



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA3471

**Objector:** Humanists UK

**Admission Authority:** Crompton House Church of England School for  
Crompton House Church of England Academy,  
Oldham

**Date of decision:** 31 July 2018

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2019 determined by Crompton House Church of England School for Crompton House Church of England Academy, Oldham.**

**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 representative of Humanists UK, (the objector), about the admission arrangements for September 2019 (the arrangements) for Crompton House Church of England Academy (the school), an academy school for children aged 11 to 18. The objection is that the arrangements may be unfair to non-religious families.

2. The local authority for the area in which the school is located is Oldham Council. The local authority is a party to this objection. Other parties to the objection are the objector, the academy trust for the school and the school's governing board.

### **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 the objection to these determined arrangements on 15 May 2018. 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 15 May 2018;
  - b. the admission authority's response to the objection and to my subsequent enquiries and supporting documents;
  - c. the comments of the local authority on the objection and supporting documents;
  - d. the comments of the Diocese of Manchester which is the religious authority for the school;
  - e. maps 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 board of the school determined the arrangements; and
  - h. a copy of the determined arrangements.
7. I have also taken account of information received during a meeting (the meeting) I convened on 17 July 2018 at the school. The meeting was attended by representatives of the school, representatives of the local authority and the objector. The diocese was invited to the meeting, but did not attend.

## The Objection

8. The objector said that the arrangements did not comply with paragraph 14 of the Code because they were unfair to non-religious people. He said *“Whilst the Code states that schools with a religious character can ‘allocate places by reference to faith where the school is oversubscribed’, it also requires that admission criteria are ‘fair’ (p. 14). It does not seem at all ‘fair’ for a school to arbitrarily discriminate against the non-religious in this way.”*

## Other Matters

9. When I reviewed the arrangements it appeared to me that they did not, or may not, conform with requirements relating to admissions in the following ways:
  - a. On the first page of the arrangements it says *“Accepted by the Diocese of Manchester Board of Education”*. Paragraph 14 of the Code requires that admission arrangements are clear, it was not clear to me what this statement meant.
  - b. The arrangements referred to children with statements of special educational needs. The Children and Families Act 2014 replaced statements with Education, Health and Care (EHC) plans. Not referring to EHC plans could make the arrangements unclear to parents and therefore not meet the requirement of paragraph 14 of the Code to be clear.
  - c. The definition of looked after and previously looked after children also failed to recognise changes made by the Children and Families Act 2014 which replaced residence orders with child arrangements orders and so may not be clear.
  - d. The arrangements appeared to give some children who were not members of the faith priority over looked after and previously looked after children not of the faith. This would not comply with Paragraph 1.37 of the Code.
  - e. The oversubscription criteria did not appear to contain a tie-breaker that could differentiate between children who lived the same distance from the school, paragraph 1.8 of the Code requires such a tie-breaker.
  - f. The arrangements say *“we currently admit 224 pupils to year 7, 8, 9 & 10 and 195 pupils to year 11”*, paragraph 1.2 of the Code requires that there is a published admission number (PAN) for each relevant age group, that is the year group into which children are normally admitted to the school, stating a PAN for every year group suggests that these are all points of entry to the school and may not be clear.
  - g. The arrangements say that the school *“will agree any changes to its admission arrangements with the Secretary of State for Education, the Local Authority and the Diocese”*. While the local authority and

diocese must be consulted about any proposed changes to the arrangements, they and the Secretary of State have no role in agreeing them, that is for the admission authority to do.

- h. Paragraph 2.14 of the Code sets out the requirements for waiting lists, the statement in the arrangements concerning waiting lists did not appear to cover all requirements of this paragraph.
- i. The arrangements say that the supplementary information form (SIF) is only available from the school office between set hours during the week, this may discriminate against working families who may be unable to visit the school during these times. As the SIF is part of the admission arrangements, paragraph 1.47 of the Code requires that it is published on the school's website.
- j. The arrangements say that the SIF must be returned to the school by 26 October 2018, the closing date for applications is set in law as 31 October 2018.
- k. Paragraph 1.9m of the Code prohibits interviewing parents or children as part of the admissions process, the discussion between priest and parent referred to on page 12 of the arrangements and on the SIF could be considered as an interview.
- l. The front page of the SIF provided for admission in 2019 states it is for admission in 2018, this makes it unclear.
- m. Paragraph 2.4 of the Code sets out the requirements for the SIF, it is not necessary to ask if the child is looked after or previously looked after on the SIF.
- n. The SIF referred to attendance at Sunday school by the child, paragraph 1.9i of the Code prohibits taking into account children's activities unless they have been laid out by the body representing the faith.
- o. It was not clear how the "*average cycle*" of the child or parent's attendance at a place of worship was calculated on the SIF.

