



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA3391

Objector: A parent

Admission Authority: Fulham Boys School Limited for The Fulham Boys School

Date of decision: 5 July 2018

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 2019 determined by Fulham Boys School Limited for The Fulham Boys 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 a parent (the objector), about the admission arrangements for September 2019 (the arrangements) for The Fulham Boys School (the school), a free school with a Church of England character for boys aged 11 to 18. The objection concerned several matters including the clarity and objectivity of faith based aspects of the arrangements, consultation and admission to the sixth form.

2. The local authority for the area in which the school is located is Hammersmith and Fulham. The local authority is a party to this objection. Other parties to the objection are the Diocese of London Board for Schools (LDBS) which is the religious authority for the school, Fulham Boys School Limited which is the academy trust for the school (the trust), the governing

board of the school and the objector.

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 academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing board on behalf of the trust, which is the admission authority for the school, on that basis.

4. The objector submitted her objection to these determined arrangements on 26 April 2018. The objector has asked to have her identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of her name and address to me. 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

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

6. The documents I have considered in reaching my decision include:

- a. the objector's form of objection dated 26 April 2018;
- b. the admission authority's response to the objection and to my other enquiries with supporting documents;
- c. the comments of the local authority on the objection and supporting documents;
- d. the comments of the LDBS on the objection and supporting documents;
- e. confirmation of when consultation on the arrangements last took place;
- f. copies of the minutes of the meeting at which the governing board of the school determined the arrangements; and
- g. a copy of the determined arrangements.

7. I have also taken account of information received during a meeting (the meeting) which I convened at the school on 14 June 2018. The meeting was attended by representatives of the school, the LDBS and the local authority. The objector was also invited to attend the meeting but chose not to do so.

The Objection

8. The objector raised several issues mainly concerned with the faith-based aspects of the arrangements. She considered that the arrangements did not meet the requirements of paragraphs 1.4 and 1.8 of the Code as they were not clear or objective in respect of the priest or minister's reference required in support of applications for a faith place. She said "*parents cannot easily understand how the faith requirement could be fulfilled*" and therefore paragraph 1.37 of the Code was not complied with. She also said that the school "*failed to take account of advice and guidance from the London Diocesan Board for Schools*" and so was in breach of paragraph 1.38 of the Code.

9. The objector raised matters concerning the supplementary information form (SIF). The first was that the form asks parents to agree to support the home school agreement which she considered placed a condition on the consideration of the application which is prohibited by paragraph 1.9a of the Code. Secondly, she said that a SIF was required from all applicants and that it asked questions that "*had no bearing on the oversubscription criteria for those not applying for a faith place*" and so the SIF did not comply with paragraph 2.4 of the Code.

10. The next matter raised by the objector was that consultation on the arrangements had not included parents as required by paragraph 1.44 of the Code.

11. The objector also considered that the interview for applicants to the sixth form was prohibited by paragraph 1.9m of the Code.

Other Matters

12. When I read the arrangements it appeared to me that there were other matters which did not, or may not, comply with the requirements of the Code.

a) Whether the information in the arrangements concerning banding met the requirements of Paragraph 1.27 of the Code to publish details of banding tests and whether the arrangements were clear about the banding process. It did not appear to be possible for the school to meet the requirement of Paragraph 1.32c of the Code to "*take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on 31 October*" when the banding tests do not take place until November of the same year.

b) There appeared to be little information in the arrangements about places offered on the basis of sporting aptitude and so the arrangements may not be clear.

c) The arrangements did not appear to comply with paragraph 1.13 or 1.14 of the Code as the point in the school from which the admission priority zone is measured was not stated, nor was it said how that measurement was carried out.

d) The Code sets out the requirements for waiting lists in

paragraph 2.14. The section on waiting lists in the arrangements did not appear to meet these requirements.

e) Paragraph 2.17 of the Code says “*Admission authorities must make clear in their admission arrangements the process for requesting admission out of the normal age group.*” This requirement did not appear to have been met in the arrangements.

f) The definition of looked after and previously looked after children did not appear to be as full as that given in paragraph 1.7 of the Code and its footnotes. This may make the arrangements unclear.

g) The admission arrangements for the sixth form did not appear to meet the requirements of Paragraph 1.2 or 1.8 of the Code.

Background

13. The school opened as a free school for boys in September 2014, it is currently on a temporary site; the move to a permanent site is intended to take place during the 2019/20 academic year. The school will include sixth form students in Year 12 for the first time in September 2019. The published admission number (PAN) for Year 7 is 120. For September 2018, the school was oversubscribed with 164 first preference applications. At the meeting the local authority informed me that there is no shortage of secondary school places in the area.

