



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3333

Objector: North East Law Centre

Admission Authority: The Academy Trust for Sacred Heart Catholic High School, Newcastle upon Tyne

Date of decision: 21 August 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 on behalf of the Academy Trust for Sacred Heart Catholic High School, Newcastle upon Tyne.

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 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 North East Law Centre (the objector), about the admission arrangements for September 2018 (the arrangements) for Sacred Heart Catholic High School (the school), an all-ability academy school for girls aged 11 to 18 in Newcastle upon Tyne. The objection relates to the naming and number of feeder schools and to the definition of the term "Catholic".
2. The local authority for the area in which the school is located is Newcastle City Council. The local authority, the school's academy trust and its governing body, and the objector are parties to this objection. The Roman Catholic Diocese of Hexham and Newcastle (the diocese) is also a party to the objection by virtue of its role as the designated religious authority for the school.

Jurisdiction

3. The terms of the academy agreement between the academy 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. These arrangements were determined by the governing body on behalf of the academy trust, which is the admission authority for the school, on that basis. The objector submitted its objections to the arrangements on 15 May 2017.
4. I am satisfied that the objection has been properly referred to me in accordance with section 88H of the Act, and that the concerns regarding the naming and number of feeder schools and to the definition of the term “Catholic” are within my jurisdiction.
5. The objector also expressed concern about the alleged failure of the admission authority to give proper reasons when an application for a place has been turned down. The role of an adjudicator is to consider whether or not determined admission arrangements comply with the School Admissions Code (the Code) and the law relating to admissions. It does not, however, extend to the application of those admission arrangements to individual children in the process of applying for school places. I do not have jurisdiction, therefore, to consider the alleged failure of the admission authority to give proper reasons when an application for a place has been turned down, nor any aspect of the appeal process.

Procedure

6. In considering this matter I have had regard to all relevant legislation and the Code.
7. The documents I have considered in reaching my decision include:
 - a. the objector’s form of objection dated 15 May 2017, and subsequent correspondence;
 - b. the school’s response to the objection on 8 June 2017, and supporting documents;
 - c. the response to the objection from the diocese on 6 June 2017, and supporting documents;
 - d. the local authority’s response to the objection dated 6 June 2017, and supporting documents;
 - e. a map of the local area identifying relevant schools;
 - f. confirmation of when consultation on the arrangements last took place;
 - g. a copy of the minutes of the meeting at which the governing body determined the arrangements;
 - h. a copy of the determined arrangements; and
 - i. the school’s funding agreement.

The Objection

8. The objector said that the “*definition of Catholic*” found in “*footnote 2(a)*” to the arrangements *appears to give wide discretion to the parish priest to determine whether or not someone should be considered to be a Catholic for the purposes of the admission policy...*” contrary to paragraphs 14 and 1.37 of the Code.
9. The objector also expressed several concerns about the feeder schools included in the arrangements:
 - i. The references to “*Catholic partner primary school*” in oversubscription criterion B and “*Catholic feeder primary schools*” in criteria G and I are confusing and contrary to “*paragraphs 1.9(b) and 1.18 (stet) of the Code.*”
 - ii. The “*overuse*” of feeder schools as the inclusion of 13 named feeder schools in the arrangements “*unfairly disadvantages children who have not attended any of the named feeder schools for one reason or another.*” The objector said this was a breach of paragraphs 14 and 1.15 of the Code.
 - iii. The lack of fairness in naming two particular feeder schools situated in Gosforth.

