



DETERMINATION

Case reference: ADA3485

Referrer: A member of the public

Admission Authority: St Edward's College Edmund Rice Academy
Trust for St Edward's College, Liverpool

Date of decision: 3 August 2018

Determination

I have considered the admission arrangements for September 2019 for St Edward's College, Liverpool, in accordance with section 88I(5) of the School Standards and Framework Act 1998. I find that in relation to the priority that is given to some non-Catholic children ahead of non-Catholic looked after and previously looked after children in the oversubscription criteria, the arrangements do not conform with requirements. I have also found that 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 this determination.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), a objection was referred to the Office of the Schools Adjudicator (OSA) by a member of the public, (the referrer), about the admission arrangements (the arrangements) for St Edward's College (the school). The date of the objection was 14 May 2018, it concerned the priority given in the oversubscription criteria to some non-Catholic looked after children and previously looked after children.
2. At that time of the objection the arrangements had not been determined by the admission authority as required by section 88C of the Act. The adjudicator's jurisdiction is restricted to admission arrangements which have been properly determined rendering the objection outside of his jurisdiction.
3. The admission authority subsequently determined the arrangements on 2 July 2018. Because it appeared that these arrangements did not, or may not conform with requirements relating to admission arrangements I have decided to use the power conferred under section 88I(5) of the

Act to consider whether the arrangements conform with the requirements relating to admission arrangements. I am therefore treating the objection as a referral.

Jurisdiction

4. 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.
5. The referrer 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 (the Regulations) by providing details of her name and address to me. I am satisfied the referral has been properly referred to me in accordance with section 88I of the Act and it is within my jurisdiction.

Procedure

6. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
7. The documents I have considered in reaching my decision include:
 - a. the referrer's original objection form dated 14 May 2018;
 - b. the admission authority's initial response to the objection dated 8 June 2018 and supporting documents;
 - c. the admission authority's response of 16 July to my letter setting out the matters which I would be considering under section 88I of the Act and supporting documents;
 - d. the comments of the Archdiocese of Liverpool which I believe to be the religious authority for the school;
 - 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.
8. Although invited to do so the local authority, Liverpool City Council, which is the local authority for the area in which the school is located, has made no comment on these matters nor offered any information for me to consider.

The Referral

9. The referral concerned the practice of giving some siblings of children already attending the school who were not Catholics priority over non-Catholic looked after and previously looked after children. This would not comply with paragraph 1.37 of the Code.

Other Matters

10. When I considered the arrangements as a whole I noted the following matters which it appeared did not, or might not, conform with requirements.
 - Paragraph 14 of the Code requires that arrangements are clear. The arrangements say in the first paragraph that parents can apply under either the faith or the music criteria, or under both. The Pupil Application Form states that an applicant who is unsuccessful in the music category is automatically considered for a faith place potentially rendering what is said in the first paragraph of the arrangements unclear.
 - The arrangements refer to statements of special educational need. Statements of special educational need have been replaced by Education, Health and Care plans. No reference is made to these in the arrangements making the arrangements unclear.
 - The ninth oversubscription criterion appears to be unclear because it refers to "*Children whose parents express a preference for a place at the school.*" Parents of children considered under the previous criteria will also have expressed a preference for the school.
 - The arrangements do not say how places will be allocated under the first of the music criteria if more than 16 children apply who meet it. Paragraph 1.8 of the Code requires an effective tie-breaker for all oversubscription criteria.
 - Paragraph 2.14 of the Code sets out the requirements for waiting lists. It does not appear clear from the arrangements whether there are separate waiting lists for the two types of places. Nor is it clear that children can be added to the waiting list and how this is done.
 - Paragraph 2.17 of the Code requires that admission authorities must make the process for requesting admission out of the normal age group clear in their admission arrangements. I could find no reference to this matter in the arrangements.
 - The Pupil Application Form says that applications must be made to both the local authority and the school using the local authority's preference form and the Pupil Application Form with

the latter submitted to the school. This is not the case. An application made on the local authority's form constitutes a valid application and must be considered by the school. Requiring the completion of the school's own form could be considered a condition for considering an application which is prohibited by paragraph 1.9a of the Code. It would also not be necessary for a child seeking priority under some of the oversubscription criteria.