14. The 2019 arrangements are different to those used in previous years. The school explained that these changes followed an analysis of the pattern of admissions in previous years. Changes include: the way in which it is decided that a child is eligible for a faith-based place, the introduction of up to eight places for boys with an aptitude for sport, removal of priority on the basis of exceptional medical or social grounds, replacing two admission priority zones with one and setting arrangements for the sixth form for the first time.

15. The school places boys into one of three bands based on their performance in cognitive ability tests. The bands are not equally sized. Rather, 25 per cent of boys are placed in the top band, 50 per cent in the middle band and 25 per cent in the bottom band. Within each band priority will be given according to the following oversubscription criteria:

1. Looked after and previously looked after children
2. Founders' children
3. Children of staff
4. Children under the sporting aptitude scheme.

16. The remaining places within each band are split equally between “*Christian Faith Places*” and “*Open Places*”. Any unfilled “*Christian Faith Places*” become “*Open Places*” and vice versa. There are different oversubscription criteria for the two types of places.

17. The three oversubscription criteria for the faith places can be summarised as :

- a. Siblings of boys at the school
- b. Practising membership of an Anglican church and resident in the admissions priority zone
- c. Practising membership of other Christian churches and resident in the admissions priority zone

18. The three oversubscription criteria for open places can be summarised as :

- a. Siblings of boys at the school
- b. Boys resident in the admissions priority zone
- c. Other boys

19. The priority admissions zone is a circle with a two mile radius centred on the school's permanent site. At the point of oversubscription in any criterion, random allocation is used to decide which boys will be offered places.

20. The school uses a form which it calls its "additional information form". I am satisfied that this form is a SIF for the purposes of the Code and use the term SIF in my consideration of the arrangements, other than where I think that it will aid the reader's understanding to use the wording employed in the school's arrangements.

Consideration of Case

Faith-based matters

21. The objector said that "*arrangements are not clear or objective in respect of the priest/minister's reference required for faith places.*" She referred to paragraph 14 of the Code which says "*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.*" and to paragraph 1.8 which says "*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.*"

22. The objector also referred to paragraph 1.37 of the Code which says "*Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.*" She expressed the opinion that "*parents cannot easily understand how the faith requirement could be fulfilled.*"

23. The last aspect of objection on faith-based matters was that the school

had “*failed to take account of advice and guidance from the London Diocesan Board for Schools*” referring to paragraph 1.38 of the Code which says “*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 this Code.*”

24. I will begin by considering whether the arrangements help parents easily understand how the faith-based criteria will be reasonably satisfied.

25. The concept of faith places and open places is introduced on the second page of the arrangements in a diagram under the heading “*Oversubscription Criteria*”. In the box headed “*Christian Faith Places*” it says “*Christian Faith places will be prioritised as follows: Children with siblings at the school, then by priority admission zone (para 19)*”. In the box headed “*Open Places*” it says “*Open places will be prioritised as follows: Children with siblings at the school, then by priority admission zone (paragraph 20)*”. As will be seen below, the oversubscription criteria for faith places is more extensive than that given under this heading, making the oversubscription criteria unclear under the heading where one might expect them to be set out in full.

26. Paragraph 17, which is on the fourth page of the arrangements is under a heading of “*Christian Faith and Open Places*”. It says “*After admissions in paragraph 16, to support the school’s vision of being a Christian learning environment, half of the remaining places within each band will be offered to boys from Christian families (Christian faith places). The other 50% of places will be offered to boys of all faiths and none (open places). Note that any unfilled Christian faith places within a band will automatically become additional Open places and vice versa. See paragraph 26 below for the definition of Christian faith.*”

27. The arrangements do not say what a Christian family is. However, it would appear that there is no need to use the term “*Christian families*” at all. This is because in a paragraph in the next section of the arrangements, numbered 19, under the heading of “*Christian Faith places*” the arrangements make the following provision. They say that, after siblings, priority is given to “*b) boys who themselves or their parents/carers are practising members of the Anglican Church*” and then to “*c) boys who themselves or their parents/carers are practising members of other Christian churches*”. A boy on his own who was considered a practising member of a Christian church would be eligible for a faith place whatever beliefs and practices were adopted by other members of his family. The inclusion of the term “*Christian families*” makes it more difficult for parents to understand how the faith requirement could be fulfilled.

28. The use of plurals for “*parents/carers*” in the sentences quoted above may be required for the plural of “*boys*”, but the way it is used could have the effect of making it unclear as to how many of the boy’s parents or carers need to be practising members of a Christian church. It would be unfair to boys from single parent families if the requirement was for more than one and I find the arrangements are not clear on this matter.

