



DETERMINATION

Case reference: ADA3308

Objector: Worcestershire County Council

Admission Authority: The Governing Body of St James' Church of England Primary School, Malvern

Date of decision: 10 October 2017

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2018 determined by the governing body of St James' Church of England Primary School, Malvern, Worcestershire.

I have also considered the arrangements in accordance with section 88I(5) and find there are other 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.

The referral

- 1. Under section 88H(4) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by the local authority (the objector), about the admission arrangements (the arrangements) for St James' Church of England Primary School (the school), a voluntary aided school with a Church of England religious character for children aged four to eleven years old for September 2018. The objection relates to a number of elements in the admission arrangements which the objector believes do not comply with the School Admissions Code (the Code).**
- 2. The local authority for the area in which the school is located is Worcestershire**

County Council. The local authority is the objector and is a party to the objection. The other parties to the objection are the Diocese of Worcester (the diocese) which is the designated religious authority for the school, and the school's governing body.

Jurisdiction

3. 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 an objection to these determined arrangements on 15 May 2017. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
 - a) the objector's form of objection dated 15 May 2017;
 - b) the school's response to the objection and supporting documents;
 - c) the comments of the diocese on the objection;
 - d) the local authority's composite prospectus for parents seeking admission to schools in the area in September 2017;
 - e) a map of the area identifying relevant schools;
 - f) confirmation of when consultation on the arrangements last took place;
 - g) copy of an extract from the minutes of the meeting at which the governing body determined the arrangements;
 - h) the school's email of 26 July 2017 with a copy of its varied arrangements;
and
 - i) the arrangements as published on the school's website.

I have also taken account of information received during a meeting I convened on 19 July 2017 at the offices of the Diocese of Worcester. The chair of governors of the school was present at the meeting together with the headteacher, the personal assistant to the Director of Education and Group Secretary of the Diocesan Education Team and the Mainstream Admissions

Officer for the local authority.

The Objection

6. The admission arrangements, as originally determined, set out eight oversubscription criteria with a section of definitions and notes about other elements of the admissions process. The objection was that:
 - the oversubscription criterion relating to *“the active involvement of parent and/or child in the work and worship of a community of any other established religious faith. A leader or representative of the religious community should provide written confirmation. If this information is missing the criterion is not met”* does not comply with paragraphs 1.4 and 1.37 of the Code; and
 - it is not for the school to determine what constitutes active involvement in another faith. The objector says that this part of the admission arrangements does not comply with paragraph 1.38 of the Code.

Other Matters

7. When I reviewed the arrangements, I noted the following ways in which they appeared not to conform with the Code (paragraphs 2.16; 2.14; 1.13; and 1.7 as list below). These were subsequently discussed at the meeting:
 - the information about deferred and part-time schooling in reception year (YR);
 - the arrangements about waiting lists;
 - the arrangements for measuring the distance of the child’s home from the school including where a child may live part of the week with each parent; and
 - the reference to previously looked after children.

Background

8. The school is a Church of England voluntary aided primary school for 4 to 11 year olds. The published admission number (PAN) for admission to YR is 15 and the school has a Department for Education assessed capacity of 105. The school last consulted on its admission arrangements between November 2012 to January 2013. The school’s admission arrangements were determined by the full governing body on 4 April 2017. I note that this is after the deadline for determining arrangements for admission in September 2018 which was 28 February 2017, but this does not affect the status of the determined arrangements or my jurisdiction to consider the arrangements and the objection made to them.

9. The school's original arrangements had eight oversubscription criteria followed by more information about the terms used, appeals, late applications, waiting lists, school entry, admission of children outside their normal age range and in-year admission. The oversubscription criteria were (in summary):
- 1) Relevant looked after and previously looked after children
 - 2) Children for whom this is the catchment area school and have a sibling at the school
 - 3) Children for whom this is the catchment area school
 - 4) Siblings of children at the school
 - 5) Children for whom this is the nearest school
 - 6) Members of St James' Church defined by (as set out in this criterion):
 - (i) Commitment/attendance at St James'
 - (ii) Members at a Church of England church
 - (iii) Members of another Trinitarian Church
 - (iv) Members of other established religious faiths
 - 7) Children with special medical or social reasons
 - 8) Other children by distance from home to school.
10. The governing body varied its determined arrangements in response to the objection (copy of revised arrangements forwarded by the local authority on 9 June 2017) and further varied its arrangements following the meeting on 19 July 2017 and sent me a copy of those arrangements on 26 July 2017. An admission authority is permitted to vary its arrangements in order to give effect to a mandatory provision of the Code by virtue of paragraph 3.6 of the Code. I have considered the objection against the arrangements in force at the time the objection was made as that is what the Act requires me to do. In exercising my power under section 88(I) of the Act I have considered the arrangements as they were at 26 July 2017 which is also how they appear on the school's website at the time of completing this determination.
11. These varied arrangements have addressed all aspects of the objection but they have not addressed the matters I raised in paragraph 7: deferred and part-time schooling; waiting lists; measuring distance from home to school; and previously looked after children. In addition, the arrangements as varied have introduced provisions which do not comply with the Code which I shall set out below in more detail.