## **Background**

10. The school, which is situated in Shaw between Oldham and Rochdale, became an academy in 2011. The school is over subscribed with 273 first preferences expressed for the 224 places available for September 2018. For 2019 the PAN is also 224 and the oversubscription criteria can be summarised as:
  1. Looked after and previously looked after children with Church of England faith
  2. Children with exceptional social or medical needs
  3. Children of staff
  4. Children with Church of England faith
  5. Other looked after and previously looked after children

6. Children with other Christian faiths
7. Children with other faiths
8. Other children

11. Within each oversubscription criterion siblings get priority and then children living closest to the school.

### Consideration of Case

10. The objector noted that the oversubscription criteria prioritise children from any faith community ahead of children who do not belong to any faith community. He said "*Whilst the Code states that schools with a religious character can 'allocate places by reference to faith where the school is oversubscribed', it also requires that admission criteria are 'fair' (p. 14) [Paragraph 14 of the Code]. It does not seem at all 'fair' for a school to arbitrarily discriminate against the non-religious in this way. Indeed, the freedom to religiously select should no more be used by Church schools to discriminate against all non-religious families vis a vis all religious families than it should be to discriminate against all Muslims, say, vis a vis families of other religions and beliefs.*"
11. The objector quoted the example given in the Government's non-statutory guidance 'The Equality Act 2010 and Schools' of a Church of England school allocating some places to Hindu or Muslim families to ensure a mixed intake reflecting the diversity of the local population. He argued that this example suggests there are "*parameters*" to the exemption from the Equality Act 2010 for the admission arrangements of faith schools. He said "*It is difficult to see how blanket discrimination against the non-religious could fall within these parameters, while also meeting either the Code's requirement for admissions criteria to be fair, or the well-established principle that any discrimination is only permissible if it is a proportionate means of achieving a legitimate aim. It is worth noting that Crompton House does not provide any justification for discriminating in this way.*"
12. Paragraph 14 of the Code referred to in the objection 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.*"
13. At the meeting I asked the objector if he could identify any children or groups of children to whom these oversubscription criteria were unfair, and in what way that unfairness manifested itself. He was unable to identify any specific children or group of children; instead, he said that it was the principle of discriminating against families of no faith that he objected to.
14. In its response to the objection the school reiterated that, because it was designated as a Church of England school, it was permitted to use faith based oversubscription criteria and those criteria were not restricted to the Church of England, but could include reference to other faiths. It stated that the school had had regard to guidance from

the diocese which included allowance for the admission of children from other faiths.

15. In its initial response to the objection, the school did not say why it had chosen to give members of other faiths priority, nor whether it considered this fair. At the meeting I asked the school if it could tell me the reasons for the oversubscription criteria it had chosen and its representatives said that the school wanted to give priority to children from families where the ethos of a faith school was respected. The school representatives told me that the school becomes oversubscribed at the sixth criterion (that is other Christian faiths). The school added that it sometimes admitted children from non-Christian faiths or of no faith at all in-year through the local authority fair access protocol. It also quoted examples of statements made at admission appeals where parents of all faiths had expressed a wish for their children to be educated in an environment where respect for religion was promoted. I find that the school has reasonable grounds for giving priority to children of any faith ahead of children of no faith.
16. The diocese responded to the objection at length citing provisions of the Equality Act 2010 relating to schools. It also quoted guidance from the Department for Education (DfE), guidance from the Equality and Human Rights Commission, guidance from the National Society and its own guidance. All of the information referred to confirms that the school is permitted to discriminate on the grounds of religion in its admission arrangements, but did not make the case that for this school it was fair to do so in the way it does.
17. Similarly, the local authority's response to the objection was focussed on the legal basis for discrimination on the grounds of religion in admission arrangements without commenting on the fairness of this example.
18. Part 2 of Schedule 11 to the Equality Act 2010 removes from schools such as this one the prohibition on discrimination on the grounds of religion in relation to deciding who is to be admitted to a school. As a result, the school may give priority on the basis of faith in its admission arrangements. The ability to give priority in this way is not restricted to applicants of the particular religious faith to which the school is affiliated. Priority may be given on the basis of any religious faith; however, it is not an untrammelled right. The provision in the Equality Act does not remove the requirements in paragraph 14 of the Code that admission arrangements must be fair, clear and objective. It does, however, mean that an argument advanced on the basis that arrangements giving priority on the basis of faith are per se unfair cannot be a reasonable argument. Parliament, in legislating to give permission for certain schools to give priority based upon any religious faith, has determined that this is a reasonable course of action to take. The school is permitted by law to give priority on the basis of faith and has chosen to do so.
19. I should also address the argument made by the objector based on

what is described in the objection as “*the well-established principle that any discrimination is only permissible if it is a proportionate means of achieving a legitimate aim*”. The objection continued “It is worth noting that Crompton House does not provide any justification for discriminating in this way”. I have above dealt with the school’s reasons for the approach it has taken and I have found this approach lawful and compliant with the Code. My understanding is that the principle set out above relates in the main to a defence against a policy, rule or practice that would otherwise amount to unlawful indirect discrimination. Indirect discrimination arises when the same policy, rule or practice is applied equally to all, but its effect is that some people with a protected characteristic are disadvantaged.