29. Another example of where the arrangements are not, in my view, clear is the first oversubscription criterion for faith-based places which reads “*boys with a sibling at the school on the date of admission*” and then refers to a definition of sibling. Unlike the next two criteria for faith-based places which include the need for the boy or a parent to be practising members of a Christian church, no such requirement is stated for siblings. I consider that this makes the arrangements unclear. In discussion at the meeting it became apparent that the boy or his parent are required to meet the requirement to be practicing members of a church. My jurisdiction is for the determined arrangements and not with their application to those seeking places at the school. Nevertheless, I consider the fact that the school’s practice arguably does not reflect the wording of the arrangements reinforces my view as to the lack of clarity.

30. I come now to the question of how a boy would or would not qualify for priority for a faith-based place. At the end of the section number 19 headed “*Christian Faith places*”, the reader is directed to paragraph 26 of the arrangements. This is found on the sixth page and is also headed “*Christian Faith places*”. Here the arrangements say “*Faith places will be offered to boys who themselves or whose parents/carers are practicing members of a Christian church which is a full member of “Churches Together in Britain and Ireland” or “The Evangelical Alliance”. Anyone applying for a faith place must have the support of their priest/minister/other referee as indicated on Section B of the Additional Information Form.*”

31. At the meeting, I asked the school how having to refer to different parts of the arrangements to understand how the faith-based criteria could be satisfied made the arrangements clear. The school said that most parents would begin with the SIF which told them everything they needed to know. The school also told me that it was drafting some guidance on the admission arrangements for parents. It seems to me that if guidance notes are thought to be needed then it is an acceptance that the arrangements themselves are not clear.

32. I will now consider whether, as suggested by the school, the SIF makes it clear what Christian practice is required for a boy, and/or his parent or carer, to be considered a “*practising member*” of an Anglican or other Christian Church and so meet one of the oversubscription criteria for a faith place.

33. Section B of the SIF says it is only for applicants for a Christian Faith Place. Part 1 of section B begins with a declaration by the parent or carer that by applying for a “*Christian faith place*” they want their son to have an education where

“-The Christian ethos will have an impact on every area of school life, be that assemblies, form times, lessons, break and lunchtimes, sports afternoons or any other time. It will have an impact on learning, behaviour, pastoral care and pupil and staff welfare.

- Everyone will have regular and varied opportunities to learn about the main beliefs of Christianity and the claims of Jesus Christ.

- Everyone will have the opportunity and will be encouraged to think and ask questions about these beliefs and claims. Everyone will be able to give their own view in response, whatever that may be.

- Everyone will learn about Christian values, as described in the Bible and demonstrated perfectly by Jesus Christ. We will try to follow them as a community in everything we do.”

34. Parents or carers are asked to sign a promise to support that ethos through:

“- Encouraging my son to attend Christian Union regularly

- Attending meetings for parents that are organised by the school with regard to the Christian ethos

- Attending all church services that are organised by The Fulham Boys School throughout the school year (Start of year service, Remembrance, Carol, Easter and End of Year service)

- Being an active member of The Friends of Fulham Boys School demonstrating the Christian value of service and community”

35. Part 2 of Section B then asks for the name, address and denomination of the Church and for the minister or leader to say whether that Church is a member of Churches Together in Britain and Ireland or The Evangelical Alliance. The minister or leader is then asked “Do you consider the family (parent(s) and/or child) understand, respect and will uphold the Christian beliefs and values of The Fulham Boys School as laid out in Section B1 above?”

36. The oversubscription criteria require a boy or his parent or carer to be a “practising member” of an Anglican or other Christian Church to qualify for a faith-based place. Nothing in the SIF says what practice is required to be considered as a “practising member”. The SIF does no more than ask to parents to make a promise and ask a priest to say whether they consider that the parent and/or the child understand and will uphold the promise set out in section B1 of the form.

37. To quote paragraph 1.37 of the Code again “Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.” I find that this requirement of the Code is not met because it is not clear in the arrangements, which include the SIF, what a parent or child must have been doing to be considered a “practising member” of a church which is the requirement for a faith-based place stated in the oversubscription criteria.

38. Paragraphs 1.4 and 1.8 of the Code require “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 “Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation” respectively. I will now consider the objectivity

of the arrangements.

39. In responding to the objection the school said that in 2017 it reviewed the admission arrangements in order to “*assess whether they were supporting the founding objectives of the school and promoting its ethos*”. It said “*The question had been raised as to whether, within the context of FBS’s applicant group, the ‘test’ [which appeared in the 2018 arrangements] of attendance at church, twice a month, for 2 years was feeding an element of hypocritical attendance and so running directly across the founding notion of a Christian ethos school.*” The school wanted “*to devise a ‘test’ of Christian belief that could mitigate against encouraging hypocrisy on one hand whilst on the other enabling those who wholeheartedly embraced the Christian ethos of the school to have a means of declaring it, of having it endorsed and so applying for a faith place.*” The same arguments were put to me at the meeting.

