



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA3307

**Objector:** Worcestershire County Council

**Admission Authority:** Governing body of Madresfield C E Primary School on behalf of the Diocese of Worcester Multi-Academy Trust, Worcestershire.

**Date of decision:** 7 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 Madresfield C E Primary School on behalf of the Diocese of Worcester Multi-Academy Trust which is the admission authority for the 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(2) 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 Madresfield C E Primary School (the school), a primary academy school with a Church of England religious character for five to eleven year olds 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 Admission 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.

Other parties to the objection are the Diocese of Worcester Multi-Academy Trust (the trust), the local governing body of the school (the school) and the diocese of Worcester (the diocese) which is the designated religious authority for the school.

### **Jurisdiction**

3. These arrangements were determined by the governing body, which was the admission authority for the school at the time when it was a voluntary aided school. The school is now an academy school having become one in May 2017 and the terms of the Academy agreement between the multi-academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. The scheme of delegation for the trust shows that the responsibility for admission arrangements rests with the local governing bodies of the academy schools within the trust. The objector submitted an objection to these determined arrangements on 12 May 2017. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it 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 12 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) copies of the minutes of the meeting at which the governing body of the school 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 headteacher of the school was present at the meeting together with the personal assistant to the Director of Education and Group Secretary of the Diocese. The Diocesan

Director of Education chose not to attend the meeting. The Chief Executive Officer of the trust was scheduled to attend the meeting but did not do so.

### **The Objection**

6. The original arrangements included eight oversubscription criteria, a section of definitions and notes concerning other elements of the admissions process. The objection covers the following areas;
  - the criterion which applies to children of “*other established faiths*” 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 a faith which is not the designated faith of the school. This does not comply with paragraphs 1.37 and 1.38 of the Code;
  - the oversubscription criterion relating to the admission of children with physical, medical or social disabilities is not clear and does not comply with paragraph 14 of the Code;
  - the statement in the arrangements concerning the admission of children from multiple births does not comply with the Code at paragraph 2.15 (g);
  - the reference to the processes by which children are admitted out of chronological age group does not comply with the Code at paragraph 2.17;
  - the process of late applications is unclear and does not comply with the paragraph 14 of the Code; and
  - the administration of the waiting list does not comply with paragraph 2.14 of the Code.

### **Other Matters**

7. In my letter to the school of the 7 July 2017 I outlined other areas of the admission arrangements which did not appear to comply with the Code. These were subsequently discussed at the meeting on the 19 July 2017. These matters concerned:
  - the definition of looked after and previously looked after children;
  - the availability of catchment area maps;
  - the five mile radius referred to in the oversubscription criteria;
  - the definition of the published admission number (PAN);
  - the lack of a supplementary information form (SIF);
  - the coverage of deferred and part-time schooling in reception year (YR); and

- the publication of the 2018 arrangements on the school's website.
8. Following the meeting the school revised the arrangements and many of the non-compliant areas were rectified. However, in the new arrangements there are three new areas of non-compliance and these are:
- the school's description of itself as a "*Voluntary Aided Primary School and [which] is part of the Diocese of Worcester Multi-Academy Trust*";
  - *the lack of definition of the word "active"* in the criteria relating to membership of churches; and
  - the requirement in the arrangements that both parents must sign the SIF.

## **Background**

9. The school is an academy primary school for 5 to 11 year olds. It converted to an academy from a voluntary aided school in May 2017. It is a small school with a PAN of 15 for admission into the reception year (YR). It has 103 pupils on roll and a Department for Education assessed capacity of 105.
10. The school last consulted on its arrangements in 2015 for the September 2017 admission arrangements. The 2018 arrangements were determined by the governing body at a meeting on 5 October 2016.
11. The original arrangements had eight over-subscription criteria. These were followed by a definitions of terms section and other information on admissions processes including the admission of children with statements of special educational need or education, health and care plans; the admission of children from multiple births; the deferral of places and part time places; out of normal age admissions, waiting lists and appeals processes.
12. The original oversubscription criteria in place when the objection was made can be summarised as follows;
- 1) Relevant looked after and previously looked after children
  - 2) Children living in the catchment area
  - 3) Siblings of pupils at the school
  - 4) Members of Church of England churches
  - 5) Members of other Christian churches
  - 6) Members of other established faiths

- 7) Children with physical, medical or social disabilities
  - 8) Other children by distance.
13. The amended arrangements which I received on the 21 July 2017 have covered all the elements of the objection. However, they have introduced three areas which were not in the original arrangements and which do not comply with the Code.
14. There are six oversubscription criteria in the revised arrangements:
- 1) Looked after and previously looked after children
  - 2) Children living in the catchment area
  - 3) Siblings of children in the school
  - 4) Members of Church of England churches
  - 5) Members of other Christian churches
  - 6) Other children by distance.