Background

10. The school is an all-ability school for girls aged 11 to 18 which was founded in Newcastle upon Tyne by the Catholic Church to provide education for children of Catholic families.
11. The school converted to academy status on 1 January 2011 and the published admission number (PAN) is 225. As a specialist school for the performing arts, the school is permitted to select up to 10 per cent of the annual intake on the basis of aptitude in the performing arts; the school states that up to 22 places will be available depending on how many places remain after criteria A to E (listed in paragraph 13) of the oversubscription criteria have been applied.
12. The arrangements were determined by the governing body on 23 March 2017 which is after the deadline specified in paragraph 1.46 of the Code.
13. The arrangements make clear that if there are more applications than the 225 places available, then after the admission of any children with an education, health and care plan or statement of special educational needs which names the school, the remaining places will be allocated according to the oversubscription criteria which I have summarised below:
 - A. Catholic looked after or previously looked after children;
 - B. Catholic children who attend a Catholic partner primary school;
 - C. Other Catholic children;
 - D. Other looked after or previously looked after children;

- E. Catechumens and members of an Eastern Christian Church;
- F. Up to 10 per cent of the intake who demonstrate an aptitude for the performing arts;
- G. Children who are baptised or dedicated members of other Christian denominations who attend a Catholic feeder school;
- H. Other children of other Christian denominations;
- I. Other children who attend a Catholic feeder school;
- J. Other children

First priority within each criterion will be given to children with a sister in Years 7 to 11 at the school. Random allocation which is independently monitored will be used as the final tie breaker in each category.

14. The school provided details about how the 225 Year 7 places for admissions in September 2017 were allocated as shown in the table below:

Oversubscription criteria	A	B	C	D	E	F	G	H	I	J
Places allocated in September 2017	0	104	13	3	1	17	16	21	39	11

It can be seen from this table that for admissions in September 2017, just over half of the places available were allocated to Catholic children.

15. The local authority confirmed that *“Sacred Heart High School received 460 on time applications for transfer into year 7 in September 2017 of which 309 named the school as first preference... Sacred Heart is a very popular oversubscribed school.”*
16. The school provided evidence that consultation last took place before the 2016/17 arrangements were determined. The evidence indicated that the school changed the final tie breaker from distance to random allocation *“to make our admissions process fairer as we feel it is unfair to base entry to our school on whether or not a child’s parents have been able to afford a house close to Sacred Heart or who are determined enough to gain a place for their child and so move into our vicinity.”*
17. The objector is the North East Law Centre, a charitable organisation providing legal advice and related services to low income families in Newcastle and beyond.

Consideration of Case

The definition of Catholic

18. The objector was concerned that the *“definition of Catholic, footnote 2(a) appears to give wide discretion to the parish priest to determine whether or not someone should be considered to be a Catholic for the purposes of the admission policy... contrary to the requirement at paragraph 14 of the Code that the practices and the criteria used to decide the allocation of school*

places are fair, clear and objective, and contrary to paragraph 1.37 that parents must easily be able understand how any faith-based criteria will be reasonably satisfied."

19. The definition of Catholic is located at Note 4 in the arrangements, rather than at footnote 2(a). The meaning of Catholic at Note 4 is *"a member of a Church in full communion with the See of Rome. This includes the Eastern Catholic Churches. This will be evidenced by a certificate of baptism in a Catholic Church or a certificate of reception into the full communion of the Catholic Church. Those who have difficulty obtaining written evidence of baptism or reception should contact their parish priest who, after consulting with the Diocese, will decide how the question of baptism or reception is to be resolved and how written evidence is to be produced in accordance with the law of the Church."*
20. The definition of Catholic provided in the arrangements states clearly that the evidence required is *"a certificate of baptism in a Catholic Church or a certificate of reception into the full communion of the Catholic Church"* which does not require the parish priest to apply any discretion, and I regard this as the general case. The school also provided a copy of the letter sent to parents which school says *"is explicit about the requirements for proof of faith."* The letter states clearly to parents that *"if your daughter is baptised as Roman Catholic or other Christian Church we will need Verification of Baptism, with either a copy of the Certificate or verification from your Church."* It seems clear to me that, in the general case, the parish priest is not required to apply any discretion whatsoever.
21. Nonetheless, I note that the latter part of the definition of Catholic states that *"those who have difficulty obtaining written evidence of baptism or reception should contact their parish priest who, after consulting with the Diocese, will decide how the question of baptism or reception is to be resolved and how written evidence is to be produced in accordance with the law of the Church."* It may be that it is this last part of the definition that the objector considers affords *"wide discretion to the parish priest to determine whether or not someone should be considered to be a Catholic."* However, my interpretation of the last part of the definition is that it applies only when a child has been baptised as a Catholic or received into the full communion of the Catholic Church but the family is unable to produce the written evidence. It seems to me that the circumstances when a family would not be able to provide certification of a child's baptism or reception would be limited, and might include, for example, when the family possessions have been destroyed in a house fire, or perhaps, when a family has had to flee a conflict zone without their possessions. In such difficult circumstances, I consider that would be reasonable for alternative evidence to be accepted, and I note that the definition makes clear that the parish priest must still consult with the diocese before deciding how any alternative *"written evidence is to be produced in accordance with the law of the Church."*
22. More importantly, I note that the school has used in its arrangements the definition of Catholic provided by the diocese in its model admission policy for Newcastle secondary schools. Paragraph 1.38 of the Code requires 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...” The school has used the definition of Catholic laid down by the diocese which is the designated religious authority for the school.

