubscription criteria and the SIF.

41. While I accept this account from the school, the guidance was available from the diocese and the obligation on the governors is to have regard to it, they did not do so are consequently in breach of the Code at paragraph 1.38.

Conclusion

42. The objector has raised a number of objections with reference to the Code at many points. The objections centre on the oversubscription criterion 'attendance at the church' and the SIF. I have sought to deal with the objections as made, upholding some and rejecting others. I summarise my findings as follows:

43. I do not uphold the parts of the objection that relate to: selection by ability; priority on the basis of financial support; interviewing; and disregarding diocesan advice that the priest should not be part of the admissions committee as I am satisfied that matters that would contravene the Code if they occurred do not take place.

44. I uphold the objections that relate to;

- discrimination that potentially arises from requiring attendance at the church rather than residency in the parish;
- transparency, both in the matter of voluntary contributions and the lack of opportunity for parents to see the priest's comments on the SIF;
- clarity in relation to guidance to the SIF about whose attendance at the church is required to meet the criterion;
- details required on the SIF; and
- failure to consider, and therefore give due regard to, the guidance from the diocese.

45. The school explains this arose from an administrative error; I accept this explanation. Nonetheless, I find these arrangements do not comply with the Code for this and other reasons given in the determination above.

Determination

46. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by the governing body of St Joseph's Catholic Primary School, Epsom.

47. By virtue of section 88 K(2), the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.

Dated: 26 June 2014

Signed:

Schools Adjudicator: Jill Pullen