



DETERMINATION

Case reference: ADA3310

Objector: Worcestershire County Council

Admission Authority: The Governing Body of St George's Church of England Primary School, Worcester

Date of decision: 26 September 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 George's Church of England Primary School.

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 George's Church of England Primary School (the school), a voluntary aided school with a Church of England religious character for children aged 4 to 11 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 of Worcester 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) copies of the minutes of the meeting at which the governing body determined the arrangements; and
 - h) a copy of the determined arrangements.

I have also taken account of information received during a meeting I convened on 19 July 2017 at the Diocese of Worcester offices (the meeting). The headteacher of the school was present at the meeting together with the vice chair of the governing body, 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 set out six oversubscription criteria with a section of definitions and notes about other elements of the admissions process. The objection was that:
 - the criterion relating to the admission of children with special health or social need does not comply with paragraphs 14 and 1.16 of the Code;

- the oversubscription criterion relating to *“the active involvement of parent and/or child in the work and worship of any other established religious faith...”* does not comply with paragraphs 14, 1.37 and 1.38 of the Code;
- it is not for the school to determine what constitutes active involvement in another faith. The objector says that these parts of the admission arrangements do not comply with paragraph 1.38 of the Code; and
- the statement in the arrangements concerning the admission of children from multiple births does not comply with paragraphs 14 and 2.20 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. These were subsequently discussed at the meeting on 19 July 2017. These matters concerned:

- the criterion giving priority to children from Church of England families might not be clear and so might not meet the requirements of paragraphs 14, 1.8 or 1.37 of the Code;
- the arrangements for measuring the distance of the child’s home from the school may not meet the requirements of paragraph 1.13 of the Code; and
- the clarity of the information in the arrangements about the waiting list may not meet the requirements of paragraph 2.14 of the Code.

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 the reception year (YR) is 30. The school’s admission arrangements were determined by the full governing body on 15 March 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. It is unclear when the school last consulted on its admission arrangements. Paragraph 1.42 of the Code sets out the requirements for consultation including that *“admission authorities **must** consult on their admission arrangements at least once every 7 years, even if there have been no changes during that period.”*

10. The school’s arrangements had six oversubscription criteria followed by more information about the terms used, definitions, appeals,

pending lists, school entry, admission of children outside their normal age range and in-year admission. The oversubscription criteria can be summarised as follows:

- 1) looked after and previously looked after children
- 2) The active involvement of the parent and/or child in an Anglican church
- 3) Siblings of pupils at the school
- 4) Children with special health or social need
- 5) The active involvement of the parent and/or child in the work and worship of any other established religious faith
- 6) Other children by distance from home to school.

Children offered places for September 2017 met the criteria as follows:

Priority	Criteria	Places allocated
1	Relevant looked after and previously looked after children	3
2	Active involvement in an Anglican church	4
3	Sibling	13
4	Health / social need	3
5	Active involvement in other religious faiths	3
6	Other children by distance	4
	Total places allocated	30

11. The school is usually oversubscribed and so has to apply its oversubscription criteria.
12. The school sent me proposed revised arrangements including a new proposed supplementary information form (SIF) following the meeting. These proposed arrangements have addressed most aspects of the objection and most of the matters I raised under section 88I. The school acted with commendable speed and I have referred below to the proposed arrangements where relevant.

Consideration of Case

13. The local authority objected to the fourth criterion which, in full, reads: *“Children who have special health or social need which can only be met at this school will be admitted at the discretion of the Governors. These applications must be supported by a written statement from their health or social care professional at the time of application.”* The

objector considers that the use of the word “only” here was unacceptable as a parent could not show that “*only one school is capable of meeting their child’s social or medical need.*” The purpose of a social and medical need criterion is generally to cater for circumstances where a child has needs that can be met at a particular school. I can see, however, that to say that only one school could meet the needs in a given case could seem to set a very high and prescriptive threshold. The school has, in its proposed revised arrangements, removed the word “only”.

14. The objector was also concerned that the reference to governors’ discretion meant that the criterion was subjective and ill-defined and, therefore, does not comply with paragraph 14 of the Code because it is not clear and objective. The requirements as to the use of social and medical need as an oversubscription criterion are set out in paragraph 1.16 of the Code which provides that admission authorities deciding to give priority on this basis “***must... give clear details about what supporting evidence will be required (eg a letter from a doctor or social worker) and then make consistent decisions based on the evidence provided.*** [Emphasis by underlining added]” The arrangements do meet the first part of this requirement as they set out what evidence is required. The phrase “*at the discretion of the Governors*” could, however, suggest that decisions may not be made on a consistent basis as required by the Code. The school’s proposed revised arrangements respond to the objection by removing the phrase “at the discretion of the governors”. I uphold this part of the objection.
15. The second aspect of the objection refers to the fifth criterion relating to children of other established faiths which states: “*The active involvement of parent and/or child in the work and worship of any other established religious faith which supports the ethos of the school. These applications must be supported by a leader of that religious community, using supplementary form G.1, which is available from the School Office. This must include written confirmation of a history of at least monthly attendance for a minimum period of one year prior to the date of application. Parents are responsible for ensuring that this form is returned to the school BEFORE the application deadline*”. The objector says that there is no definition of 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.
16. 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.

17. 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.”*
18. Paragraph 1.38 states that *“Admission authorities for schools designated as having a religious character must have regard to any guidance from the body of 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. They **must** also consult with the body or person representing the religion or religious denomination when deciding how membership or practise 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.”*
19. 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.
20. 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.
21. 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 objection 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.

