



Office of  
the Schools  
Adjudicator

### **DETERMINATION**

**Case reference:** ADA3313

**Objector:** Worcestershire County Council

**Admission Authority:** The Governing Body of Great Witley Church of England Primary School on behalf of the Rivers Multi-Academy Trust, Worcestershire

**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 Great Witley Church of England Primary School on behalf of the Rivers Multi-Academy Trust for Great Witley Church of England Primary School, Worcestershire 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 to 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 Worcestershire County Council, (the objector), about the admission arrangements (the arrangements) for Great Witley Church of England Primary School (the school), for entry in September 2018. The school is a primary academy converter school designated as having a religious character. The objection was to some elements of the school's oversubscription criteria which the objector considered did not conform to 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 Rivers Church of England Multi-Academy Trust (the trust), the governing body of the school and the Diocese of Worcester (the diocese), which is the designated religious authority for the school.

### **Jurisdiction**

3. The terms of the academy agreement between the trust and the Secretary of State for Education require that the admissions arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing body of the school on behalf of the trust, which is the admission authority for the school, on that basis. 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 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 governing body'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 2018;
  - e. maps of the area identifying relevant schools;
  - f. confirmation of when consultation on the arrangements last took place;
  - g. a copy of the determined arrangements for September 2018; and
  - h. a copy of a proposed revised set of admission arrangements for September 2018 sent to me on 25 July 2017.
6. I have also taken account of information received during a meeting I convened on 20 July 2017 at the offices of the Diocese of Worcester. Those attending the meeting were the Headteacher and Chair of Governors of Great Witley School, and representatives from the local authority and the diocese. A representative from the trust was expected but sent apologies shortly before the meeting was due to start.

## **The Objection**

7. The objection covers a number of areas in the arrangements which it is suggested did not conform to the Code. These were that:
  - the criterion relating to “*any established religious faiths*” did not conform to paragraphs 1.37, 1.38 and 14 of the Code;
  - the definition of Looked After and Previously Looked After Children in the arrangements was not in accordance with the definition in paragraph 1.7 of the Code; and
  - the arrangements stated that applications should be sent to the school, which did not conform to paragraph 2.3 of the Code.

## **Other Matters**

8. In a letter to the parties dated 7 July 2017, I raised a number of other matters which did not conform to the Code. These matters were subsequently discussed at the meeting on 20 July 2017. They concerned:
  - the availability of catchment area maps;
  - the lack of a Supplementary Information Form (SIF);
  - the arrangements for the admission of multiple birth children;
  - the measurement of distance from the school;
  - the home address to be used for the purposes of the application;
  - the definition of the published admission number (PAN);
  - the school’s policy relating to deferred entry to school and part-time schooling for children below compulsory school age.

## **Background**

9. The school converted to become an academy on 1 April 2016. It is a mixed primary school with an age range of 5 -11. It is a small school with a PAN of 20 for admission into the reception year. The school is not generally oversubscribed; however, 21 children were admitted to the school in September 2016, that is one over PAN. The school has 160 pupils on roll and a Department for Education assessed capacity of 140. A copy of the Rivers Multi-Academy Trust Scheme of Delegation was sent to me on 20 July 2017 which indicates that the governing body has “*full responsibility and control of admissions*”.
10. The arrangements included five oversubscription criteria, which were followed by notes and information about the application process. There was also information about the coordinated admissions process, the address to be used for the purposes of an application, the Fair Access

Protocol, admissions outside the normal age group, in-year admissions and right of appeal. The criteria can be summarised as follows:

- 1) Looked After and previously Looked After children.
- 2) Children residing within the catchment area.
- 3) Out of area children with siblings attending the school at the time of admission.
- 4) Those who have an active involvement, parent and/or child, in the work and worship of a community of any established faith.
- 5) Out of area children.