20. My view is that indirect discrimination is not relevant here. The arrangements give a higher priority to applicants of the Church of England faith, other Christian faiths and other faiths over applicants who do not have a religious faith. The arrangements advantage applicants directly, as opposed to indirectly, on the basis of faith. However, the school is legally permitted to do this. The school is not required to consider whether giving priority on the basis of faith is justifiable, or whether this is a proportionate means of achieving a legitimate aim. So far as the protected characteristic of religion is concerned I have already explained that the prohibition in the Equality Act against discrimination on the basis of religion does not apply in respect of admission to this school.
21. I must decide against that background whether the school’s arrangements are fair. Reasonableness and fairness are not always the same thing. A set of arrangements which are objectively reasonable, such as these, may have the effect of operating unfairly to an identifiable group. An important factor to consider when considering whether admission arrangements are fair is the availability of other schools to children who may not receive a place at the school because of the disputed factor in the arrangements.
22. There are eight other secondary schools listed on the DfE database within three miles of the school, one of these is a Church of England school and one is a Catholic school. The local authority has informed me that the highest proportion of parental preference across the authority is met in the post code area where the school is located. Children are able to go to secondary school within an acceptable distance of their homes if they are not offered a place at the school. The objector was not able to identify any children to whom the school’s oversubscription criteria might be unfair to or in what way any unfairness occurred. The school has a sound reason to give priority to children of any faith ahead of children of no faith. My own enquiries of the local authority showed that children in the area near the school have a range of alternative schools available to them within an acceptable distance of their homes. I cannot identify any way that the arrangements are unfair to children and so do not uphold the objection.

### **Other Matters**

23. On the first page of the arrangements it says “*Accepted by the Diocese of Manchester Board of Education*”. Paragraph 14 of the Code requires that admission arrangements are clear, it was not clear to me what this statement meant. At the meeting the school said that this meant the diocese had approved the arrangements. However, the diocese is not the admission authority and beyond issuing guidance and commenting on admission arrangements when they are being consulted on has no role in approving them. Approval or determination of arrangements is the role of the trust or governing body. The school agreed to clarify this point on the arrangements.
24. The arrangements referred to children with statements of special educational needs. The Children and Families Act 2014 replaced statements with Education, Health and Care (EHC) plans. Not referring to EHC plans could make the arrangements unclear to parents and therefore not meet the requirement of paragraph 14 of the Code to be clear. When I raised this matter with the school it undertook to revise its arrangements to refer to EHC plans.
25. The definition of looked after and previously looked after children also failed to recognise changes made by the Children and Families Act 2014 which replaced residence orders with child arrangements orders and so may not be clear. When I raised this matter with the school it undertook to amend the arrangements to reflect the changes made by the Children and Families Act 2014.
26. The second and third oversubscription criteria gave children who had exceptional medical or social needs or were children of staff at the school priority over looked after and previously looked after children who were not Church of England children. Paragraph 1.37 of the Code which says “*Admission authorities for schools designated with a religious character may give priority to all looked after children and previously looked after children whether or not of the faith, but they **must** give priority to looked after children and previously looked after children of the faith before other children of the faith. Where any element of priority is given in relation to children not of the faith they **must** give priority to looked after children and previously looked after children not of the faith above other children not of the faith.*” Because there was no requirement in the second and third criteria for the child to be Church of England those criteria do not comply with paragraph 1.37 of the Code. After discussion of this point at the meeting the school said it would revise the arrangements in order to comply with the Code on this issue.