40. The approach taken by the school is described above. The school acknowledges that in its response to consultation on the arrangements the LDBS considered this approach was not objective. The LDBS provided me with their response to the school’s consultation on the, then, proposed arrangements. The LDBS also provided me with a copy of an email sent to the school expressing the view that the arrangements were not compliant with the Code. As the LDBS itself did not lodge an objection with the Office of the Schools Adjudicator, I can only conclude that it did not feel strongly on this matter or was not sufficiently confident that the arrangements did not comply with the Code to do so. The local authority did not comment on this issue.

41. The school said that putting “*an obligation on an applicant to show they have understood what the Faith place means*” and requiring “*a priest to give their opinion on this understanding*” is more objective than requiring a church leader to say if “*a family has physically been in a building on a certain number of occasions*” without being aware of the school’s ethos.

42. I have no doubt that some people will make the considerable commitment to attend church twice a month for two years to gain priority for a school place without any long-term commitment to the faith. However, attendance at Church can be observed as a matter of fact; motivation for attendance cannot. Paragraphs 14 and 1.8 of the Code quoted above require that admission arrangements, including oversubscription criteria, are objective. I do not accept that a promise to support the school’s ethos is objective and note that just as a parent could stop attending church once a place had been offered at the school, they could fail to keep a promise. I note that this would also seem to fall within the school’s concept of “hypocritical”. Nor do I accept that whether or not a priest considers that a family understands, respects and will uphold that ethos is objective; it is a matter of the priest’s opinion no matter how genuinely held. With the best will in the world, it is also possible that different priests will adopt different standards in making their judgements.

43. I find that the arrangements including the oversubscription criteria are not objective and so do not meet the requirements of paragraphs 14 and 1.8 of the Code.

44. I now turn to the final part of the objection concerning faith matters. That concerns whether the school met the requirements of paragraph 1.38 of the Code. This says “*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 this Code.*”

45. In paragraph 9 of its guidance to schools on admissions dated December 2017 LDBS says “*Where regular church attendance is used as the criterion for assessing religious affiliation, the LDBS guidance is that attendance once or twice a month for two years is an appropriate threshold. The LDBS does not believe that additional factors such as ‘active involvement with the church’ should be used. However, there can be particular circumstances where a school is exceptionally oversubscribed where additional factors may need to be considered*”. In paragraph 2.2.16 of that guidance it says “*There is no single definition of Christian commitment which will be suitable for all church schools, especially where families are drawn from a wide range of denominations. Each governing body must work out for itself what is appropriate to the particular circumstances of their community.*”

46. A report on the consultation undertaken by the school was provided by the objector and can be found on the school’s website. This shows that the governing board did have regard to comments from the LDBS received during consultation on the arrangements. The requirement to have regard to guidance from the body representing the religion or religious denomination is different to taking into account comments received during consultation. In my view, this former requirement appears to have been met. The LDBS’s own guidance, quoted above, says admission authorities may depart from the method of assessing religious affiliation set out in its guidance if another definition is appropriate for its community. The school chose to do this, although as I have found above, the method chosen was not clear or objective. Therefore, I do not uphold the part of the objection concerning the school not having regard to the guidance published by the LDBS.

The supplementary information form

47. The objector referred to paragraph 2.4 of the Code and said “*all applicants are required to submit the additional information form, but this information has no bearing on the oversubscription criteria for those not applying for a faith place. It also asks for information available from the CAF. The explanation for this is specious – other local schools with far greater application numbers manage their banding tests and admissions without an additional form.*” She also said “[the] additional information form requires all applicants to sign a declaration which constitutes a condition on consideration of the application” and referred to paragraph 1.9a of the Code.

48. Paragraph 2.4 of the Code says “*In some cases, admission authorities will need to ask for supplementary information forms in order to process applications. If they do so, they **must** only use supplementary forms that request additional information when it has a direct bearing on decisions about*

*oversubscription criteria or for the purpose of selection by aptitude or ability. They **must not** ask, or use supplementary forms that ask, for any of the information prohibited by paragraph 1.9 above or for: a) any personal details about parents and families, such as maiden names, criminal convictions, marital, or financial status (including marriage certificates); b) the first language of parents or the child; c) details about parents' or a child's disabilities, special educational needs or medical conditions; d) parents to agree to support the ethos of the school in a practical way; e) both parents to sign the form, or for the child to complete the form."* Paragraph 1.9a of the Code says *"It is for admission authorities to formulate their admission arrangements, but they **must not**: a) place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements ..."*.