### Consideration of Case

11. The diocese responded to the objection by saying that it does not provide generic guidance for schools, but offers advice in relation to an individual school's arrangements when requested to do so. The Code provides that schools are required to have regard to any guidance offered by the diocese, but no guidance had been provided which the school could have referred to. The trust responded to the objection but did not send a representative to the meeting. It appeared to me that the school had not received any help or support in drawing up their arrangements from either the diocese or the trust.
12. The objector claimed that the fourth oversubscription criterion did not comply with paragraphs 1.37 and 1.38 of the Code: This criterion referred to *"Those who have an active involvement, parent or child, in the work and worship of a community of any established religious faith, i.e. at least monthly attendance at the place of worship for a period of a year prior to application."* It stated that *"A leader or representative of the religious community should provide written confirmation."* It also stated: *"If this information is missing the criterion is not met."*
13. The objector's claim was made on the basis that there was no definition of *"established faith"* in the arrangements. It was said that, because the term was not defined, the oversubscription criterion could not be easily understood as required by paragraph 1.37 of the Code, and because it could not be easily understood, it was also unclear. As a result, it also failed to conform to paragraph 14 of the Code.
14. Paragraph 1.37 of the Code states that *"Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied."* Paragraph 1.38 of the Code states that *"Admission authorities... **must** 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."* Paragraph 14 of the Codes states: *"In drawing up 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.*" I could find no explanation of what constituted an "established faith" in the arrangements. I therefore concluded that parents could not have easily understood how the faith based criteria would be met, and that this did not conform to paragraph 1.37 of the Code. The arrangements were therefore also unclear, and did not conform to paragraph 14 of the Code. I uphold this aspect of the objection.

15. The objector also stated: "*It is not for the school to determine what constitutes active involvement in another faith [other than the faith of the school], it is for the body or person representing that faith to determine a specific/measurable criteria for 'active involvement' in that faith*". This statement is not in my opinion correct. Although paragraph 1.38 of the Code requires that admission authorities must consult with the person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated, it is for the admission authority to determine the admission arrangements for the school, and to decide whether an applicant falls within their faith-based oversubscription criteria. I therefore do not uphold this element of the objection.
16. The objector claimed that the definition of Looked After and Previously Looked After Children in the arrangements did not conform to paragraph 1.7 of the Code because it did not include a definition of Looked After Children, only previously Looked After Children. Paragraph 1.7 of the Code defines Looked After Children as "*Children who are in the care of local authorities as defined by section 22 of the Children Act 1989. In relation to school admissions legislation a 'looked after child' is a child in public care at the time of application to the school.*" Previously looked after children are defined as "*Children who were looked after, but ceased to be so because they were adopted (or became subject to a child arrangements order or special guardianship order).*" Since the arrangements did not include a definition of Looked After Children, they did not conform to paragraph 1.7 of the Code, and I uphold this aspect of the objection.
17. The objector also objected to the statement in the arrangements that applications would need to be received "*by the school*" before a particular date. This was claimed not to conform to paragraph 2.3 of the Code, which states: "*Regardless of which schools parents express a preference for, the CAF is required to be returned to the local authority in the area that they live (the 'home' authority).*" Since the arrangements informed parents that they should send applications to the school as opposed to the 'home' local authority, they did not conform to paragraph 2.3 of the Code. I uphold this aspect of the objection.
18. I now turn to consideration of the further matters raised by me under section 88I of the Act, and have set out my conclusions below. A number of these matters relate to paragraph 14 of the Code which is set out above.

