



Office of
the Schools
Adjudicator

Determination

Case references:	ADA3504 and ADA3564
Objector:	An individual on behalf of a number of parents and a member of the public
Admission authority:	The Sacred Heart High School Academy Trust, London Borough of Hammersmith and Fulham
Date of decision:	16 September 2019

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objections to the admission arrangements for September 2020 determined by the governing board for Sacred Heart High School in the London Borough of Hammersmith and Fulham.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. In this case I have determined that the arrangements need not be revised.

The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), two objections have been referred to the adjudicator by individuals (the objectors) about the admission arrangements (the arrangements) for Sacred Heart High School (the school), an academy school for girls aged 11 – 18 for September 2020. The objections are to the arrangements for the admission of pupils to Year 7, and they essentially concern the effect of the removal of proximity to school as the means of distinguishing between applicants attending any of the named feeder schools, and its replacement by a process of random allocation. It is said that there has been a failure to have regard to relevant diocesan guidance; that the selection of feeder schools is neither reasonable nor transparent; and that the adoption of random allocation is unreasonable and operates to create an unfairness to local applicants.

2. The local authority (LA) for the area in which the school is located is the London Borough of Hammersmith and Fulham. The school, the LA and the Catholic Diocese of Westminster (the diocese) are parties to the objection.

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 Sacred Heart High School Academy Trust, which is the admission authority for the school, on that basis. Objector One submitted an objection to these determined arrangements on 13 March 2019. Objector Two submitted an objection on 15 May 2019. Objector Two has asked to have his/her identity kept from the other parties and has met the requirement of regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of his/her name and address to me. I am satisfied that both objections have been properly referred to me in accordance with section 88H of the Act and are 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) Objector One's form of objection dated 13 March 2019, supporting documents and further representations;
- b) the comments of the school on the objection and supporting documents;
- c) the comments of the Catholic Diocese of Westminster which is the religious authority for the school;
- d) the LA's composite prospectus for parents seeking admission to schools in the area in September 2019;
- e) a map 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 on 26 February 2019 at which the governing board of the school determined the arrangements; and
- h) a copy of the determined arrangements;
- i) Objector Two's form of objection dated 15 May 2019;

- j) The school's response to questions relating to the second objection;
- k) The case of *R (on the application of London Oratory School Governors) -v- the Schools Adjudicator [2015] EWHC 1012 (Admin)*; and
- l) Adjudicator Determination ADA2278 in relation to Sacred Heart High School.

The Objections

6. The school has revised its arrangements for admission in September 2020. The school's arrangements for admission in September 2019 had afforded a level of priority to applicants attending 56 Catholic feeder schools. Priority within the feeder school oversubscription criterion was determined by proximity to the school. The effect of this was that Catholic applicants attending Catholic feeder schools nearest the school could be assured of a reasonable prospect of being offered a place at the school. The school's arrangements now afford priority to Catholic applicants attending 53 Catholic feeder schools, however priority within this category of oversubscription (and indeed all other categories) is now determined by random allocation. There are three elements to the first objection as set out below

- (i) The objector considers that the school failed to have regard to relevant diocesan guidance when determining the arrangements for admission in September 2020.
- (ii) The school's choice of feeder schools has not been made on reasonable grounds.
- (iii) The arrangements are unreasonable and the effect of their operation, when considered alongside the arrangements for Catholic secondary schools in other areas offering places for girls, creates an unfairness to Catholic girls who live close to the school.

There are two elements to the second objection as set out below.

- (i) The objector's principal concern is the adoption of random allocation. Given the large area covered by the feeder schools, no parent can reasonably ascertain whether their child is likely to be offered a place at the school.
- (ii) The arrangements are unreasonable as they encompass a large number of feeder schools which have no clear connection to Sacred Heart High School. Some are a significant distance from the school. The effect of this is that girls attending Catholic primary schools close to the school have an almost negligible chance of being offered a place.