23. I consider that this definition of Catholic is clear about the evidence that will be required to verify that a child is Catholic. I am also of the view that it is reasonable for the definition of Catholic to make provision for the verification of the child's Catholicity by means of other evidence in accordance with the law of the Church for what would be a small number of families in limited circumstances where production of the specified written verification is not possible. The school has had due regard to the guidance from the diocese.
24. I am persuaded that the allocation of places with respect to membership of the Catholic church is *“fair, clear and objective”* and, accordingly, complies with paragraph 14 of the Code. I also consider that parents would be able to look at the definition of Catholic and be able to understand easily how membership of the Catholic church would be verified and, therefore, how this faith-based criterion would be satisfied, which meets the requirements of paragraph 1.37 of the Code. I do not uphold this part of the objection.

Feeder schools

25. The objector had several concerns about the arrangements with respect to feeder schools.
26. The first matter of concern regarding feeder schools was the inconsistent terminology used in the arrangements. The objector considers that the references to *“Catholic partner primary school”* in oversubscription criterion B and *“Catholic feeder primary schools”* in criteria G and I are confusing for parents and contrary to the requirements of the Code at paragraphs 1.9(b) and 1.18 of the Code (which I have taken to be a typographical error, and should instead be paragraph 1.8). The objector also comments that the arrangements also lists 13 primary schools under the heading *“Feeder primary schools”* is also confusing and questions whether these are *“intended to be the “Catholic partner primary schools” referred to in the criterion B or the “Catholic feeder primary schools” referred to in G and I.”*
27. The Code at paragraph 1.9(b) states that in formulating the arrangements, an admission authority ***“must not take into account any previous schools attended, unless it is a named feeder school.”*** Paragraph 1.8 of the Code requires that the oversubscription criteria in the school's arrangements ***“must be reasonable, clear, objective...and procedurally fair.”***
28. It is my view that the inconsistent use of terminology in the oversubscription criteria is likely to be confusing for parents. The oversubscription criteria are not clear and therefore do not meet the requirements of paragraph 1.8 of the Code. I uphold this part of the objection.
29. It is to the school's credit that it has acknowledged quickly *“that the reference*

to ‘Catholic partner primary school’ in criteria B could be confusing.” The school has agreed to “replace ‘partner’ with ‘feeder’” in criterion B so that the terminology related to feeder schools will be consistent throughout the arrangements. The objector agreed in the letter dated 11 July 2017 that *“the school’s proposal to replace “partner” with “feeder” would remove this confusion.”*

