



Office of
the Schools
Adjudicator

Determination

Case reference: VAR884

Admission authority: The Governing Board for St John Fisher Catholic High School, Wigan

Date of decision: 27 August 2019

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I approve part of the proposed variation to the admission arrangements determined by the governing board for St John Fisher Catholic High School for September 2020.

I determine that the third oversubscription criterion shall read “Baptised Catholic children resident in the parishes of St Mary, St William (the two parts of that parish formerly referred to as St John and St Patrick), St Edward (the two parts of that parish formerly referred to as Sacred Heart and St Edward) and St Jude.”

I do not approve the proposal to include St Cuthbert’s Catholic Primary School as a feeder school in the sixth oversubscription criterion.

I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with 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. On behalf of the governing board of St John Fisher Catholic High School (the school) the Archdiocese of Liverpool (the Archdiocese) has referred a proposal for a variation to the admission arrangements for September 2020 (the arrangements) for the school to the Office of the Schools Adjudicator. The school is a voluntary aided school for children aged 11 to 16 in Wigan.

2. The proposed variation is to amend the list of parishes and feeder schools in the oversubscription criteria.

Jurisdiction

3. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which states that: *“where an admission authority (a) have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, but (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined, the authority must [except in a case where the authority’s proposed variations fall within any description of variations prescribed for the purposes of this section] (a) refer their proposed variations to the adjudicator, and (b) notify the appropriate bodies of the proposed variations”*.

4. I am satisfied that the proposed variation is within my jurisdiction.

5. I am also satisfied that it is within my jurisdiction to consider the determined arrangements in accordance with my power under section 88I of the Act as they have come to my attention and determine whether or not they conform with the requirements relating to admissions and if not in what ways they do not so conform.

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 referral from the Archdiocese dated 2 August 2019 and supporting documents;
- b. confirmation from the governing board that the diocese was acting on its behalf;
- c. the determined arrangements for 2020 and the proposed variations to those arrangements;
- d. a copy of the minutes of the meeting at which the arrangements were determined;
- e. a map showing the location of the school and other relevant schools;
- f. a copy of the letter notifying the appropriate bodies about the proposed variation;
- g. comments received on the proposed variation from the appropriate bodies including Wigan Council which is the local authority for the area in which the school is situated; and

- h. comments received from the governing board, the archdiocese and the local authority on the other matters which I raised under section 88I of the Act.

Consideration of the arrangements

8. When I considered the arrangements as a whole it appeared to me that the arrangements did not, or may not conform with the Code in two ways. Firstly, they were not clear about the process of making an application when the Code requires in paragraph 14 that admission arrangements are clear. Secondly, provision in the oversubscription criteria for children who appear to have been in state care outside of England may lead to the arrangements not conforming with paragraph 1.7 of the Code.

The proposed variation

9. The arrangements were determined by the governing board on 9 January 2019. The third oversubscription criterion gives priority to baptised Catholic children who live in certain named parishes. The Archdiocese has merged a number of parishes to create new larger parishes. One of these new parishes is the parish of St Edward the area of which includes the former parishes of Sacred Heart, St Cuthbert and St Edward residence in which afforded priority for admission to the school. The Archdiocese reports concern that future applicants to the school may be confused about whether or not they live in the new parish of St Edward. New wording has been proposed to clarify this matter.

10. The sixth oversubscription criterion gives priority to non-Catholic children attending five named Catholic primary schools in the parishes served by the school. It is proposed that St Cuthbert's Catholic Primary School is added to the list of named schools.

11. Paragraph 3.6 of the Code requires that relevant parties are notified of a proposed variation. The Archdiocese has provided me with a copy of the notification of the proposed variation and the list of schools and other bodies to which it was sent. I am satisfied that all relevant bodies have been notified and that views expressed have been taken into consideration. I have seen confirmation from the school's governing board that the Archdiocese is acting on its behalf in making the proposal for a variation. Only an admission authority can propose a variation but it can of course ask another body to act in effect as its agent. I find that the appropriate procedures were followed.

Consideration of the proposed variation

12. The third oversubscription criterion as determined by the governing board reads "*Baptised Catholic children resident in the parishes of St Mary's, St Williams (including the parts of the parish formerly referred to as St John's and St Patrick's), St Edwards (including the part of the parish formerly referred to as Sacred Heart) and St Jude's.*" The proposed version reads "*Baptised Catholic children resident in the parishes of St Mary, St William (the*

two parts of that parish formerly referred to as St John and St Patrick), St Edward (the two parts of that parish formerly referred to as Sacred Heart and St Edward) and St Jude.”

