



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3503

Objector: A member of the public

Admission authority: The Governing Board of Emmaus Church of England and Roman Catholic Primary School, Liverpool.

Date of decision: 3 May 2019

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 2020 determined by the governing board for Emmaus Church of England and Roman Catholic Primary School, Liverpool.

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 member of the public (the objector) about the admission arrangements (the arrangements) for Emmaus Church of England and Roman Catholic primary school, Liverpool for admission in September 2020. The school is a voluntary aided school with Church of England and Roman Catholic religious designation in the Anglican Diocese of Liverpool and the Roman Catholic Archdiocese of Liverpool. The school is a mixed primary school catering for children from 3 to 11 years. The objection is to the level of priority given in the oversubscription criteria to siblings of existing pupils of either faith living outside the school's catchment area, the reasonableness of the oversubscription criteria in terms of priority for siblings and children living in the catchment area, the fairness of the geographical catchment area and the use of random allocation when an oversubscription criterion is oversubscribed.

2. The local authority for the area in which the school is located is Liverpool City Council. The local authority is a party to this objection. Other parties to the objection are

the school, the objector, the Roman Catholic Archdiocese of Liverpool and the Anglican Diocese of Liverpool.

3. These arrangements were determined under section 88C of the Act by the school's governing board which is the admission authority for the school. The objector submitted her objection to these determined arrangements on 13 March 2019. 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.

Procedure

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

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

- a) the objector's form of objection dated 13 March 2019 and subsequent correspondence;
- b) the school's response to the objection and supporting documents;
- c) the Roman Catholic Archdiocese of Liverpool's response to the objection and supporting documents;
- d) the Anglican Diocese of Liverpool's response to the objection and supporting documents;
- e) supporting documents received from the local authority;
- f) the local authority's composite prospectus for parents seeking admission to schools in the area in September 2019;
- g) maps of the area identifying the catchment area and other relevant schools;
- h) copies of the minutes of the meeting of the governing board at which the arrangements were determined; and
- i) a copy of the determined arrangements.

The Objection

6. The objector states that the oversubscription criteria are unreasonable and unfair because they are different from and not in line with other Roman Catholic or Church of England schools in the Liverpool area; specifically, she believes that;

- a) it is unfair not to include the whole of a particular Roman Catholic parish within the catchment area;

- b) siblings of Roman Catholic or Church of England children already at the school should have priority regardless of where they live;
- c) it is unfair that baptised Catholic children living in the school's catchment area have priority for admission to two Catholic schools and others living outside the catchment area have priority for only one;
- d) the legitimacy of the school's designated catchment area is questionable;
- e) the use of random allocation to allocate places when the school reaches its published admission number (PAN) within a given criterion is unfair and exacerbates the chances of siblings of those at the school not gaining a place.

7. The objector suggests that the arrangements do not conform with paragraph 1.10 of the Code which states that *"This code does not give a definitive list of acceptable oversubscription criteria. It is for the admission authorities to decide which criteria would be most suitable to the school according to the local circumstances"*.

8. In later correspondence, the objector accepts that the admission arrangements do conform to these specific aspects of the Code; however, her concerns about whether the arrangements are fair and reasonable is covered within paragraphs 14 and 1.8 of the Code. Paragraph 14 provides that admission arrangements must be *"fair, clear and objective"* and paragraph 1.8 that *"Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair and comply with all relevant legislation..... Admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated"*.

9. I have therefore considered this objection under paragraphs 1.10, 14 and 1.8 of the Code.

Background

10. The school is a joint Church of England and Roman Catholic, voluntary aided primary school in the Croxteth Park area of Liverpool. The welcome message on the school's website states that *"We are a joint denominational school, the first in the country which was conceived as such and built to provide education for the children of Croxteth Park and fulfill the wishes of both the Liverpool Diocese and Archdiocese for a joint church school."* The school opened in 1997. The school has a PAN of 60 and has been oversubscribed for many years.

11. In 2015 an objection was made to the Office of the School Adjudicator (OSA) concerning the admission arrangements. The objection was not upheld but a number of issues within the arrangements did not conform with the Code. The adjudicator's determination dated July 2015 outlined these issues and required the governing board to amend the arrangements. The arrangements were amended promptly and these have been the determined arrangements since that time. The governing board determined these arrangements for admission in September 2020 on 28 February 2019.