### **Consideration of Case**

15. The diocese responded to the objection over a month after being contacted. The response stated that it treats each of its school 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, but, as I set out below, where it chooses not to do so this has certain consequences for the school. In this case, it was clear to me from the meeting and correspondence that the school was in need of direction and support in drawing up the faith based oversubscription criteria within its arrangements. The Code is specific in that schools have to have regard to guidance from the relevant designated religious body. In addition, Church of England schools such as this school must consult with the diocese before undertaking any public consultation on its arrangements. The school last consulted on its admission arrangements in 2015 and the headteacher reported that the diocese had been sent the proposed arrangements as part of the consultation. At the meeting on 19 July the diocese representative was unable to report whether the diocese had responded to this consultation due to change in personnel.
16. The trust did not respond to the objection and, although planning to send a representative to the meeting, no-one from the trust actually attended. I find this unhelpful as it left the school without support when drawing up its arrangements.
17. I have considered all elements of the objection and I agree that the arrangements as previously issued were non-compliant with the Code in all respects of the objection except one as set out under the heading

'objection'. I give further details in the paragraphs below. Where I have upheld the objection this is because the arrangements at the time the objection was made did not conform with the requirements relating to admissions and the Act requires that I make a determination on these matters. As I make clear, where the school has made changes to its arrangements so that they conform with the requirements relating to admissions it need make no further change.

18. The objection refers to the criterion relating to children of other established faiths and quotes the following; *"Parents/children [who] are actively involved in the worship and work of any established faith within the local community and reside within five mile radius of the school. A letter from the faith leader should accompany the application (at the time of application) and must include written confirmation of a history of at least monthly participation in worship for a minimum period of one year prior to the application. If this information is missing the criterion is not met"*. The objector says that there is no definition of the terms *"work and worship"*, *"within the community"* or *"established religious faith"*. The objection also records that the oversubscription criterion states *"work and worship"* as though each element must be fulfilled. The objector says that these parts of the admission arrangements do not comply with paragraphs 14, 1.37 and 1.38 of the Code.
19. 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."* 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 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."*
20. The terms *"work and worship"*, *"within the community"* and *"established religious faith"* are not defined and hence not clear and therefore are not compliant with paragraph 14 of the Code. 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 1.19i of the Code provides that schools may not take account of any activities undertaken by children with the exception of *"religious activities, as laid out by the body or person representing the religion or religious denomination."* The

judgement in a judicial review (*on the application of the Governing Body of the London Oratory School v The Schools Adjudicator (and others)*) (17<sup>th</sup> April 2015) made clear that “*laid out*” in this context meant laid out in guidance on school admissions. In this case, 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, which it is not. It would be difficult for parents reading this criterion to understand how the requirements could be satisfied and therefore it does not comply with paragraph 14 or paragraph 1.37 of the Code. In the amended version of the arrangements this criterion has been removed.

21. The objector cites another of the school’s oversubscription criteria; “*Children with physical, medical or social disabilities who would benefit from attending Madresfield School .....*” and suggests that this is a subjective statement without definition and therefore does not comply with paragraph 14 of the Code because it is not clear and objective. The phrase “*children ..who would benefit*” is not clear and is therefore contrary to paragraph 14 of the Code. At the meeting the headteacher said that all children would benefit from being admitted to her school and therefore understood why this criterion was misleading. In the amended arrangements this criterion has been removed.
22. The objector quotes part of the admission arrangements which relates to the admission of children from multiple births; this states: “*When places are being sought for twins/triplets etc. as we are only able to offer places up to our published pupil admission number for each year group in Key Stage 1 we may only be able to offer a place to one of the siblings.*” The objector suggests that this is contrary to paragraph 2.15 (g) of the Code. The statement on multiple births suggests that it is a requirement of the school not to 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 the rules on infant class. This is explained in paragraph 2.15 (g) of the Code which states that “*Infant classes **must not** contain more than 30 pupils with a single school teacher. Excepted children are (g) children whose twin or sibling from a multiple birth is admitted*”. The amended 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.
23. The admission arrangements include “*we expect that pupils should be taught within their chronological year group and that only in exceptional circumstances will consideration be given to accelerating or delaying the admission of a pupil.*” The objector says that this is contrary to paragraph 2.17 of the Code. The explanation of how parents request admission out of the chronological year group is unclear in the original arrangements and this is non-compliant with paragraph 2.17 of the Code which states that “*Parents may seek a place for their child outside of their normal age group..... Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group*”. The amended arrangements

have a full and compliant section relating to out of chronological age admissions which is in line with the Code.