30. The second matter of concern to the objector regarding feeder schools is their “overuse”. The objector suggests that the inclusion of 13 named feeder schools in the arrangements *“unfairly disadvantages children who have not attended any of the named feeder schools for one reason or another.”*
31. The objector drew my attention to the Code at paragraph 14 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”*, and to paragraph 1.15 which requires that *“any feeder school included within an oversubscription criterion **must** be made transparently and on reasonable grounds.”*
32. The objector referred to the 2014/15 Annual Report of the previous Chief Schools Adjudicator and stated, in particular, that there should be *“sufficient places at the receiving school for (i) children attending the feeder schools to have a realistic chance of progressing to the receiving school and (ii) places available for children not attending the feeder schools... if the sum of the published admission number of the feeder schools is almost the same as, or greater than, that of the receiving school, it is very likely that giving priority to children at all the feeder schools will be judged unfair.”*
33. The objector observed that the school’s *“PAN for entry into year 7 is 225 girls whereas the total number of children leaving the named feeder schools is around 400. This means that, in conjunction with the other oversubscription criteria, girls not attending any of the thirteen named feeder schools will find it extremely difficult to get a place.”*
34. The 13 primary schools named as feeder schools in the arrangements are as follows (PAN in brackets): Sacred Heart, Fenham (30), St Bede’s, Denton Burn (30), English Martyrs, Fenham (60), St George’s, Bells Close (20), St Oswald’s, Gosforth (30), St Charles’, Gosforth (30), St John Vianney, West Denton (60), St Cuthbert’s, Kenton (30), Our Lady and St Anne’s (30), St Cuthbert’s, Walbottle (30), St Michael’s, Elswick (30), St Mark’s, Westerhope (30) and St Joseph’s, Benwell (30). It is the case that the combined PAN of 440 for these feeder primary schools does greatly exceed the 225 places available in Year 7 at the school.
35. The school explained, in its letter of response to the objection dated 8 June 2017, that *“as a single-sex girls school where only around 50% of students from feeder schools can apply to Sacred Heart, there are sufficient places for children attending the feeder schools to have a realistic chance of progressing to Sacred Heart and there are places available for children not attending the feeder schools. For the year 2017/18, of the 225 places offered, 163 were to girls from feeder primaries and 62 were to girls from other schools.”*

36. In its letter of 6 June 2017 in response to the objection, the diocese said the contention that there is an overuse of feeder schools *“fails to take into account that Sacred Heart is a school for girls. Consequently, to compare the year seven PAN to the total number of children is not helpful... on the basis that approximately 50% of the children will be girls and 50% boys.”*
37. The local authority stated in its response to the objection of 6 June 2017, that *“the data presented by the objector regarding the number of children in the feeder primary schools and the number of places available in year 7 fails to recognise that half the children in the primary schools will be male and therefore will not be eligible to apply for a place at Sacred Heart, which is an all-girls school. The Council’s analysis of the outcome of national offer day is that 64 students offered places did not attend a feeder primary school (more than 25% of the intake) which clearly demonstrates that there are sufficient places for those in the feeder primary schools that want them and also space for additional children to be admitted.”*
38. In letters dated 11 July 2017, the objector welcomed the comments and statistical information from the school and the local authority and added that *“from the statistics provided there does indeed appear to be sufficient number of places available to children attending the thirteen named feeder schools as well as a reasonable number of places left over for children attending other primary schools.”* The objector also expressed the hope that the school, the diocese and the local authority might *“continue to monitor the situation going forwards to ensure fairness for children attending the named feeder primary schools as well as for children attending other primary schools.”*
39. It seems to me that there are likely to be places available in Year 7 so that children who have not attended any of the named feeder schools are not unfairly disadvantaged. On this basis, I consider that the arrangements are not unfair and, accordingly, do not contravene paragraph 14 of the Code.
40. The objector suggested that naming 13 feeder schools contravenes the Code at paragraph 1.15 which requires that *“any feeder school included within an oversubscription criterion **must** be made transparently and on reasonable grounds.*
41. The school said that *“as the only girls’ school within the geographical area, the school ensures that it gives fair access across the city to parents who would like single-sex education for their daughters. Distance is not used as a deciding factor when it comes to oversubscription; random allocation is used to ensure fair access and equal chance for all.”* In my experience, it is not unusual for a single-sex school to have a large number of feeder schools to ensure that parents have the opportunity to state a preference for single-sex education.
42. The 13 feeder schools are named clearly in the arrangements, and have been feeder schools for some considerable time. The inclusion of the 13 feeder schools has been made transparently.
43. The school also stated that it *“has meaningful links with all of its feeder*

schools. Children from all feeder schools attend Festival days in Year 5 and Transition days in Year 6. In addition to this, all feeder schools opt for a further day from one of three options: Year 3 Performing Arts, Year 4 PE Day, Year 5 Science Day. Sacred Heart staff from the following departments: English, Maths, PE, Science, Learning Support visit feeder schools to work with students and staff.” The school has close curricular links with all its feeder schools which, in my view, constitutes reasonable grounds for including the 13 feeder schools in the oversubscription criteria.