12. Within the arrangements there are nine oversubscription criteria which can be summarised as follows;

- 1) Looked after and previously looked after children
- 2) Baptised Church of England or Roman Catholic living within catchment and with a sibling at the school
- 3) Baptised Church of England or Roman Catholic children living within catchment
- 4) Baptised Church of England or Roman Catholic living outside catchment and with a sibling at the school
- 5) Baptised Church of England or Roman Catholic children (not siblings or living within catchment)
- 6) Other Christians living within catchment
- 7) Children of other faiths living within catchment
- 8) Other children living within catchment
- 9) Other children

13. The arrangements provide for equal numbers of Church of England and Roman Catholic allocations and if PAN is reached within any particular criterion then random allocation is used to decide which of the children within that criterion category will be allocated places and which will have to be disappointed.

14. For admission in September 2019 there were 111 applications, 102 of which were first preferences. Five places were allocated to looked after or previously looked after children. There were 12 Church of England and 19 Roman Catholic children living in the catchment with siblings at the school who were admitted under criterion two. This left 24 places and as 32 applicants fell under criterion three not all could be admitted. In fact, 16 Church of England and eight Roman Catholics were admitted within this criterion. The eight Roman Catholics were selected by random allocation. This allocation fulfilled the arrangements process to admit equal numbers from the two faiths. Forty two applications were unsuccessful; this included eight from criterion three (baptised children living in catchment), two from criterion four (baptised with siblings at the school but not living in catchment) and 21 from criterion five (baptised children not siblings or living in catchment).

Consideration of Case

15. The objector has one child already attending the school and a second child who was not admitted last year in line with the oversubscription criteria and now attends another school. The application fell into criterion four of the oversubscription criteria. An appeal was unsuccessful. The objector believes that the oversubscription criteria are unfair and

unreasonable, as they have led to the difficult situation of having two children who attend different primary schools. The objector reports that this situation is stressful and causes unhappiness for the children and financial pressures for the family. The main tenet of the objection is the position of baptised Catholic children who have a sibling at the school but who do not live in the catchment area and who are considered under criterion 4.

16. In response to the objection the local authority provided the numbers of applicants to the school for admission in September 2019 but did not make any comment on the objection.

17. The Roman Catholic Archdiocese of Liverpool responded to the objection by explaining that there is a common policy for Roman Catholic schools in Liverpool but that this school is different because it is a joint Roman Catholic and Church of England school. It goes on to say that following the determination by a school adjudicator in July 2015 the school consulted the Archdiocese when amending the arrangements. The archdiocese is satisfied that the arrangements conform with the Code in terms of policy established by the governing board for siblings, catchment and random allocation in the case of oversubscription. The arrangements have not been changed since that time. The Archdiocese explained that whilst every Roman Catholic child living in Liverpool will have access to at least one Roman Catholic primary school there are some areas of the city where there may be more than one Roman Catholic school available.

18. The Anglican Diocese of Liverpool responded to the objection in a similar way. It drew attention to the amendments to the admission arrangements following the adjudication in July 2015 and stated that it was satisfied that the admission arrangements conform to the Code. It goes on to say that as the arrangements have not been changed since that time then it is of the opinion that the arrangements remain compliant.

19. The school's response supplied details of the allocation of places for the September 2019 admissions and minutes of relevant governing board meetings. The response emphasised that the school is a joint denominational school built specifically to provide education for the children of Croxteth Park. The headteacher made it clear that he considers the admission arrangements to be fully compliant with the Code.

20. The Code makes it clear that it is the responsibility of the admission authority to set out how children will be admitted to the school (paragraph 15b). The arrangements must be compliant with the terms of the law and the Code but there is no compulsion to make the arrangements the same as those for other schools in an area, a parish or diocese. The admission authority of this voluntary aided school is the governing board and they are responsible for determining a compliant set of admission arrangements. The objector considers it unfair and unreasonable that the arrangements are not the same as other Roman Catholic or Church of England schools in the Liverpool area. She considers it unfair that the whole of a particular Roman Catholic parish is not contained within the catchment area and she further considers it unfair that some Roman Catholic children in Liverpool have a high level of priority for two local Roman Catholic schools whereas families in her position only have one. There is no compulsion within the Code for the admission authority

to make provisions of this kind in the admission arrangements and therefore I do not uphold these elements of the objection.

21. The objector's main concern is that children living outside the catchment area who have a sibling at the school area are not being admitted to the school because higher priority is given to children living in the catchment area than to those who live outside the area but have a sibling at the school. The objector suggests that *"the school's admission criteria do not meet the needs of the local circumstances, in accordance of the admissions code section 1.10."* Paragraph 1.10 states *"This Code does not give a definitive list of acceptable oversubscription criteria. It is for admission authorities to decide which criteria would be most suitable to the school according to local circumstances."* In this case, the governing board has decided that priority should be given to all baptised Roman Catholic and Church of England children who live within the designated catchment area above those who live outside the catchment. They assert that the school was built for this specific purpose. I am of the opinion that this part of the Code is not relevant to this case because it clearly states that it is for the admission authority to decide on the criteria.