- The requirements for supplementary information forms (SIFs), of which the school has three, are set out in paragraph 2.4 of the Code. The Pupil Application Form did not appear to conform to these requirements.
- The Musical Aptitude Form also appeared not to comply with the requirements of paragraph 2.4 of the Code.
- The Faith Request Form asks a minister or other faith leader to "*complete the statement below*". There is no statement for them to complete, presumably to confirm that the applicant is a member of the faith.

Background

11. The school which became an academy in 2011 is designated as having a religious character of Roman Catholic. The Catholic Education Service, on behalf of the Conference of Catholic Bishops of England and Wales, has confirmed that for all Catholic academies, the religious body is the Diocesan Bishop or the equivalent in canon law for the diocese in which the school is situated. The school is situated in the Archdiocese of Liverpool and it is stated in the Government database 'Get Information about Schools' that this is the relevant diocese. However, the funding agreement for the school published on the Government school performance tables states "*The relevant faith body is the Trustees of the property held in connection with the English Province of the Congregation of the Christian Brothers*". This anomaly is outside of my jurisdiction. However, I note that the school has not sought any support for its position from the Congregation of the Christian Brothers while it has referred to letters from the archdiocese and a representative of the archdiocese has provided material which I have taken into consideration in this determination as my understanding is that the archdiocese is the religious body for the school.
12. There is another anomaly in the funding agreement published on the Government's website. There is no reference in that document to the school being partially selective and permitted by section 100 of the Act to admit 20 per cent of children on the basis of musical aptitude. This status is confirmed by a letter to the academy trust from the Minister for Schools dated 29 March 2015 in which he agreed to correct the funding agreement accordingly.
13. The published admission number for September 2019 is 160 which

includes 32 places for children on the basis of their musical aptitude. The oversubscription criteria for the other 128 places, which the school refers to as “*faith places*”, can be summarised as:

1. Baptised Catholic looked after and previously looked children.
 2. Baptised Catholic children with medical or social reasons.
 3. Baptised Catholic children with siblings attending the school.
 4. Baptised Catholic children of members of staff.
 5. Baptised Catholic children.
 6. Non-Catholic looked after and previously looked after children.
 7. Children from other Christian denominations.
 8. Children of other faiths.
 9. Children whose parents express a preference for the school.
14. Random allocation is used as a tie-breaker should the school reach and exceed its published admission number (PAN) within any one of the above oversubscription criteria. For the 32 places allocated on the basis of musical aptitude the oversubscription criteria can be summarised as:
1. Baptised Catholic Choristers of the Metropolitan Cathedral of Christ the King.
 2. Baptised Catholic candidates on the basis of their scores in the musical aptitude test.
 3. Candidates of other Christian denominations on the basis of their scores in the musical aptitude test.
 4. Other candidates on the basis of their scores in the musical aptitude test.
15. The arrangements say that if for criteria 2, 3 and 4 two or more applicants are tied random allocation will be used and that any unallocated music places will be added to those allocated under the faith criteria.

Consideration of Case

Priority for some non-Catholic children over non-Catholic looked after and previously looked after children

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

*looked after children of the faith before other children of the faith. 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.”*

17. The arrangements include a footnote to the third and fourth oversubscription criteria for faith places (that is those dealing with Catholic siblings and Catholic children of staff) which says *“NOTE prior to the round of entry for September 2019 this category was not restricted to Baptised Catholic children. It would therefore be a breach of the good faith parents have a right to expect, to apply it retrospectively to those who were part of the St Edward's College community before the alteration. Thus this category will be restricted to baptised Catholics for those joining St Edward's since the change in policy was promulgated, but will not be so restricted for those who were members of St Edward's College community beforehand.”* This footnote gives some non-Catholic children priority over non-Catholic looked after and previously looked after children.
18. The school was told by an appeal panel for admission in September 2017 that its practice of giving some non-Catholic children priority over non-Catholic looked after and previously looked after children did not comply with the Code. The school was also told by the Department for Education in June 2017 that its admission arrangements were unlawful because they did not comply with paragraph 1.37 of the Code.
19. The archdiocese recommended that the school include all looked after and previously looked after children in the first criterion whether Catholic or not. The governing board rejected that suggestion because the advice of the special needs co-ordinator at the school was that *“the College’s infrastructure could not adequately support the likely numbers of LACs if non-catholic [sic] LACs were included in Cat 1.”* I find that this argument makes assumptions about the nature of looked after and previously looked after children that cannot be conscionable. However, my jurisdiction is for whether or not the arrangements comply with the Code and the Code permits the school to give priority to Catholic children ahead of non-Catholic looked after and previously looked after children.
20. The governing board decided that it would continue to give priority for non-Catholic siblings and non-Catholic children of members of staff over non-Catholic looked after children and previously looked after children if the elder sibling or member of staff was *“part of the St Edward's College community”* before the third and fourth criteria were restricted to Catholics. This was *“a demonstration of good faith, since they / their family joined the school community in the expectation that they would be included in this category.”*
21. The local authority wrote to the school supporting this approach saying *“The point you have raised on honouring existing non-catholic [sic] siblings until the point of policy change seems sensible too. Although*