24. The admission arrangements included the statement *“Only in very exceptional circumstances (evidence to support the reason for late application will be required) will these applications be considered at the discretion of the Governing Body, in line with those who have applied on time.”* The objector considers this unclear as the school does not provide a definition of what might qualify as a reason for a late application to be considered with those who apply on time. The objector says that this is not clear and therefore contravenes paragraph 14 of the Code and I agree that it is. In the amended arrangements the school is specific about the circumstances in which late applications will be treated as on time.
25. The objector quotes the following from the admission arrangements; *“if parents do not attend the appeal hearing without giving prior notice or without good reason, their child will not be added to the waiting list if the appeal is unsuccessful.”* There is no provision in the Code for such a condition to be placed on the whether a child may be added to a school’s waiting list. The objector maintains that the statement is contrary to paragraph 2.14 of the Code which states that *“Each admission authority **must** maintain a clear, fair and objective waiting list until at least **31 December** of each school year of admission.”* I consider that the statement is unreasonable and unfair. The statement has been removed from the revised arrangements.
26. I uphold the elements of the objection explained in paragraphs 18 to 25 above.
27. The objection states that it is not for the school to determine what constitutes active involvement in a faith which is not the designated faith of the school and says that these parts of the admission arrangements do not comply with paragraphs 1.37 and 1.38 of the Code. The objector suggests that it is the faith body which should make these decisions. This is not the case. The Code is clear that schools with a religious character may use faith-based oversubscription criteria (paragraph 1.36 of the Code) and that the admission authority for the school (in this case the local governing body acting with delegated authority from the trust) must set out the criteria against which places will be allocated (paragraph 1.6 of the Code). The admission authority must have regard to diocesan guidance and must consult with the diocese but the setting of oversubscription criteria remains a function of the admission authority. I therefore do not uphold this element of the objection.
28. Throughout the process of this determination the school has been keen to rectify mistakes and any non-conformity with the Code. At the meeting on 19 July 2017 the headteacher understood the explanation of the areas of non-conformity with the Code and the revised arrangements which I received a few days later had taken all these points into account. At the meeting, each of the objector’s points, and



those other matters which had been identified and shared with the school before the meeting were discussed and explained. The new arrangements comply with the Code in respect of all the objector's points and all the points raised by the adjudicator. For this, and for the speed with which the amendments were made the school is to be commended.

29. In revising its arrangements after the meeting the school introduced three elements of non-compliance with the Code:

- by describing itself as voluntary aided academy the school has made its arrangements confusing and unclear for the simple reason that there is no such category of school. Types of school are listed in paragraph 11 of the Code: these are Academies, Community schools, Foundation schools, Voluntary aided schools and Voluntary controlled schools. When the school changed its status in May 2017 the school became an academy;
- in revising its faith based oversubscription criteria the school has retained the word "*active*" before member of a church –in the criterion relating to the Church of England and that relating to other Christian churches. Although the criteria now set out what is required in terms of attendance at services (covering frequency and duration of practice) make clear that parents need to confirm this by completing a SIF – there is still no specific reference to the definition of what the word "*active*" means. This means that the arrangements do not comply with the Code at paragraph 14 or paragraph 1.37 as they are not clear and as parents will not be able to look at the arrangements and "*...easily understand how any faith-based criteria will reasonably be satisfied*" (1.37); and
- a SIF has been introduced but the arrangements specify that both parents must sign the form; this is contrary to paragraph 2.4 (e) of the Code which states that SIFs must not ask for "*both parents to sign the form...*".

The arrangements require these parts to be amended in order to conform with the Code.

### **Summary of Findings**

30. The objection listed a number of parts of the arrangements which did not conform to the Code and I agree with all but one of them and uphold these elements of the objection. I did not uphold one element of the objection which suggested that it was not for the school to determine what constitutes active involvement in a faith. This is not the case as it is the responsibility of the admission authority to determine all the arrangements. In addition, I identified a number of further respects in which the arrangements did not conform with the Code and these were shared with the school.

31. After a meeting with the parties a revised set of arrangements were

produced which corrected all the objector's points and all the adjudicator's points of non-compliance.

32. Unfortunately, in revising the arrangements three further non-compliant areas were introduced which now require amendment.

### **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 for Madresfield C E Primary School on behalf of the Diocese of Worcester Multi-Academy Trust.

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: 7 September 2017

Signed:

Schools Adjudicator: Ann Talboys