49. I have described and commented on Section B of the SIF above. On the front page of the SIF it says *"This form should be filled in by everyone applying for a place at The Fulham Boys School"*. It also says the form should be returned to the school by 31 October 2018. At the top of Section A it says *"to be completed by ALL applicants"*. Part 1 of Section A, asks for the child's name, address and current school. In part 2 it asks for information about the parent or carer, their name, address if different from the child's, telephone number and email address and relationship to the child. The third section requires the parent or carer to sign the following statement *"I confirm that I have read The Fulham Boys School's Home School Agreement and am aware of the School's unique ethos and agree to fully support it if my son becomes a pupil at FBS."* The home school agreement can be found on the admissions page of the school's website, but is not included in the arrangements. For the avoidance of doubt, there is no reason why a home school agreement would be included in a school's admission arrangements.

50. I note that in their responses to the school's consultation on the arrangements both the LDBS and the local authority commented extensively to the school on the SIF and its possible non-compliance with paragraph 2.4 of the Code. The report on this consultation sets out the governing board's reasons for retaining some of the items on this form which both the LDBS and the local authority advised against.

51. The school told me that the purpose of the first part of the SIF was solely to collect information needed to administer the banding tests. Schools which set banding tests in the first half of the autumn term, or earlier, will need to collect basic details about the children who will sit them in order to administer the tests and to match up the results with applications when the common application form (CAF) is received. As this school does not hold its banding tests until November, after the deadline for the CAF, the reason for collecting information to administer the tests was not clear to me.

52. The school said *"it has not always been able to obtain the information from the Common Application Form (CAF) necessary to administer its admissions in a timely fashion ... in particular to contact all applicants and their schools to notify them of the fair banding tests held in November. The additional information form was proposed to enable FBS to access this information directly."* The school did note that new technology was being

introduced by the local authority which would allow earlier access to data about applicants but said this may not solve problems occurring with transfer of data from other local authorities.

53. The SIF asks for both the address of the child and parent or carer if different and the relationship of the parent or carer to the child and for the child's current school. Asking for the relationship between the parent or carer and the child and for two addresses if those of parent or carer and child are different, does not comply with paragraph 2.4a of the Code quoted above as these are personal details about the family. The school said that it was necessary to ask for the name and address of the current school so the school could inform the primary school that the child would be absent on the day of the banding test. I do not consider this to be necessary. It would be the parent or carer's responsibility to account for their child's absence to their primary school. I find that the contents of the SIF do not comply with paragraph 2.4 of the Code.

54. Paragraph 7 of the arrangements says "*All applicants should also fill in the additional form*". The form itself says it "*should be filled in by everyone applying for a place*" at the top of section A of the form it says "*to be completed by ALL applicants*". Paragraph 14 of the Code requires that arrangements are clear. It is not clear in the arrangements that children with an Education, Health and Care plan which names the school do not have to complete any application form, including the SIF. The school gives highest priority to looked after and previously looked after children as it is required to by the Code. Such children do not need to take the banding test and therefore do not need to complete a SIF which supports that process.

55. Part of the objection concerned the requirement for parents or carers to give an undertaking by confirming that "*I have read The Fulham Boys School's Home School Agreement and am aware of the School's unique ethos and agree to fully support it if my son becomes a pupil at FBS*". In responding to this, the school said this statement was to differentiate the school from a school with a similar name and to ensure that applicants understand the school's ethos when they applied. The school also said "*Applicants are not obliged to fill out part A of the form*".

56. At the meeting I asked the school how it would consider an application without a SIF or without a signature showing the parent would support the home school agreement. The school said that it would have to process the application.

57. I am of the view that a parent or carer looking at these arrangements would come to the understanding that the application would not be considered unless the SIF was completed, including agreeing to support the home school agreement. This constitutes conditionality which is prohibited by paragraph 1.9a of the Code.

58. There is another aspect of the arrangements which I shall raise here as it concerns conditionality. Paragraph 1.9i of the Code says "*It is for admission authorities to formulate their admission arrangements, but they **must not** ... i) 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)”. Part B of the SIF, as quoted in the earlier section of this determination headed “Faith based matters” refers to a number of activities which the parent is asked to promise to undertake. At the meeting the LDBS confirmed that those activities had not been laid out by the LDBS. The school argued that these were not past or current activities as the parent would only be required to undertake them after the place had been allocated and so were future activities; therefore, in the school’s view, paragraph 1.9i of the Code was not engaged.

