

DETERMINATION

Case reference: ADA3253

Referrer: The Local Government Ombudsman

Admission Authority: The Governing Body of Khalsa Primary School, Slough

Date of decision: 3 May 2017

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I determine that there were aspects of the admission arrangements of Khalsa Primary School, Slough, for 2018 which did not conform with the requirements relating to admission arrangements in the ways set out in this determination.

The referral

1. The admission arrangements for 2018 for Khalsa Primary School, Slough (the school), a voluntary aided Sikh primary school in Slough for children aged 3 to 11, were brought to the attention of the Office of the Schools Adjudicator (OSA) following the referral of the school's admission arrangements for 2017 by the Local Government Ombudsman in June 2016.
2. The local authority for the area in which the school is located is Slough Borough Council. The local authority is a party to this case.

Jurisdiction

3. The 2018 admission arrangements were determined under section 88C of the School Standards and Framework Act 1998 (SSFA) by the school's governing body, which is the admission authority for the school, on 17 January 2017. It appeared to me when I reviewed the arrangements which had come to my attention that there were matters in the arrangements which did not appear to conform with the requirements relating to admissions. I have accordingly used my power under Section 88I(5) of the SSFA 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. In reaching my decision I have considered:
- a. the copy of admission arrangements provided to me on 14 December 2016 by the school;
 - b. the information I received at a meeting held at the school on 13 January 2017 attended by representatives of the school and the local authority;
 - c. a copy of the arrangements determined by the governing body on 17 January 2017 and the relevant minute of that meeting; and
 - d. a copy of revised arrangements determined by the governing body on 30 March 2017 and the relevant minute of that meeting.

The Referral

6. The Local Government Ombudsman referred the school's 2017 admission arrangements to the OSA on 7 June 2016. These arrangements did not appear to meet the requirements of the School Admission Code. Following protracted correspondence between the OSA and the school it transpired that these arrangements had not been determined by the governing body as required by the SSFA and so were not within my jurisdiction as the adjudicator has jurisdiction only in relation to determined arrangements. The school was informed of its duty to determine arrangements every year and was asked to send a copy of its determined arrangements to the OSA. On 14 December 2016 the school sent a set of arrangements to the OSA; these were not the same as the undetermined arrangements for 2017 which were published on the school's website. Although to a lesser degree than those published on the school's website, this latest set of arrangements did not appear to meet the requirements of the Code.

Consideration of Case

7. In order to clarify the status of the arrangements provided to me on 14 December 2016 and matters of concern within them I convened a meeting with representatives of the school and the local authority on 13 January 2017. At this meeting it transpired that the arrangements which I had been sent on 14 December were those which the school intended to use for admission in September 2018 and were due to be determined by the governing body on 17 January. The school undertook to send me the arrangements again once they were determined.

8. At the meeting, it became apparent that no order had been made under section 69(3) of the SSFA to designate the school as having a religious character. Taking account of a child's religion for the purpose of admission to a maintained school such as this school is prohibited by the Equalities Act 2010 unless the school has been designated as having a religious character by an order under section 69(3) of the SSFA.

9. In addition, orders made under section 69 of the SSFA note that "*Designation as a school which has a religious character is relevant for a*

number of purposes under the [School Standards and Framework] Act, notably:

(a) as part of the mechanism for determining the form of religious education to be provided under Schedule 19 to the Act;

(b) as part of the mechanism for determining the form of collective worship to be provided under Schedule 20 to the Act; and

(c) as part of the mechanism for determining school staffing matters under sections 58 to 60 of the Act."

10. On 3 March 2017 I received a set of arrangements from the school and a copy of the minute from the governing body meeting dated 17 January. This minute did not make it clear whether the governors had determined the arrangements or not. After I sought clarification, on 16 March 2017 a revised minute was received which confirmed that the arrangements had been determined at the governors' meeting on 17 January. The school also confirmed that the arrangements provided on 3 March were the arrangements determined at that meeting.

11. Those arrangements include elements of priority for the majority of places at the school on the basis of faith. At that time no order designating the school as having a religious character had been made and unless and until an order was made, the school was not permitted to use faith-based oversubscription criteria.

12. Priority for those places designated as faith places is given as follows:

1. Children who have a sibling that is already attending the school in Years 1 to 6, in the academic year the applicant enters Reception class.
2. Sikh Looked After Children and previously Looked After Children
3. Sikh children whose parents demonstrate their commitment to the Sikh faith.

13. Paragraph 1.37 of the Code says "*Admission authorities for schools designated with a religious character may give priority to all looked after children and previously looked after children whether or not of the faith, but they must give priority to looked after children and previously looked after children of the faith before other children of the faith.*"

14. If the school had a religious designation order in place allowing it to use faith-based oversubscription criteria, the arrangements determined on 17 January 2017 would not comply with paragraph 1.37 of the Code. When this was drawn to the school's attention, the school provided me with revised arrangements determined by the governing body on 30 March 2017 in which priorities 1 and 2 above are reversed. The school is permitted to vary its determined arrangements in order to comply with a mandatory provision of the Code (in this case to give the highest priority to looked after and previously looked after Sikh children) by virtue of paragraph 3.6 of the Code. The

arrangements as varied would meet the requirements of paragraph 1.37 if an order were in place.

15. An order under section 69(3) of the SSFA was made on 27 April 2017. I find that the arrangements now comply with requirements and the school does not need to take further action.

Summary of Findings

16. The school did not have a religious designation order under section 69(3) of the SSFA designating it as a school with a religious character. Without such an order the school was not permitted to set faith-based oversubscription criteria. The process of obtaining such an order has now been completed, however until such an order was in place discriminating for admission to school on the grounds of religious belief was prohibited.

17. If the school had been permitted to set faith-based oversubscription criteria at the time, the arrangements determined by the school on 17 January 2017 would not have complied with requirements concerning looked after and previously looked after children. The school has now varied this aspect of the arrangements and a religious designation order is in place so the arrangements now comply with requirements.

Determination

18. In accordance with section 88(5) of the School Standards and Framework Act 1998, I determine that there were aspects of the admission arrangements of Khalsa Primary School, Slough, for 2018 which did not conform with the requirements relating to admission arrangements in the ways set out in this determination.

Dated: 3 May 2017

Signed:

Schools Adjudicator: Mr Phil Whiffing