



DETERMINATION

Case reference: REF3345

Admission Authority: The Governing Body of St Boniface Roman Catholic Primary School, Wandsworth

Date of decision: 24 October 2017

Determination

I have considered the admission arrangements for September 2018 for St Boniface Roman Catholic School, Wandsworth in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that 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 revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that the arrangements must be revised by 28 February 2018, with the exception of the aspects of the arrangements summarised in paragraph 24 of the determination. These aspects of the arrangements must be revised by 1 December 2017.

The referral

1. Under section 88I(5) of the School Standards and Framework Act 1998, (the Act) the admission arrangements (the arrangements) for St Boniface Roman Catholic Primary School (the school), for which the governing body is the admission authority, have come to the attention of the adjudicator.
2. In April 2017, an objection was referred to the adjudicator about the admission arrangements of Holy Ghost Catholic Primary School (ADA3280). During the course of my consideration of this objection, it was drawn to my attention that the arrangements for St Boniface Roman Catholic Primary School, which is located close to Holy Ghost School, may not conform with the requirements relating to admission arrangements. I have decided to use the power conferred under section 88I (5) of the Act to consider whether this is the case.
3. The local authority for the area in which the school is located is

Wandsworth Borough Council (the local authority). The body representing the religious denomination of the school is the Catholic Diocese of Southwark (the diocese).

Jurisdiction

4. These arrangements were determined under section 88C of the Act by the school's governing body, which is the admission authority for the school, on 2 February 2017. I am satisfied it is within my jurisdiction under section 88I(5) of the Act to consider them as a whole.

Procedure

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
6. The documents I have considered in reaching my decision include:
 - a. a copy of the determined arrangements;
 - b. the diocese's guidance to schools on admissions;
 - c. the responses of the school's governing body, the local authority and the diocese to the referral and supporting documents;
 - d. a map of the area identifying relevant schools and parish boundaries; and
 - e. extracts from the minutes of the meeting at which the governing body of the school determined the arrangements.

The Referral

7. Whilst I was considering the objection to the arrangements of Holy Ghost School, the diocese drew my attention to its guidance to schools, which states that "*giving priority for those worshipping in a named Parish must not be used.*" The arrangements for Holy Ghost School give priority for places to those who attend Mass regularly at Holy Ghost Church. The oversubscription criteria of St Boniface School were also said not to follow this guidance in a similar way. I considered that this may be a breach of paragraph 1.38 of the Code, which states that,

*"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."*

Other Matters

8. Having had the arrangements brought to my attention, in relation to giving priority for those worshipping in a named Parish, I was concerned that they contained what I considered may be further breaches of the requirements of the Code. I therefore sought the comment of the

governing body concerning these matters in addition to that raised by the diocese. The further matters were as follows:

- a note defining previously looked after children did not reflect the introduction by the Children and Families Act 2014 of child arrangement orders, which replaced residence orders, as laid out in paragraph 1.7 of the Code;
- priority was given to children enrolled in the catechumenate ahead of looked after children and previously looked after children who are not Catholic, which appeared to me to be in breach of paragraph 1.37 of the Code which states, in relation to schools designated with a religious character,

*“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”*; and
- some parts of the Supplementary Information Form (SIF) did not appear to be relevant to making decisions about oversubscription criteria. Paragraph 2.4 of the Code makes clear that SIFs **must** only seek information when it has a direct bearing on decisions about oversubscription criteria.

Background

9. The school is a voluntary aided school for children aged four to eleven. Its Published Admission Number is 50 and it is generally oversubscribed. The oversubscription criteria can be summarised as:
 - (i) Catholic looked after and previously looked after children.
 - (ii) Baptised Catholic children who have one or two parents who are practising Catholics who live in St Boniface Parish and attend Mass at St Boniface Church.
 - (iii) Baptised Catholic children who have one or two parents who are practising Catholics who are not included in category (ii).
 - (iv) Baptised Catholic children who live in St Boniface Parish who are not included in category (ii).
 - (v) Other baptised Catholic children.
 - (vi) Children enrolled in the catechumenate.
 - (vii) Other looked after and previously looked after children.
 - (viii) Children who are members of Eastern Orthodox Churches.
 - (ix) Children of families who are members of other Christian denominations.