59. This argument does not in my view aid the school. In the first place, and as I have explained above, it is not possible to assess objectively commitment to participation in future activities. Moreover, I am of the view that the promise to undertake various activities (which is the effect of signing Section B) should the boy be offered a place at the school would be understood by parents to be a condition of admission. Seeking such a promise does not comply with paragraph 1.9a of the Code.

60. I uphold the parts of the objection concerning the SIF and conditionality.

Consultation

61. The objector said that the school failed “*to consult parents of children under school age*”. Paragraph 1.44 of the Code lists who must be consulted with, the very first of which is “*parents of children between the ages of two and eighteen*”.

62. In responding to this part of the objection, the school said that because it was a secondary school it “*saw no imperative to actively seek the views of this cohort [parents of children under school age]*”. It relied on any parent of an under school age child seeing the notice of the consultation on the school’s website.

63. It is understandable that a secondary school would focus its consultation on parents who may be applying for the school in the year in question more than on those who may not be applying for six years. The school provided me with a copy of a letter to the local primary schools about the consultation, this letter did not ask them to draw it to the attention of parents of children at the school. The school has not provided me with any other evidence of steps taken to draw the consultation to the attention of parents who may be applying for a place at the school in September 2019.

64. The school only received responses to their consultation from three prospective parents. I contrast this with the level of oversubscription at the school with 164 first preferences for the 120 places available in 2018. This suggests that the consultation could have generated more interest among parents and it was not as effective as it could have been, paragraph 1.45 of the Code says “*Failure to consult effectively may be grounds for subsequent complaints and appeals.*” The school argued that a low response to the consultation from parents indicated that they were satisfied with the proposed

arrangements.

65. There is much good practice found in schools when consulting parents, for example, using social media and putting notices about the consultation in surgeries, libraries and other public places. The Code makes one specific requirement, in paragraph 1.45, that the proposed arrangements are placed on the school's website, which was done. This is a necessary, but not sufficient condition of effective consultation and I consider that the school could have done more to consult all parents, particularly those in the current Year 5 who will be affected by the changes, not just those of pre-school children. I uphold this part of the objection.

Sixth form

66. The objector said that because sixth form applicants would be interviewed to decide on their suitability for the course, this breached paragraph 1.9m of the Code which says that admission authorities "**must not: interview children or parents. In the case of sixth form applications, a meeting may be held to discuss options and academic entry requirements for particular courses, but this meeting cannot form part of the decision making process on whether to offer a place.**"

67. The arrangements say "*To help candidates decide which courses are most suitable for them all candidates who are predicted grades that match or exceed our subject requirements will be offered an advice and guidance meeting with a senior member of staff at the school before offers are made.*"

68. In responding to this part of the objection, the school said "*It is not in the interest of pupils, parents or the school that pupils embark on a programme of A level studies without being aware of the nature of the course.*"

69. Meetings between prospective students and school staff are common practice prior to admission to the sixth form. They are allowed in the Code which says "*this meeting cannot form part of the decision making process on whether to offer a place.*" The arrangements say "*when places are oversubscribed they will be allocated on the grounds of suitability for the specific courses applied for.*" The meeting is also about suitability for courses and is held before an offer of a place is made. I can only draw the conclusion that the meeting forms "*part of the decision making process on whether to offer a place*" and so contravenes paragraph 1.9m of the Code. I uphold this part of the objection.

Other Matters

Banding

70. There were a number of ways in which it appeared the arrangements did not, or may not, meet the requirements of the Code concerning banding.

71. Paragraph 1.27 of the School Admissions Code (the Code) requires

that “*The admission authority **must** publish the admission requirements and the process for such banding and decisions, including details of any tests that will be used to band children according to ability.*” There are two paragraphs in the arrangements and one note concerning banding. Having read these parts of the arrangements a parent, would not know where the test is held, how long the test is or how a boy who missed the test for a “*proven legitimate reason*” is put in the appropriate band. Nor do these paragraphs make it clear that a looked after or previously looked after boy, or boys with an Education Health and Care Plan naming the school, must be admitted to the school whether or not they take the banding test.

72. In response to my enquiries on these matters the school said it considered that publishing details of the tests on 1 September when the admissions process started and in emails to applicants was sufficiently timely and invited me to advise on an earlier timescale. It is not for me to advise on a timescale; the Code sets a deadline of 15 March for publication as explained in the next paragraph.

73. Paragraph 1.47 says “*Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and must publish a copy of the determined arrangements on their website*”. The Code defines admission arrangements in footnote 5 as “*the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered.*” Banding is therefore part of the arrangements and details of the banding process must be published with the arrangements. Admission arrangements must be determined by 28 February each year and Paragraph 1.47 also says “*Admission authorities **must** send a copy of their determined admission arrangements ... as soon as possible before 15 March in the determination year*”. This enables local authorities to meet the requirement set out in paragraph 1.48 to publish “*details of where the determined arrangements for all schools, including Academies, can be viewed*” by 15 March each year.