13. The third criterion in the determined arrangements for 2020 is worded in the same way as that in the arrangements for 2019. The change to the organisation of the parishes must, therefore, have taken place before 28 February 2018 when the Code required the 2019 arrangements to be determined. I find it difficult to envisage what, quoting the Act, “*major change in circumstances*” have occurred since 9 January 2019 when the 2020 arrangements were determined to justify this proposed variation.

14. Paragraph 3.6 of the Codes permits admission authorities to vary arrangements to “*give effect to a mandatory requirement of this Code.*” Paragraph 14 and 1.8 of the Code requires that admission arrangements, and within them oversubscription criteria, are clear. I am of the view that a minor change to the wording in the interests of clarity such as this would have been permissible under that provision of the Code and would not require referral to the adjudicator.

15. The proposed definition appears to me to be clearer than that in the determined arrangements and does not change the priority for admission of any child so I approve this part of the variation.

16. The sixth oversubscription criterion, as determined, lists five Catholic primary schools attendance at which gives children who are not baptised Catholics priority for a place at the school. The reason for this proposed variation given by the Archdiocese on behalf of the school is that St Cuthbert’s serves the parish of St Edward although it is named as a feeder school for another Catholic secondary school, St Peter’s. The Archdiocese said that children living near and attending St Cuthbert’s were less likely than others to be offered a place at St Peter’s because of the distance to that school. The Archdiocese said “*It is important that all children for whom their families have chosen a church education in the primary phase have a reasonable opportunity to access a church education at their secondary school and this change would give such children a better chance to continue church education at St John Fisher*”.

17. The application did not explain what “*major change in circumstances*” there had been since 9 January 2019 to make this variation necessary now. Unlike the first part of this request, agreeing this variation would change the priority for admission of children and so more detailed consideration is necessary.

18. Not only does the inclusion of St Cuthbert’s increase the number of children who would meet the sixth criterion and so reduce the number of places available for children who meet lower criteria, it has implications for children who meet the sixth criterion as it stands. St Cuthbert’s is closer to the school than three of the five primary schools already named. At least some of the children who attend St Cuthbert’s are therefore likely to live closer to the school than many of the children attending the other five named primary schools. If the school is oversubscribed at the sixth criterion, then those living closest to the

school have priority so children attending St Cuthbert's would displace children attending some of the other five named schools. These children may find themselves in a worse position as regards continuing their education in a Catholic school than those currently at St Cuthbert's.

19. When an admission authority applies for a variation to determined admission arrangements it is required to notify appropriate bodies. The appropriate bodies are set out in the Code as footnote 61 to paragraph 3.6 of the Code. This list includes some, but not all of the people that admission authorities are required to consult before making changes to their admission arrangements as part of the annual determination of admission arrangements. The most significant group not included among the appropriate bodies is parents.

20. Consulting parents takes time, so it is understandable that if there is a "*major change in circumstances*" which requires an urgent variation to determined admission arrangements it is left to responsible bodies such as other admission authorities and the local authority to indicate any concerns after being notified of the proposed variation. It then falls to the adjudicator to decide if the proposed variation addresses the "*major change in circumstances*" and conforms with the Code. I have noted that the Archdiocese allowed a four-week period for the appropriate bodies to send them comments on the proposed variation, but parents were not given any opportunity to comment.

21. In this case I have not been told of any "*major change in circumstances*" that requires this variation now. The Code requires in paragraph 14 that admission arrangements are fair. The proposed variation would change the priority for admission of children in a way which may, or may not, be fair. It seems to me that the proper way to add another feeder school to the sixth criterion is after following the consultation process laid out in paragraphs 1.42 to 1.45 of the Code. This will enable the proposal to be fully scrutinised by parents and others.

22. In my view there are possible consequences of the proposal to add St Cuthbert's to the list of named feeder schools which need a thorough exploration. I have not been told of any "*major change of circumstances*" occurring since the arrangements were determined to justify the risk of adding St Cuthbert's to the list of feeder schools without full scrutiny. For these reasons I do not consider that the proposed change to the determined variation is justified and I do not approve the proposal to add St Cuthbert's to the list of feeder schools in the sixth oversubscription criterion.

Other Matters

23. The arrangements say in the third paragraph "*Parents must complete a Local Authority Preference Form or apply online via the website www.wigan.gov.uk following the links.*" Paragraph 2.3 of the Code makes it clear that parents must apply for school places through the local authority in which they live. It makes no difference whether they are applying online or using a paper form.

24. When I raised this matter with the governing board it referred me to the common admission policy of the Archdiocese and the local authority's documentation. The admission authority for the school is the governing board and as such it is responsible for ensuring that the admission arrangements for the school comply with the Code which includes being clear. This determination requires the governing board to revise this part of the arrangements to make it clear that online applications are to be made to the home local authority of the applicant which may or may not be Wigan.