Consideration of Case

12. The first aspect of the objection refers to criterion 6(iv) relating to children of other established faiths and quotes the following: *“The active involvement of parent and/or child in the work and worship of a community of any other established religious faith. A leader or representative of the religious community, should provide written confirmation. If this information is missing the criterion is not met.”* The objector says that there is no definition provided by the school as to what would be considered under this category and what constitutes *“work and worship of”* or what is meant by *“established religious faith”*. The objector also comments that *“This does not appear to be an either or option too, which would be work or worship, the wording implies both are to be completed yet there is no definition of what this involves.”* The objector says that these parts of the admission arrangements do not comply with paragraphs 14, 1.37 and 1.38 of the Code.
13. The diocese, as the religious authority for the school, stated in its response that it treats each of its schools as unique and does not offer a one size fits all generic style of advice but offers advice on a school by school basis should it be sought. There is, of course, no requirement on a religious authority for a school to issue guidance. The Code is specific in that schools have to have regard to any guidance from the relevant designated religious body, but the absence of such guidance does not prevent a school with a religious character from having faith-based arrangements although it does have certain consequences in terms of what those faith-based arrangements may contain.
14. Paragraph 14 of the Code 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.”* Paragraph 1.37 states that *“Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonable satisfied.”*
15. Paragraph 1.38 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 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. Church of England schools **must**, as required by the Diocesan Boards of Education Measure 1991, consult with their diocese about proposed admission arrangements before any public consultation.”*

16. As observed by the objector, the terms “*work and worship*” and “*established religious faith*” are not defined. They are hence not clear and, therefore, are not compliant with paragraph 14 of the Code. They are also not in conformity with paragraph 1.37 of the Code as parents would not be able to look at the arrangements and know whether their own practice met the school’s requirements as to active involvement in work and worship or, indeed, whether their faith fell within what the school meant by “*established religious faith*” as this term is not defined.
17. The term work and worship – even undefined as it is – indicates taking part in some activity in addition to worship or it would not say work and worship (my underlining for emphasis). Paragraph 1.9i of the Code provides that admission arrangements “**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)**”. However, there is no diocesan guidance on these matters so the school cannot take account of religious activities which might fall within “work” even if this term were defined. I uphold this part of the objection.
18. The objector said that it was not for the admission authority to decide what constitutes active involvement in a faith. I have already dealt with the question of the clarity of active involvement. However, the objector was also arguing that some external body other than the admission authority should be responsible for deciding what the test of religious practice or affiliation should be to meet this criterion. This is not the case. It is the responsibility of the admission authority to determine its admission arrangements, including (for a school with a religious character) the nature of any faith-based oversubscription criteria. It remains therefore for the admission authority to decide what test of religious practice or affiliation to employ for both the denomination of the school and any other faiths or denominations to whom priority is given. In doing so, of course, it must have regard to any guidance from its own faith body and must also meet all requirements relating to admissions. I do not uphold this aspect of the objection.
19. The school has varied its arrangements and removed the oversubscription criterion relating to other established religious faiths. I now turn to the matters I identified when I used my power under section 88I to consider the arrangements as a whole. In the following paragraphs, I am concerned with the arrangements as varied.
20. Under School Procedure the arrangements say “*Children can start school in the September after their 4th birthday. At St James’ CE Primary School there is one intake each year in September. The school is prepared to have flexible arrangements in building up to coming full time. This may be discussed with the Headteacher after formal acceptance to the school.*” Paragraph 2.16b) sets out that “*the child’s parents can defer the date their child is admitted to the school until later in the school year but not beyond the point at which they reach*

compulsory school age..”. Paragraph 2.16c) of the Code says that “*where the parents wish, children may attend part-time until later in the school year but not beyond the point at which they reach compulsory school age.*” The terms “*one intake each year*” and “*prepared to have flexible arrangements*” could be interpreted that deferred and part-time attendance is at the discretion of the headteacher rather than a legal right. This is incompatible with the Code.