74. If a parent or other person wanted to object to any aspects of the banding process they have until 15 May to do so. If all details of the arrangements are not published when required by the Code, parents or others will be unable to submit an objection by the published date. I find that the school has not met the requirements in the Code regarding publishing details of the banding process and tests.

75. Paragraph 14 of the Code requires that admission arrangements are clear. I consider that the last sentence in paragraph 12 of the arrangements may not be clear. It says “*If all applicants in a Band are offered places, additional places will be added to the adjoining Band (e.g. once all Band 3 applicants have been offered places, any unfilled Band 3 places will become additional places in Band 2).*” From this paragraph it is not clear how if there are unfilled places in Band 2, if they become available as additional places for Band 1 or Band 3.

76. When I raised this matter with the school it proposed alternative wording which if incorporated into revised arrangements would clarify this

matter.

77. Banding is a form of selection permitted by section 101 of the Act. Therefore banding tests are subject to the requirements of paragraph 1.32c of the Code which deals with tests for selection. It says “*Admission authorities must: ... c) take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on 31 October so as to allow parents time to make an informed choice of school - while making clear that this does not equate to a guarantee of a selective place.*” The arrangements say that the banding tests do not take place until November; this makes it impossible for the school to inform parents of the results of the banding process by the end of October.

78. The school argued that the banding test is not a selection test. This is not the case. I have referred above to section 101 of the Act which is headed “Permitted Selection: Pupil Banding”. Paragraph 1.25 of the Code also states that “*pupil ability banding is a permitted form of selection*”. The tests the school applies are solely for the purpose of banding; banding is a form of selection and that means that the banding tests are selection tests. I have also noted that in a previous version of the Code banding tests were explicitly excluded from the requirement to inform parents of the outcome of tests before they applied for places. The current Code – as approved by Parliament - does not include this provision and this means that banding falls within the scope of paragraph 1.32c.

79. The school also argued that “*it would be a practicable impossibility for FBS to invite applicants to sit a test, and notify them of the results of the test, before 31 October as the school does not have the necessary details until 31 October.*” In my view it would not be impossible for them to do so. It is in fact common practice in schools with banding tests, including other schools within the Pan-London admissions scheme. These schools manage to set banding tests and provide results to parents by 31 October each year.

80. The purpose of paragraph 1.32c is to allow parents to make an informed choice of school. When this matter was discussed at the meeting, the school argued that knowing which band a boy was in would not affect a parent’s decision to apply for the school or not and it could be misleading.

81. In schools which use proximity to the school to determine priority for a place at the point of oversubscription within each band, it is possible for a child living at a particular address to have a greater likelihood of a place if they are in one band rather than another. There will be historical data to show this. In such cases parents need information about which band their child is in to make decisions about which schools to apply for.

82. Although random allocation is used at the point of oversubscription it is possible that some bands will become oversubscribed from within the admission priority zone, and others from outside of it. This could be useful information for parents to have before applying, but as the admission priority zone is in its current form for the first time on 2019, there is no historical data to indicate if this is the case. There is, however, another factor which a parent may take into account in deciding whether or not to apply for the school which

could be informed by knowledge of the outcome of the banding test. A parent may prefer that their child was one of the brighter children at the school they attended and if the banding test indicated they would not be, then it could affect their decision to apply.

83. For these reasons I have formed the view that knowledge of which band a child is in could be a factor parents may wish to take into account when deciding to apply for the school. I find that the arrangements fail to conform with paragraph 1.32c of the Code, and the school must take reasonable steps to inform parents about the outcome of the banding tests before 31 October.

Sporting Aptitude

84. Paragraph 16 in the arrangements says that more information about how to apply for a place on the basis of sporting aptitude will be “*available shortly*”. I have set out above the timescale set out by the Code for the publication of admission arrangements together with the reasons for it.

85. After I raised this matter with the school, details of the sports aptitude scheme were published on the school’s website and sent to me. This included an application form for a sports aptitude place which is another SIF and required to comply with paragraph 2.4 of the Code set out in the section above about the main SIF.

86. The application form asked for both the child’s address and the parent or carer’s address if different, the child’s current school and the parent or carer’s relationship with the child. Because these questions have either no bearing on decisions about whether or not the child should be offered a place on the basis of sporting aptitude, or are personal details about parents and families they are prohibited by the Code. This form should be amended to comply with the Code.