25. The first oversubscription criterion reads "*Looked after children and previously looked after children. This includes children who appear to have been in state care outside of England and ceased to be in state care as a result of being adopted.*"

26. Paragraph 1.7 of the Code says "*All schools **must** have oversubscription criteria for each 'relevant age group' and the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and all previously looked after children. Previously looked after children are children who were looked after, but ceased to be so because they were adopted (or became subject to a child arrangements order or special guardianship order). Further references to previously looked after children in this Code means such children who were adopted (or subject to child arrangements orders or special guardianship orders) immediately following having been looked after. Oversubscription criteria **must** then be applied to all other applicants in the order set out in the arrangements.*"

27. Footnotes to paragraph 1.7 of the Code provide more details about who qualifies as a looked after or previously looked after child. "*Children who appear to have been in state care outside of England*" do not meet any of these definitions of a looked after or previously looked after child. Indeed, when the Minister of State for School Standards wrote to admission authorities in December 2017 about the admission of children previously in care outside of England, he recognised that to include such children alongside looked after and previously looked after children as having highest priority for admission to schools would require a change in the Code. To put it another way, giving them equal priority with the groups listed in paragraph 1.7 is not compliant with the Code as it stands. The Minister's letter encouraged admission authorities to consider giving such children second highest priority in oversubscription criteria.

28. When I raised this matter with the governing board it said "*We still give the first priority to looked after children or previously looked after, however, following ministerial advice and guidance Wigan Authority consulted with local schools on adjusting the admission criteria to include children in care outside of England. Following consultation advice and guidance from our Archdiocese (as we have a common admissions policy) we discussed this proposal at our Resources and Premises Committee in October 2019 [sic] and agreed to include this change.*" I was provided with a copy of the minutes of a meeting dated 31 October 2018 referring to this.

29. The Archdiocese commented that the criterion broadened the support given to vulnerable children and the local authority proposed splitting the criterion into two.

30. The governing board would appear to have misunderstood paragraph 1.7 of the Code and the letter from the Minister. The first oversubscription criterion does not conform with the Code as it stands today.

31. From the governing board's response quoted above, it would appear that this oversubscription criterion was introduced for 2020 without the governing board undertaking the consultation for which, as I have referred to above, the Code makes it responsible before making changes to admission arrangements. While it would be possible for the governing board to have contracted with the local authority to undertake consultation on its behalf, the Code requires in paragraph 1.43 that consultation takes place for at least six weeks between 1 October and 31 January. The governing board could not, therefore, have considered the result of any consultation at a meeting on 31 October.

32. Not only is the first oversubscription not compliant with the Code, the process by which the governing board introduced it was not compliant with the Code. This determination requires that the first oversubscription criterion is revised to conform with the Code. For the avoidance of doubt, the introduction of an additional oversubscription criterion would require the governing board to apply to the Schools Adjudicator for a variation to the arrangements and identify the "*major change in circumstances*" since the arrangements were determined which makes that variation necessary.

Summary

33. While no "*major change in circumstances*" since the arrangements were determined was identified which requires it, the request to vary the wording of the third oversubscription criterion makes no change to the children who meet that criterion and makes that criterion clearer. I therefore approve this part of the requested variation.

34. No "*major change in circumstances*" since the arrangements were determined was identified to justify the proposal to add a school to the list of feeder schools in the sixth oversubscription criterion. This change would affect the priority of children for places at the school with unforeseen consequences which may be worse than those the proposal is intended to address. A change of this nature is in my view more properly introduced following thorough consultation with parents as set out in the Code rather than through a variation process which does not take parents views into account. I do not approve this part of the variation request.

35. The arrangements do not make it clear that online applications should be through the child's home local authority.

36. The first oversubscription criterion does not conform with paragraph 1.7 of the Code and was introduced without following the consultation process set out in the Code.

37. It is a matter of concern that the governing board determined one change to its arrangements without undertaking the consultation required by the Code. It is of further

concern that it subsequently applied to the adjudicator for a variation to those arrangements which, if approved, would have prevented parents from expressing a view on that change.

Determination

38. In accordance with section 88E of the School Standards and Framework Act 1998, I approve part of the proposed variation to the admission arrangements determined by the governing board for St John Fisher Catholic High School for September 2020.

39. I determine that the third oversubscription criterion shall read “Baptised Catholic children resident in the parishes of St Mary, St William (the two parts of that parish formerly referred to as St John and St Patrick), St Edward (the two parts of that parish formerly referred to as Sacred Heart and St Edward) and St Jude.”

40. I do not approve the proposal to include St Cuthbert’s Catholic Primary School as a feeder school in the sixth oversubscription criterion.

41. I have also considered the arrangements under section 88I(5) of the Act and find that they do not comply with requirements relating to admission arrangements in the ways set out in this determination.

42. 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: 27 August 2019

Signed:

Schools Adjudicator: Phil Whiffing