- (x) Children who are members of other faiths.
- (xi) Other children.

The arrangements state that the following priorities will be applied in order if there is over-subscription within any “*category*”: (a) siblings, (b) acute medical or exceptional need, (c) children of teachers in the school and (d) straight line distance. Where distance measures are identical, priority will be determined at random.

Consideration of Case

10. The school gives priority for places to children whose parents live in the Parish of St Boniface and attend Mass at St Boniface Church. The latter part of this provision is contrary to the guidance provided by the diocese, which states that there is no requirement to attend a particular church in Canon Law and that such a criterion could discriminate against those who attend “ethnic chaplaincies” outside the parish. There is no concern in the diocesan guidance about priority being given to those who live in a parish.
11. Paragraph 1.38 of the Code places an obligation on the school with respect to the diocesan guidance on admissions. The paragraph begins as follows:

*“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, to the extent that the guidance complies with the mandatory provisions and guidelines of the Code.”*
12. The meaning of the term “*have regard*” was clarified in High Court by Mr Justice Cobb in a judgment about the London Oratory School (Governing Body of the London Oratory v The Schools Adjudicator [2015] EWHC 1012 (Admin)). Mr Justice Cobb held to “*have regard*” to guidance from their religious authority does not mean that admission authorities are obliged to follow such guidance, but that they must have a “*clear reason*” with a “*proper evidential basis*” for a decision to depart from diocesan guidance.
13. The governing body gave some consideration to the diocesan guidance at its meeting on 2 February 2017, when the admission arrangements were determined. There is a brief mention in the minutes of some practical difficulties that might arise if the diocesan guidance were to be followed. These included the different approaches used by priests to confirm Catholic practice and that an increase in the number of applicants with priority for a place under the second oversubscription criterion might result in some siblings of children currently at the school, who have priority under the third criterion, not being allocated a place. It was agreed that no change would be made in the arrangements for 2018, but that the issue should be considered in relation to the arrangements for 2019.

14. When invited to comment on this referral, the headteacher and the interim chair of governors provided further explanation. They made reference to,

“complaints about some Catholic practitioners seeking the evidence of practice from parishes (especially ethnic churches) where the assessments may be more lenient.”

It was felt that it was fairer that priority for places under the second oversubscription criterion should be *“assessed by the same measure”*, that is, attendance at St Boniface Church.

15. The headteacher and chair of governors also emphasised that,

“all ethnic groups were represented across the school and that therefore the additional requirement to worship was not prejudicial to particular ethnic groups.”

The area of the school is experiencing continuing demographic changes and the governing body,

“will be looking at the admission arrangements to ensure that, with these changing circumstances, the social, economic and ethnic mix that has long been a feature of St Boniface will continue. They will be looking closely at the Diocesan Model Policy for guidance on the admission arrangements for 2019-2020.”

16. I recognise that there may be some practical challenges for the school if they were to follow the diocesan guidance, particularly in ensuring a consistency of approach between churches when confirming Catholic practice. There may also be some transitional effects with respect to siblings of children currently at the school. I do not, however, consider these challenges provide a *“clear reason”* for not following the guidance.

17. I do not accept the school’s argument that the fact that children from different ethnic groups attend the school means that the requirement to attend Mass at St Boniface Church is not *“prejudicial to particular ethnic groups.”* Families living in the parish of St Boniface who choose to attend ethnic chaplaincies outside the parish have a lower priority for places. The choice to attend an ethnic chaplaincy may therefore reduce the chances for such families of obtaining a place at the school. The diocese says that its guidance aims to remove the possibility of a claim of *“discrimination under the Equality Act 2010.”* The school has not addressed this concern.