44. I am persuaded that there has been no “overuse” of feeder schools in the arrangements. The inclusion of the 13 feeder schools in the arrangements meets the requirements of paragraphs 14 and 1.15 of the Code and local children are unlikely to be disadvantaged for “*not having attended any of the named feeder schools for one reason or another.*” I do not uphold this part of the objection.
45. The objector also questioned the fairness of naming as feeder schools two Gosforth Catholic primary schools: St Charles’ and St Oswald’s. The objector said that “*naming these two schools in particular as feeder schools unfairly disadvantages local children who have not attended any of the named feeder schools for one reason or another.*”
46. The objector noted that these two schools “*are also named as feeder schools for St Mary’s Catholic High School in Longbenton, which is geographically much closer to these two schools*” and suggested that naming these two Gosforth Catholic primary schools as feeder schools was a breach of paragraph 1.15 of the Code which “*requires that any feeder school included within an oversubscription criterion must be made transparently and on reasonable grounds.*” The objector referred again to the 2014/15 Annual Report of the previous Chief Schools Adjudicator which stated “*that there should be meaningful links between the feeder schools and the receiving school.*”
47. As explained in the paragraphs above, the school said that “*as the only girls’ school within the geographical area, the school ensures that it gives fair access across the city to parents who would like single-sex education for their daughters. Distance is not used as a deciding factor when it comes to oversubscription; random allocation is used to ensure fair access and equal chance for all.*” The school has also made clear to my satisfaction, as explained already in the paragraphs above, that it has close curricular links with its feeder schools.
48. The diocese confirmed that “*it is not uncommon for a primary to be named as a feeder school for more than one secondary. In the case of St Charles’ and St Oswald’s this has been the situation for many decades.*”
49. As stated in a letter dated 11 July 2017, the objector was not persuaded by the arguments in relation to the two named Gosforth feeder schools. The objector said that “*just because a practice has existed for a long time does not mean that it was appropriate in the first place, or if it was appropriate then, that it remains appropriate now. Secondly, as a general principle, the farther*

away a secondary school is situated from its “feeder” school, the harder it is to argue on reasonable grounds that the primary school is really a feeder school in the sense commonly understood. Thirdly, we do not believe that it is common for a primary school to be a named feeder school for more than one secondary school. In our view if a primary school is named as a “feeder” for more than several secondary schools, it becomes harder to argue on reasonable grounds that it is a feeder school in the sense commonly understood.”

50. I understand the general principle being mooted by the objector but the requirements of the Code about naming feeder schools are as follows: at paragraph 1.9(b) *“it is for admission authorities to formulate their admission arrangements, but they **must not** take into account any previous schools attended, unless it is a named feeder school”*; and at paragraph 1.15 *“the selection of a feeder school or schools as an oversubscription criterion **must** be transparent and made on reasonable grounds.”*
51. If there are more applicants for admission to the school than places available, the arrangements seek to prioritise children who have previously attended the named feeder schools. It seems to me entirely transparent to name in the arrangements the two Gosforth schools that have been feeder schools for decades, as verified by the diocese. Furthermore, as there are close curricular links between the school and all its feeder schools, as explained already in the paragraphs above, it also seems reasonable to have named these two Gosforth Catholic primary schools as feeder schools.
52. It seems to me that the objector has suggested that the two named Gosforth schools are harder to justify as feeder schools because they may be *“farther away”* than the other feeder schools named in the arrangements. Having consulted the Department of Education’s database of schools called Edubase, I found that both of the named Gosforth feeder schools are within a three-mile radius of the school. I have taken three miles because that is the statutory walking distance to school for children aged eight or more years of age, above which the local authority is required to provide home to school transport where there is no suitable school nearer to the child’s home. Although *“farther away”* than some of the other feeder schools named in the arrangements, the two Gosforth feeder schools are nevertheless within a reasonable distance of the school and it would be feasible for children living close to them to attend the school.
53. The objector also suggested that it is uncommon for a primary school to be the named feeder school for more than one secondary school. In this case, the two Gosforth primary schools have been named as feeder schools for both Sacred Heart Catholic High School which is a single-sex girls’ school, and for St Mary’s Catholic High School which is co-educational. In my experience, it is not unusual for two secondary schools serving a densely populated area, such as Newcastle, to share as feeder schools one or more of the local primary schools, particularly when there is an element of choice between single-sex and co-educational schools in the locality.
54. I have also looked on the map of the local authority area at the location of the