19. The arrangements described the catchment area, and stated that a map may be viewed at the school. This did not conform to paragraph 14 of the Code. The catchment area is part of the admission arrangements and must be published as part of those arrangements.
20. Criterion 4 of the oversubscription criteria referred to the term “*work and worship*”. This term was not defined. It would therefore have been difficult for parents to understand its meaning, and how the requirements of the oversubscription criterion could have been satisfied. It was therefore unclear, and so did not conform to paragraph 14 of the Code. The term work and worship – even undefined as it was – indicated taking part in some activity in addition to worship or it would not have said 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 the case of (*R 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*” means laid out in guidance on school admissions. In this case, there was no diocesan guidance on these matters so the school were not able to take account of religious activities which might fall within the meaning of the term “work” even if this term had been defined (which it had not). Use of the term, in these circumstances, did not conform to paragraph 1.19i of the Code.
21. Also, in relation to criterion 4, there appeared to be no SIF, so it was not clear to the person who was providing “*written confirmation*” what it was that they needed to confirm. This did not conform to paragraph 14 of the Code. In the proposed revised arrangements, criterion 4 has been removed altogether.
22. Note 3 stated that “*governors will decide if they wish to admit multiple birth children*”. A parent with multiple birth children would not have known from the arrangements whether or not any of their children would have been admitted to the school, or how this would have been decided. This did not conform to paragraph 14 of the Code.
23. Distance from the school was said to be measured by the “*shortest suitable vehicular route*”. There was no explanation of how suitability was to be determined, or who would have determined this. Paragraph 1.13 of the Code states that “*Admission authorities **must** clearly set out how distance from home to the 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 did not set out clearly how distance from home to school would have been measured, therefore they did not conform to paragraph 1.13 of the Code. Because the arrangements were unclear, they also did not conform to paragraph 14 of the Code.

24. The NB on page 2 of the arrangements relating to the address from which applications would have been accepted made no provision for children who had separated parents and who lived at more than one address. This did not conform to Paragraph 1.13 of the Code. Because this made the arrangements unclear, they also did not conform to paragraph 14 of the Code.
25. “*Planned Admission Number*” should be Published Admission Number, abbreviated as PAN.
26. The arrangements stated: “*The school’s policy regarding admission of Reception children at the start of the Autumn Term is to take all the children full time; however, parents may wish to discuss this arrangement with the Headteacher*”. Paragraph 2.16 of the Code states: “*Admission authorities must provide for the admission of all children in the September following their fourth birthday. The authority must make it clear in their arrangements that, where they have offered a child a place at the school:*
- a. *That the child is entitled to a full-time place in the September following their fourth birthday;*
  - b. *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 and not beyond the beginning of the final term of the school year for which it was made; and*
  - c. *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.”*
27. The school’s wording failed to make clear the entitlement to part-time attendance, suggesting instead that part-time attendance was a matter at the headteacher’s discretion. This is not the case, as parents have a right for their child to start school later in the school year so long as they start by the time they reach compulsory school age or at the beginning of the final term of the school year concerned.
28. The school has cooperated fully throughout this process. The headteacher and chair of governors then attended a meeting on 20 July 2017 to discuss the matters raised by the adjudicator under section 88I of the Act as set out in my letter of 7 July 2017. A proposed revised set of arrangements was sent to me on 25 July 2017. These contain four oversubscription criteria. The faith-based criterion has been removed. The proposed revised arrangements have addressed all of aspects of the objection and all of the matters I raised under section 88I of the Act. The school has acted with commendable speed and worked hard to produce a proposed set of arrangements which conform to the Code. They deserve full credit for their cooperation and for the speed within which the proposed revisions were made. The only further action required is for the governing body

formally to vary the arrangements to adopt the proposed revisions; for the arrangements to be updated; and for them to be published on the school's website.

## **Summary of Findings**

29. Having considered the arrangements for admission to the school in September 2018 which were referred to me by the objector on 15 May 2017 together with the relevant paragraphs of the Code, my findings are that some of the matters referred to by the objector did not conform to the Code. There is one aspect of the objection which I do not uphold. There were a number of other matters raised by the adjudicator in relation to aspects of the arrangements which also did not conform to the Code. These were shared with the school at the meeting on 20 July 2017. I also find that the school acted promptly in sending me a revised proposed set of arrangements which remedy both the points raised in the objection and the points raised by the adjudicator under section 88I that needed to be addressed.

## **Determination**

30. 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 Great Witley Church of England Primary School on behalf of the Rivers Multi-Academy Trust for Great Witley Church of England Primary School, Worcestershire.

31. I have also considered the arrangements in accordance with section 88I(5) and found there were other matters which did not conform to the requirements relating to admission arrangements.

32. 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: Dr. Marisa Vallely