there could be challenge concerning the sibling point as the initial years passed by, I would imagine that as long as the point and situation is explained then an appeals panel would deem the school to have acted reasonable in the circumstances.”

22. The school is well aware that paragraph 1.37 of the Code prohibits giving any non-Catholic children priority over non-Catholic looked after and previously looked after children. It has continued to do so. It cannot continue to break the law and breach the Code as a demonstration of good faith. I find that the arrangements do not comply with paragraph 1.37 of the Code and they must be revised accordingly.

Clarity of the arrangements

23. Paragraph 14 of the Code 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.”*
24. The arrangements say in the first paragraph that parents can apply under either the faith or the music criteria, or under both. The Pupil Application Form states that an applicant who is unsuccessful in the music category is automatically considered for a faith place. I consider that a parent reading these two statements may be unsure whether they need to apply separately for each type of place. When I raised this matter with the school it said *“Whilst we don’t find this unclear, and it is certainly not to the disadvantage of any applicant, we would be happy to amend the wording.”*
25. The arrangements refer to statements of special educational need. Statements of special educational need have been replaced by Education, Health and Care plans. No reference is made to these in the arrangements making the arrangements unclear. When I raised this matter with the school it said *“We would be happy to update the wording.”*
26. The ninth oversubscription criterion appears to be unclear because it refers to *“Children whose parents express a preference for a place at the school.”* Parents of children considered under the previous criteria will also have expressed a preference for the school. When I raised this matter with the school it said *“We would be happy to amend the wording to, ‘Any other children whose parents express a preference for a place at the school.’”*

Tie-breaker for Chorister places

27. Paragraph 1.8 of the Code requires an effective tie-breaker for all oversubscription criteria. The arrangements say *“In the Aptitude for Music criteria 2 to 4, if two or more applicants’ musical aptitude scores are tied, the tie-break will be via a random allocation process.”* This

meets the requirement of paragraph 1.8. The arrangements, however, do not say how places will be allocated under the first of the music criteria if more than 16 children who are baptised Catholic choristers of the Metropolitan Cathedral of Christ the King apply.

28. In response to my enquiries the school explained that *“Choristers of the Metropolitan Cathedral are selected on the basis of their musical aptitude as displayed during a voice trial. In the voice trial candidates are marked on their musical aptitude in rhythm, pitch and vocal/ instrumental ability. Each candidate receives the same test, and marks are given in each section. Voice trials are assessed by members of the Cathedral Music Department, and the process is moderated by an external assessor for the sake of independence. No more than 16 Chorister places are awarded in any year group. Any unsuccessful applicants are able then to apply to the school for general musical aptitude assessment.”*

29. Admission arrangements are defined in footnote 4 of the Code 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.”* Paragraph 1.47 of the Code requires that admission arrangements are published on the school’s website, therefore this explanation of how the 16 places for Choristers are allocated should be published. The explanation does not however explain how a place would be offered for a Chorister if two or more of them received the same score and were ranked equally for the sixteenth place, so it does not meet the requirements of paragraph 1.8 of the Code.

Waiting lists

30. Paragraph 2.14 of the Code says *“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. It did not appear clear from the arrangements whether there are separate waiting lists for the two types of places. Nor was it clear that children can be added to the waiting list and how this is done. The school noted my comment on this matter and put forward a new form of words. While the new form of words referred to children being added to the waiting list, it did not address the question of whether or not there were separate waiting lists for faith and music places.