27. The oversubscription criteria did not appear to contain a tie-breaker that could differentiate between children who lived the same distance from the school, paragraph 1.8 of the Code requires such a tie-breaker. When I raised this matter with the school it said it would address it "*using siblings*". The arrangements already give siblings priority within each oversubscription criterion and further differentiation is provided by taking into account the distance which the child lives from the school. A tie-breaker is needed for cases where two or more children live the same distance from the school in order to comply with paragraph 1.8 of the Code. Following discussion at the meeting I am satisfied that the school does understand the need for a final tie-breaker such as drawing lots and that it will revise the arrangements accordingly.
28. The arrangements say "*we currently admit 224 pupils to year 7, 8, 9 & 10 and 195 pupils to year 11*", paragraph 1.2 of the Code requires that there is a published admission number (PAN) for each relevant age group, that is the year group into which children are normally admitted to the school, stating a PAN for every year group suggests that these are all points of entry to the school and may not be clear. When I raised this matter with the school it said it would only state the numbers admitted into Year 7.
29. The arrangements say that the school "*will agree any changes to its admission arrangements with the Secretary of State for Education, the Local Authority and the Diocese*", while the local authority and diocese must be consulted about any proposed changes to the arrangements, they and the Secretary of State have no role in agreeing them, that is for the admission authority. When I raised this matter with the school it undertook to amend the arrangements to refer to the consultation which is required.
30. The section of the arrangements concerning waiting lists says "*The waiting list is prioritised using the same oversubscription criteria outlined in section 'Admission Criteria to Years 7 to 11' in the Crompton House admissions policy.*" The requirement of Paragraph 2.14 of the Code is "*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. Priority **must not** be given to children based on the date their application was received or their name was added to the list. Looked after children, previously looked after children, and those allocated a place at the school in accordance with a Fair Access Protocol, **must** take precedence over those on a waiting list.*"
31. The arrangements do not meet the requirements of the Code in respect to waiting lists. When I raised this matter with the school it undertook to revise the arrangements to meet those requirements.
32. The arrangements say that the supplementary information form (SIF) is only available from the school office between set hours during the week, this may discriminate against working families who may be

unable to visit the school during these times. When I raised this matter with the school it said it would add a paragraph to the arrangements offering to post the SIF to parents on request. Paragraph 1.47 of the Code requires that admission arrangements are published on the school's website. If the school complied with this requirement, then there would be no difficulty for parents who could not visit the school during the set hours in the working week.

33. The arrangements say that the SIF must be returned to the school by 26 October 2018, the closing date for applications is set in law as 31 October 2018. When I raised this matter with the school it said that 31 October 2018 would be in the half-term holiday and nobody would be in the school to receive any SIFs submitted after 26 October. Parents are entitled to wait until 31 October before submitting their application and the school needs to allow this to happen.
34. Paragraph 1.9m of the Code prohibits interviewing parents or children as part of the admissions process, the discussion between priest and parent referred to on page 12 of the arrangements and on the SIF could be considered as an interview. When I raised this matter with the school it undertook to remove the wording suggesting that the parent discuss matters with the priest.
35. The front page of the SIF provided for admission in 2019 states it is for admission in 2018, this makes it unclear and the school has agreed to revise the SIF accordingly.
36. 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."*
37. The SIF asks if the child is or was previously looked after. This is requesting personal details about the family, which is prohibited by the Code, and unnecessary because as confirmed by the local authority at the meeting, this information is provided to the school along with the common application form. When I raised this matter with the school it undertook to remove this section from the document.

38. The SIF referred to attendance at Sunday school by the child, paragraph 1.9i of the Code prohibits taking into account children's activities unless they have been laid out by the body representing the faith.
39. I was unable to find any reference to attendance at Sunday school in guidance from the diocese. The diocese said "*It is the case that the Diocesan guidance does not set out a list of specified activities such as singing in the choir, flower arranging, bell ringing etc.*" It continued "*The key element of the Diocesan guidance is attendance at public worship, and the Diocese would consider a child's attendance at Sunday School to be one example of attendance at public worship that an admissions authority, having had regard to the Diocesan guidance as required by the Code, could legitimately set out in a school's admission arrangements.*"
40. In R (on the application of the Governing Body of the Oratory School) v The Schools Adjudicator, [2015] EWHC 1012 Admin, Cobb J ruled that if religious activities are to be used, then they must have been "*laid out*" by the faith body "*in school admissions guidance provided by the religious authority*". "*Laid out*" is defined by Cobb J to mean "*specifically provided for in or authorised by such guidance*". By the diocese's own admission, attendance at Sunday school has not been specifically provided for in any guidance, therefore the Code does not allow it to be taken into account.
41. On the SIF reference is made to the "*average cycle*" of the child or parent's attendance per year at a place of worship over the past five years. It was not entirely clear to me how this might be calculated and on the basis of what evidence it would be calculated. At the meeting the school accepted that this was not clear and undertook to revise it.

### **Summary of Findings**

42. The school is designated as having a religious character and so the law permits it to discriminate for admission on the grounds of faith, but if it chooses to do so it must do so fairly. I have not been able to identify any children or groups of children which suffer any unfairness as a result of these arrangements so I do not uphold the objection.
43. I also find that the arrangements do not conform to requirements in the 15 ways set out above.

### **Determination**

44. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2019 determined by Crompton House Church of England School for Crompton House Church of England Academy, Oldham.

45. 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.

46. 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:

Signed:

Schools Adjudicator: Phil Whiffing