22. The objector questions the legitimacy of the catchment area. Paragraph 1.14 of the Code states that *"Catchment are **must** be designed so that they are reasonable and clearly defined. Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school."* In this case, the map of the catchment area shows a clearly defined area which encompasses all the dwellings in the Croxteth Park estate. The school explains that the school was built in order to serve children from this area and I therefore consider that the catchment area is reasonable and clearly defined in line with the requirements of the Code and I therefore do not uphold this element of the objection.

23. Paragraph 1.11 and 1.12 define the requirements for sibling criteria. Schools may prioritise siblings of children at the school and are required to define clearly what the arrangements mean by 'siblings'. In determining the arrangements, the governing board has indicated that they do wish to give priority to siblings of existing pupils but that living in the catchment area is a higher priority. The choice to place children in the catchment area in higher priority order than children not living in the catchment area but with a sibling at the school is one which the governing board have legitimately taken in line with the Code. It is a reasonable and lawful approach. Whenever a school is oversubscribed there will be unsuccessful applicants in lower priority criteria and this will always lead to feelings of unfairness and unreasonableness. I can understand and sympathise with the objector who finds that she now has children at two different schools. However, the arrangements which give clear priority to children living in the catchment area over and above those who do not even if the latter have siblings at the school have been in place since 2015. I am of the view that the governing board has made its decisions about priority in an open and reasonable way and explained them on the website. The arrangements in respect of siblings and the catchment area conform with the requirements of the Code and I therefore do not uphold these elements of the objection.

24. The objector believes that the use of random allocation to allocate places when the PAN is reached in a particular criterion category is oversubscribed is unfair and exacerbates the sibling issue. Random allocation is covered in paragraphs 1.34 and 1.35 of the Code. This states that *“Admission authorities that decide to use random allocation when schools are oversubscribed **must** set out clearly how this will operate, ensuring that arrangements are transparent, and that looked after and previously looked after children are prioritised. The random allocation process **must** be supervised by some-one independent of the school, and a fresh round of random allocation **must** be used each time a child is offered a place from a waiting list”*.

25. The admission arrangements state that *“the tie-break will be via a random allocation process. The random allocation process will be supervised by a person not otherwise involved in the admissions process. The process will be open to scrutiny by an appropriately qualified external consultant appointed by the school Governing Body.”* I am of the view that this conforms with the requirements of the Code in this respect. In terms of the question of whether this selection process exacerbates the likelihood that a child living outside the catchment area but with a sibling at the school will fail to gain a place, I turn to the allocation of places for 2019. All children living in catchment with a sibling were admitted under criterion two. Random allocation was used to identify eight children within criterion three – these were baptised Roman Catholic Children who live in the area. This group did not include any children living in catchment with siblings at the school (as they had been admitted under a higher criterion) and therefore the random allocation could not allocate more or fewer siblings. There were two children living out of area with a sibling at the school who fell to be considered under criterion 4. As PAN was reached and exceeded in criterion three with eight unsuccessful applicants this meant that the random allocation was not used in relation to criterion 4 as there were no places to allocate in this category. I therefore do not believe that there is evidence that random allocation either favours or disadvantages sibling applications and I do not uphold this element of the objection.

26. I have therefore considered the reasonableness of the oversubscription criteria in line with paragraph 1.8 of the Code. I consider that the governing board have made decisions about criteria relating to catchment area and siblings in line with the Code and that these criteria are reasonable, clear, objective and procedurally fair in line with paragraph 1.8 of the Code. I therefore do not uphold this objection.

Summary of Findings

27. I understand how frustrating and difficult it is when a child is refused admission to a school and in this case it is even more difficult because it leaves two children at different schools. However, I am of the view that the governing board of the school as its admission authority has clearly stated priorities for admission in line with the Code and the law. These priorities are looked after and previously looked after children and equal numbers of baptised Roman Catholic and Church of England children with priority in place for siblings who live in the catchment area and then others who live in the area. There will always be disappointed families when schools are oversubscribed; this is the nature of a priority list,

however in this case I am of the view that the arrangements conform to the law and the Code and therefore I do not uphold this objection.

Determination

28. 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 2020 determined by the governing board for Emmaus Church of England and Roman Catholic Primary School, Liverpool.

Dated: 3 May 2019

Signed:

Schools Adjudicator: Ann Talboys