18. Therefore, I find that the arrangements are in breach of paragraph 1.38 of the Code. The school has not provided a clear reason with a proper evidential basis for not following the diocesan guidance. I have also considered the arrangements of two neighbouring schools: Holy Ghost Primary and St Anselm’s Primary (Case references: ADA3280 and REF3344) and have determined that they too do not follow the

diocesan guidance and have not met Mr Justice Cobb's test for departing from it. Although St Boniface Primary has not mentioned these schools in its response to the referral, the other schools consider that a collective approach to amending their arrangements should be undertaken, as they interlock to some extent. I agree. All three schools are in breach of paragraph 1.38 of the Code as they are departing from diocesan guidance without a clear and proper reason. The Code requires them to amend their arrangements. In order for appropriate analysis of the effect of making changes to its arrangements to be made, followed by consultation in accordance with the Code's requirements, I determine that these changes should be made by 28 February 2018, that is, in respect of admissions in September 2019.

19. I turn now to the other matters that I considered might breach the requirements relating to admission arrangements. With the assistance of the local authority, the school corrected the note relating to previously looked after children.
20. In relation to the priority given to children enrolled in the catechumenate ahead of looked after children and previously looked after children who are not Catholic, the school indicated that it was following guidance provided by the diocese. The "*Model Admissions Policy*" provided within the diocesan guidance on school admissions includes the same order of priority used in the school's arrangements for children enrolled in the catechumenate and non-Catholic looked after and previously looked after children. Elsewhere in the diocesan guidance the definition for membership of the Catholic Church for school admission purposes is "*Baptism or reception into the Church.*"
21. Children enrolled in the catechumenate do not meet the definition for membership of the Catholic Church. Indeed, a child who had been baptised or received into the Catholic Church would no longer be a member of the catechumenate. I consider that such children cannot be regarded as "*of the faith*" and must be prioritised after "*other (that is, non-Catholic) looked after and previously looked after children*", as required by paragraph 1.37 of the Code. The arrangements are therefore in breach of the requirements relating to admissions. Paragraph 1.38 of the Code, quoted above, makes clear that admission authorities are required to have regard to guidance provided by the school's religious authority only to the extent that it complies with the mandatory provisions and guidelines of the Code. In this respect, the diocesan guidance does not so comply and the requirement to have regard to the guidance does not apply.
22. The SIF, which is completed by applicants seeking priority for a place under one of the faith-based criteria, asks the Parish Priest to indicate whether "*the practice of the family*", with respect to attendance at Mass, is "*regular*", "*occasional*", "*irregular*" or "*unknown*". However, the oversubscription criteria and supporting notes only refer to "*regular*", which is defined as weekly, attendance at Mass by one or two parents. Other categories of attendance at Mass do not appear at any point within the oversubscription criteria. The request for information about

attendance at Mass, other than whether it is regular (that is, weekly) by one parent or not, is therefore in breach of paragraph 2.4 of the Code, as it is not required in order to apply the oversubscription criteria. I consider that it is reasonable to require the governing body to make the necessary changes to the arrangements to remedy these breaches reasonably quickly. I therefore determine that the changes must be made by 1 December 2017.

Summary of Findings

23. The arrangements give priority to Catholic children with at least one parent who lives in St Boniface Parish and attends Mass at St Boniface Church. This is contrary to the diocese's guidance, which requires the highest priority (after Catholic looked after and previously looked after children) to be given to practising Catholics who live in the parish. I do not consider that the school has provided a clear reason with a proper evidential basis for departing from the guidance. I therefore find that the arrangements are in breach of paragraph 1.38 of the Code, which requires admission authorities to have regard to guidance on admissions provided by its religious body. I have come to a similar judgment in respect of two neighbouring schools and determine that this aspect of the arrangements of the three schools should be revised by 28 February 2018.
24. Children enrolled in the catechumenate are given a higher priority than non-Catholic looked after and previously looked after children. This is in breach of paragraph 1.37 of the Code. The SIF used by the school requests information that is not required in order to apply the oversubscription criteria and is therefore in breach of paragraph 2.4 of the Code. I have concluded that the changes required here can be made by 1 December 2017.

Determination

25. I have considered the admission arrangements for September 2018 for St Boniface Roman Catholic School, Wandsworth in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that there are matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.
26. 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 the determination. In this case I determine that the arrangements must be revised by 28 February 2018, with the exception of the aspects of the arrangements summarised in paragraph 24 of the determination. These aspects of the arrangements must be revised by 1 December 2017.

Dated: 24 October 2017

Signed:

Schools Adjudicator: Peter Goringe