Admission outside of the normal age group

32. Paragraph 2.17 of the Code requires that admission authorities must make the process for requesting admission out of the normal age group clear in their admission arrangements. There was no reference to this matter in the arrangements. When I raised this matter with the school it said that it would adopt wording to address this omission.

Supplementary Information Forms

33. There are three forms included in the arrangements. They are the Pupil Application Form, the Musical Aptitude Form and the Faith Request Form. I consider that they are all what is referred to in the Code as SIFs and so must comply with paragraph 2.4 which 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.”*
34. The Pupil Application Form says that applications must be made to both the local authority and the school using the local authority’s preference form and the Pupil Application Form with the latter submitted to the school. This is not the case. An application made on the local authority’s common application form (CAF) constitutes a valid application on its own and must be considered by the school, although clearly without details about the child’s faith it will not be possible to consider them against some of the faith criteria. Requiring the completion of this form could be considered a condition for considering an application which is prohibited by paragraph 1.9a of the Code which 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”*.
35. When I raised this matter with the school, it expressed surprise at my view, however, it said it *“will be happy to co-operate and amend our processes so that the LA preference form is the basic application, but with a clear instruction that for the application to be considered under the Faith criteria, the further school form with supporting documentation (i.e. baptism certificate) will be required.”* There remain some children for whom there is no need to complete a SIF, for example a non-Catholic looked after child, because this information is collected on the

local authority's common application form (CAF).

36. The Pupil Application Form asks for the child's gender and current school which have no bearing on decisions about oversubscription criteria. The question on the form about the relationship to the applicant is also prohibited by paragraph 2.4 itself as is asking whether a child is looked after or previously looked after as these are personal details about the family and details of any looked after status is provided on the CAF. The final question on The Pupil Application Form asks whether "*The prospective pupil is a child whose parents express a preference for a place at the College*" is not needed as the school will know from the local authority if the parent has expressed a preference for the school which is done through completion of the CAF.
37. I have considered whether it is necessary to ask for the parent's work telephone number on this form. Paragraph 1.9 prohibits taking into account a parent's occupational status when giving children priority for school places. The lack of a work telephone number could indicate that the parent is unemployed, dialling a given number could enable the school to establish where a parent works. The school said this was only requested for ease of contact, however I note that is collected by the local authority on the CAF.
38. The Musical Aptitude Form also asks for the child's gender and primary school which are unnecessary to make any decision about oversubscription criteria. This form also asks for the relationship to the child which is prohibited by the Code.
39. When I raised these issues with the school it said "*The child's gender and current school do not form part of our selection process, nor do parents' occupations. The inclusion of the pieces of information you identify is for ease of contact and administration. However mindful of your opinion we would be happy to amend the forms to comply with your view.*"
40. The Faith Request Form asks a minister or other faith leader to "*complete the statement below*". It then asks the minister or faith leader for their name, address, position held and for a signature. There is no statement for them to complete, presumably to confirm that the applicant is a member of the faith. When I raised this matter with the school it said "*We would be happy to amend the form to ask the minister to confirm that the child is a member of that faith.*"
41. I find that the three SIFs used by the school do not meet the requirements of paragraph 2.4 of the Code as described above and must be revised accordingly.

Summary of Findings

42. The school has been aware that by giving priority in its admission arrangements to some non-Catholic children over non-Catholic looked after children and previously looked after children it has been in breach

of paragraph 1.37 of the Code for some years. It has however continued to do so on the basis of it being a demonstration of good faith. I cannot conceive of any other area of law where its breach could be justified on the grounds of good faith. It is plainly not lawful for any non-Catholic children to have priority in oversubscription criteria over non-Catholic looked after children and previously looked after children at a Catholic school. I find that the arrangements do not conform with the Code in this respect.

43. I also find that the arrangements do not conform with the Code in the other ways set out above.

Determination

44. I have considered the admission arrangements for September 2019 for St Edward's College, Liverpool, in accordance with section 88I(5) of the School Standards and Framework Act 1998. I find that in relation to the priority that is given to some non-Catholic children ahead of non-Catholic looked after and previously looked after children in the oversubscription criteria, the arrangements do not conform with requirements. I have also found that there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

45. 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 this determination.

Dated: 3 August 2018

Signed:
Schools Adjudicator: Phil Whiffing