feeder schools for both of the Catholic secondary schools. The feeder schools for Sacred Heart Catholic High School are distributed in the west half of the local authority area, with the two Gosforth schools at the eastern edge of it. Whereas, the feeder schools for St Mary's Catholic High School are in the eastern half (and some beyond the perimeter) of the local authority area, with the two Gosforth schools at the western edge. It seems to me, therefore, that it is not surprising that both Catholic secondary schools have named as feeder schools the two Gosforth primary schools.

55. The naming of the two Gosforth feeder schools in the arrangements accords with the requirements of paragraph 1.9(b) of the Code. The selection of the two Gosforth primary schools as feeder schools is transparent as both Gosforth schools have been feeder schools for many years. I am also of the view that the selection of these two Gosforth schools as feeder schools has been made on reasonable grounds as both Gosforth schools are within a three-mile radius of Sacred Heart Catholic High School, which has close curricular links with its feeder schools. The naming of the two Gosforth schools as feeder schools meets the requirements of paragraph 1.15 of the Code.
56. The objector implied that the naming of the two Gosforth Catholic primary schools as feeder schools in the arrangements is unfair and *"disadvantages local children who have not attended any of the named feeder schools for one reason or another."* The final question for me to consider, therefore, is whether the inclusion of the two Gosforth schools as feeder schools in the oversubscription criteria meets the requirement of fairness as set out in paragraphs 14 and paragraph 1.8 of the Code.
57. The local authority's analysis of allocations data for the 225 places available in Year 7 for September 2017, as explained in the paragraphs above, indicates that *"64 students offered places did not attend a feeder primary school (more than 25% of the intake) which clearly demonstrates that there are sufficient places for those in the feeder primary schools that want them and also space for additional children to be admitted."* From the evidence presented, it appears unlikely that local children who have not attended any of the feeder schools will be disadvantaged. However, as the evidence available to me is limited, it may be helpful for the school, the diocese and the local authority to continue to monitor the situation in forthcoming admission rounds to ensure that local children attending other primary schools are not disadvantaged by the inclusion in the arrangements of the two Gosforth feeder schools.
58. I consider that the inclusion in the arrangements of the two Gosforth primary schools as feeder school is fair and therefore complies with paragraphs 14 and 1.8 of the Code. I do not uphold this final part of the objection.

Summary of case

59. I have found that the inconsistent use of terminology with respect to feeder schools in the oversubscription criteria is likely to be confusing for parents. The oversubscription criteria, therefore, lack clarity and do not meet the requirements of paragraph 1.8 of the Code. I uphold this part of the objection.

The school has already agreed to amend the arrangements so that the terminology related to feeder schools will be used consistently.

60. I have not upheld any of the other parts of the objection that are within my jurisdiction for the reasons stated in the paragraphs above.

61. Accordingly, I partially uphold the objection to the admission arrangements for Sacred Heart Catholic High for September 2018.

62. Paragraph 3.1 of the Code requires that admission authorities revise their arrangements to give effect to the Adjudicator's decision within two months of the date of this determination.

Determination

63. 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 on behalf of the Academy Trust for Sacred Heart Catholic High School, Newcastle upon Tyne.

64. 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 this determination.

Dated: 21 August 2017

Signed:

Schools Adjudicator: Ms Cecilia Galloway