Measurement of distance

87. Paragraph 1.13 of the Code says “*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.*” The arrangements define the “*priority admissions zone*” as being two miles from the school’s permanent location in Heckfield Place SW6 5NL. This is not as precise as required by the Code, nor do the arrangements say how this will be measured. Paragraph 1.14 of the Code says that “*Catchment areas **must** be designed so that they are reasonable and clearly defined*”

88. When I raised this matter with the school it said that distance was measured by the local authority using its system. To meet the requirements of the Code this needs to be stated in the arrangements along with the point in the school from which the measurement is taken.

Waiting list

89. The Code sets out the requirements for waiting lists in paragraph 2.14.

*“Each admission authority **must** maintain a clear, fair and objective waiting list until at least 31 December of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria.”*

90. The section in the arrangements about waiting lists says “*All unsuccessful applicants will be placed on the waiting list. The waiting list will be ranked in accordance with the over- subscription criteria set out earlier in this policy and will be open until December each year.*” It does not state that “*each added child will require the list to be ranked again*”.

91. I also find that the waiting list is unclear concerning how places would be allocated if one became available in, say, the middle band and there were no applicants remaining on the waiting list in that band. At the meeting the school explained how it would deal with this situation, but this is not stated in the arrangements making them unclear.

Admission of children outside of the normal age group

92. Paragraph 2.17 of the Code says “*Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.*” The school told me that it had not had any such requests and said what it would do if it received one. The Code requires that the arrangements say what the process for requesting a place out of the normal age group is and this requirement is not met in the arrangements.

Looked after and previously looked after children

93. The arrangements correctly give first priority in each band to looked after and previously looked after children. The definition of looked after and previously looked after children given in the arrangements is not as full as that given in the Code. This could make it unclear to some parents that their son would have first priority for a place at the school. When I raised this matter with the school it proposed wording which if adopted would make the definition as full as that in the Code.

Sixth Form

94. The admission arrangements say “*The school is able to accommodate a maximum of 240 boys in the sixth form.*” The arrangements continue to say that “*Admission to the sixth form will only become available to external applicants if internal candidates have not taken up the available places. For admissions in September 2019 there will be a maximum of 82 internal applicants for a maximum of 100 lower Sixth places*”.

95. Schools cannot limit the number of internal applicants transferring to the sixth form. If a boy meets the required academic standard, then he transfers to Year 12 without going through an admissions process; he simply remains on the school roll and cannot lawfully be removed. If the school is planning to admit any new students into Year 12 it becomes a relevant age group and paragraph 1.2 of the Code says the school must set a PAN for external applicants to that year group. If a school has 100 places in the lower

sixth form and has 82 pupils in Year 11, then it can assume that all Year 11 transfer and may set a PAN of 18 for external applicants. Should fewer than 82 boys transfer to the sixth form, the school may admit more than 18 external applicants as it is permitted to do by paragraph 1.4 of the Code.

96. Paragraph 1.6 of the Code says there must be a set of oversubscription criteria to decide which applicants are to be offered places if more than the PAN apply. Those oversubscription criteria must meet the requirements of paragraph 1.8 of the Code and be reasonable, clear and objective.

97. The arrangements say *“When there are more external applicants who satisfy the entry requirements, and once places have been offered to students of special educational needs (SEN) or those with an education, health and care (EHC) plan naming The Fulham Boys School, places will be offered first to young people who are in public care (looked after children) or who were in public care but ceased to be so because they were adopted or became subject to a child arrangement or Special Guardianship (previously looked-after children). Thereafter, when places are oversubscribed they will be allotted on the grounds of suitability for the specific courses applied for.”*

98. At the meeting I offered the school the opportunity to explain to me how suitability for a course could be assessed objectively; it could not do so. I have found above that the interview which the school uses to assess suitability of courses for students prior to the offer of places above is prohibited by the Code. I now find that suitability is not an objective oversubscription criterion and therefore the oversubscription criteria for the sixth form do not conform with the Code.

Summary of Findings

99. For the reasons set out above I uphold those parts of the objection relating to the clarity and objectivity of the faith-based aspects of the arrangements. I also uphold the part of the objection regarding the SIF and conditions which appear to be placed on the consideration of applications other than those in the oversubscription criteria. Furthermore I uphold those parts of the objection relating to consultation and admission to the sixth form.

100. I do not uphold the part of the objection relating to the assertion that the school did not have regard to guidance from LDBS.

101. I also find several other ways in which the arrangements do not conform with the Code which are set out above.

Determination

102. 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 2019 determined by Fulham Boys School Limited for The Fulham Boys School, Hammersmith and Fulham.

103. 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.

104. 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: 5 July 2018

Signed:

Schools Adjudicator: Phil Whiffing