21. Paragraph 2.14 of the Code deals with waiting lists and among other things, provides that admission authorities **must** maintain a waiting list until at least 31 December of each school year of admission. The school’s arrangements on the website refers twice to waiting lists: the notes section says “*in the event of oversubscription a Waiting List for a place in Reception 2018-2019 will be maintained until 31 July 2018..*”. Further down the arrangements, and in answer to a question about waiting lists, the arrangements state “*St James’ CE Primary School will, if required, keep a waiting list which will be maintained until the end of the academic year.*” The references do not comply with paragraph 2.14 of the Code on waiting lists but also do not comply with paragraph 14 of the Code which sets out that “*...admission authorities **must** ensure that the practices and 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.*” These arrangements are not clear about waiting lists and thus not compatible with the Code.
22. Where distance from home to school is part of the school’s arrangements, paragraph 1.13 of the Code provides that “*Admission authorities **must** clearly set out how distance from home to school will be measured, making clear how the ‘home’ address will be determined and the point in the school from which all distances are measured. This should include provision for cases where parents have shared responsibility for a child following the breakdown of their relationship and the child lives for part of the week with each parent.*” The arrangements set out two different measures where distance is an issue: oversubscription criterion 5 measures whether St James’ is the nearest school and “*The measurement will be from the postcode of the school to the postcode of the child’s home address. It will be measured using Google Maps,*” Oversubscription criterion 8 sets out “*Pupils who live **nearest** to the school by the shortest straight line distance. The measurement will be taken using the GeoCode Points for each property and the GeoCode point for the School. The Governing Body will utilise the Local Authority software package called Arcview GIS to determine distance. Ordnance Survey supplies the co-ordinates that are used to plot an address within this system.*” While it is open to the school’s governing body to decide what measure should be used for determining distance from home to school, parents may be puzzled by the two measures and thus the arrangements do not comply with paragraph 14 where the allocation of places should be “*fair, clear and objective*”. There is no reference to where a child may live in two homes for part of the week and thus, the section does not

comply with the Code.

23. Paragraph 1.7 of the Code sets out that “*All schools **must** have oversubscription criteria for each ‘relevant age group’ and the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and all previously looked after children.*” The school’s arrangements do make this requirement clear in the first oversubscription criterion but in the notes section refers only to looked after children. All references to looked after children must also include previously looked after children in order to comply with the Code. Oversubscription criterion 6 of the varied arrangements provides that: “*A child in a family who are members of St James’s Church as defined by:*” followed by three sub-categories of which only the first refers to commitment/attendance at St James. The other two sub-categories refer to commitment/attendance at a Church of England church and commitment/attendance at another Trinitarian Church. This section may be confusing to parents as it is difficult to see how you can be a member of another Trinitarian Church as well as St James. This section is not clear and not compliant with paragraphs 1.37 and paragraph 14 of the Code, both references set out in paragraph 14 above.
24. Again, in relation to oversubscription criterion 6, all three sections say that a child needs to “*show a regular commitment/attendance at...*”. It is not clear whether commitment is separate from attendance and, if it is, how that commitment will be measured. The sections ask for letters from the parish priest or minister which “*must include written confirmation of a history of at least monthly attendance for a minimum period of a year prior to the date of application.*” The word “*include*” could suggest that something other than attendance could be required. By asking for letters, rather than a Supplementary Information Form, there is the possibility that the parish priest/minister could include information other than attendance about the child and/or parent. This is therefore unclear and does not conform with paragraph 14 of the Code. In addition, a parent would not be able to look at the arrangements and understand easily whether their own practice met the school’s faith based requirements as required by paragraph 1.37 of the Code.
25. The Code requires that the admission authority vary its arrangements in order to remedy the breaches of the Code set out above. As I have noted, the varied arrangements have addressed the matters identified by the objector. The governing body now needs to address the remaining matters where the varied arrangements do not meet the Code’s requirements and to vary its arrangements to adopt new arrangements and then to publish these on its website.

Summary of Findings

26. I have considered all elements of the objection and I find that the arrangements do not conform to the Code in one respect of the objection. I have not upheld the

other aspect of the objection. After a meeting with the parties the school submitted a varied set of arrangements which addressed the issue raised by the objector. However, the varied arrangements do not conform to the requirements relating to admissions in a number of ways as set out in this determination. The Code requires the admission authority to vary its arrangements in order to conform with this determination.

Determination

27. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2018 determined by the governing body of St James' Church of England Primary School, Malvern, Worcestershire.
28. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.
29. 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.

Dated: 10 October 2017

Signed:

Schools Adjudicator: Mrs Lorraine Chapman