22. When I considered the arrangements under section 88I I noted that as well as the matters raised by the objector in relation to other faiths, the criterion relating to Church of England children also gave priority on the basis of “active involvement”. As with the criterion relating to other denominations and faiths, active involvement was not defined. This meant that the criterion did not meet paragraphs 14 and 1.8 of the Code as it was not clear. In addition, it failed to meet paragraph 1.37 as parents would not be able to look at the arrangements and “*easily understand how any faith-based criteria will be reasonably satisfied*”.
23. The school emphasised at the meeting that it is located in a diverse community and is keen to retain applications from children of other religious faiths and to afford an element of priority for such children. It is also keen to continue to offer some priority to Church of England children. It is entirely proper for a school with a religious character, having had regard to any advice from its religious authority and provided its arrangements meet the requirements of the Code including as to clarity, to give priority to children from its own faith or denomination and from other faiths or denominations. In its proposed revised arrangements, it has proposed the following: “*The involvement of a parent and/or child in the worship of any other established major world religion, including Islam, Christianity, Hinduism, Sikhism and Judaism. These applications must be supported by a leader of that religious community, using supplementary form G.1, **which is available from the school office or website.** This 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. Parents are responsible for ensuring that this form is returned to the school BEFORE the application deadline*”.
24. This proposed revised arrangements have addressed the objection in part. The criteria which relate to members of the Anglican denomination and other established major world religions set out in both cases that there must be “*written confirmation of at least monthly attendance for a minimum period of a year prior to the date of application.*” However, the phrase “*other established major world religions*” is not defined and were it to be included in determined

arrangements would be unlikely to be considered to meet the Code's requirements as to clarity without any further explanation as to which faiths were covered and how this was to be tested. In addition, the school's proposed supplementary information form states that *"one of our admissions criteria is regular (at least monthly) involvement in a faith community."* Further down the form, the clergy or religious leader is asked to sign that *"This family attends this church/religious community at least once a month."* The form needs to reflect the specific wording in the oversubscription criterion. Because of the inconsistency in wording between the oversubscription criteria and the form, the proposed revised arrangements are not clear and would not be likely to meet the Code's requirements.

25. The objector quotes part of the admission arrangements which relate to the admission of children from multiple births. This states *"In the rare case where the admission of twins or triplets to the school would be incompatible with the admissions criteria, the Governors would postpone the decision by random selection as long as possible to allow all the options available and compatible with the best interests of the children in the year group to be considered."*
26. The objector suggests that this is contrary to paragraph 14 of the Code (set out above) which states that the admissions criteria need to be fair, clear and objective. The objector also comments that *"The statement made by the school does not make it clear to parents, how long this postponement may take, what options are available and how it determines what is compatible with the best interests of other children. The arrangements are therefore unclear."* The objector also comments that *"The school would be in breach of [paragraph 2.20 of the Code] if it postponed any decision on ranking applications and did not meet the deadlines set by the scheme."* I note that paragraph 2.20 of the Code sets out that *"all admission authorities **must** participate in co-ordination and provide the local authority with the information it needs to co-ordinate admissions by the dates agreed within the scheme."* The operation of co-ordinated schemes is outwith my jurisdiction and I make no further comment on this particular matter.
27. It seems to me that implicit in the school's arrangements is the view that the school cannot admit all children from a multiple-birth family if this results in an infant class of more than 30 children with one teacher. This is not the case because multiple births are one of the exceptions to this and therefore not a requirement. This is explained in paragraph 2.15 of the Code which states that *"Infant classes.... **must not** contain more than 30 pupils with a single school teacher. Additional children may be admitted under limited exceptional circumstances. These children will remain an 'excepted pupil'....The excepted children are ...2.15g) children whose twin or sibling from a multiple birth is admitted otherwise than as an excepted pupil..."* I consider also that the wording used by the school in its arrangements is unclear and hence in breach of paragraphs 14 and 1.8. I consider also that, as argued by the objector, the wording also means that the arrangements are not objective and hence also breach paragraphs 14

and 1.8. I uphold this element of the objection.

28. The proposed revised arrangements make provision for the admission of all children from a multiple birth even if, by such an admission, the infant class size is exceeded.
29. Paragraph 1.13 of the Code provides that in setting out how distance from home to school will be measured, arrangements should include provision for the situation where parents have shared responsibility for a child and the child may live for part of the week with each parent at different addresses. The school's arrangements did not do this. The proposed revised arrangements state that *"Where parents have shared responsibility for a child but reside separately and the child lives with each parent for part of the week then the address used to calculate distance shall be that where the child lives most of the time during the school week. If this is the same for each parent, then the address of the parent in receipt of child benefit shall be the one considered for the purposes of the application."*
30. 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 said *"The parents/carers of students who are unsuccessful in gaining a place in the normal round of applications will have the student's name placed on a pending list for a place at St George's C of E Primary School, irrespective of whether they make an appeal against the decision not to offer them a place."* The proposed revised arrangements provide *"The pending list will be maintained until 31st December, after this time parents should confirm if they wish their child's name to remain on the list."*
31. 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 proposed revised arrangements have addressed many of the matters identified by the objector and by me. The governing body is to be commended for the speed with which it acted. The governing body now needs to address the remaining matters where the proposed revised arrangements would not meet the Code's requirements and to formally vary its arrangements to adopt new arrangements and then to publish these on its website.

Summary of Findings

32. I have considered all elements of the objection and I find that the arrangements do not conform to the Code in most respects of the objection. I have not upheld two aspects of the objection. After a meeting with the parties the school submitted a proposed revised set of arrangements which addressed most aspects of non-compliance. The Code requires the admission authority to vary its arrangements in order to conform with this determination.

Determination

33. 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 George's Church of England Primary School which is the admission authority for the school.
34. 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.
35. 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: 26 September 2017

Signed:

Schools Adjudicator: Mrs Lorraine Chapman