7. Relevant paragraphs of the Code are:

- paragraph 14 which states that "*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.”;

- paragraph 1.8 which states that “*Oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation...*”;
- paragraph 1.15 which states that “*Admission authorities may wish to name a primary or a middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion must be transparent and made on reasonable grounds.*”;
- paragraph 1.9b which states that admission authorities “**must not** take into account any previous school attended, unless it is a named feeder school”; and
- paragraph 1.38 which states: “*Admission authorities for schools designated as having a religious character must have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith based admission arrangements, to the extent that the guidance complies with the mandatory provisions and guidelines of this Code. They must also consult with the body or person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated*”.

Background

8. The school is a Catholic 11-18 non-selective school for girls. It was founded by the Society of the Sacred Heart in 1893, and has always sought to promote the education of women and academic excellence. The school became an academy on 1 March 2012. It was inspected by Ofsted in October 2017, and was found to be Outstanding in all categories. The school has a PAN of 198, and is heavily oversubscribed. For applications in September 2019, 932 applications were received, of which 352 were first preferences. The school operates a banding system whereby all applicants take an ability test and are then allocated to one of three ability bands with the admission number split so that 49 places are allocated to the girls who come in the above average ability range; 100 places are allocated to those who come in the average ability range and 49 places are allocated to the below average ability range.

9. The oversubscription criteria are as follows:

Criterion 1: Catholic Looked After Girls & Previously Looked After Girls

Criterion 2: Catholic Girls with a Certificate of Catholic Practice

Catholic girls with a Certificate of Catholic Practice will then be admitted in the following order:

a) *Those who have an exceptional medical or social need which makes it necessary for them to attend Sacred Heart High School Hammersmith, and no other school.*

b) *Those who have a sister on roll at the school at the time of the application deadline.*

c) *Those who attend one of our Feeder Schools listed in Appendix A.*

d) *Other Catholic girls with a Certificate of Catholic Practice.*

Criterion 3: Catholic Girls without a Certificate of Catholic Practice

Catholic girls without a Certificate of Catholic Practice will then be admitted in the following order:

a) *Those who have an exceptional medical or social need which makes it necessary for them to attend Sacred Heart High School Hammersmith, and no other school.*

b) *Those who have a sister on roll at the school at the time of the application deadline.*

c) *All other Catholic girls.*

Criterion 4: Other Looked After Girls

Criterion 5: Members of the Catechumenate of a Catholic Church & Members of Eastern Christian Churches

Criteria 6: Other Girls.

Aspects of the arrangements which are also relevant to these objections are section 3, which refers to the random allocation process. This states:

“If there are more girls in any oversubscription criterion group than places available, the places within that group will be allocated on the basis of random allocation within each ability band.

The random allocation process will be carried out electronically by an organisation wholly independent from the school. The independent organisation will electronically create a random order for applicants and places will be awarded in this order”.

10. The list of 53 feeder schools is set out in Appendix A as follows:

“London Borough of Brent

Our Lady of Grace Catholic Junior School, NW2 6HS Our Lady of Lourdes Catholic Primary School, NW10 8PP St Joseph's Catholic Primary School, NW10 9LS St Joseph's Catholic Junior School, HA9 6BE St Margaret Clitherow Catholic Primary

School, NW10 0BG St Mary Magdalen's Catholic Primary School, NW2 5BB St Mary's Catholic Primary School, NW6 5ST St Robert Southwell Catholic Primary School, NW9 8YD

London Borough of Ealing

Holy Family Catholic Primary School, W3 0DY Our Lady of the Visitation Catholic Primary School, UB6 9AN Mount Carmel Catholic Primary School, W5 4EA St Anselm's Catholic Primary School, UB2 4BH St Gregory's Catholic Primary School, W5 1SL St John Fisher Catholic Primary School, UB6 7AF St Joseph's Catholic Primary School, W7 3HU St Raphael's Catholic Primary School, UB5 6NL St Vincent's Catholic Primary School, W3 9JR

London Borough of Hammersmith and Fulham

Holy Cross Catholic Primary School, SW6 4BL Larmenier and Sacred Heart Catholic Primary School, W6 7BL St Augustine's Catholic Primary School, W6 8QE St John XXIII Catholic Primary School, W12 7QR St Mary's Catholic Primary School, W14 0LT St Thomas of Canterbury Catholic Primary School, SW6 7HB The Good Shepherd Catholic Primary School, W12 9BY

London Borough of Hounslow

Our Lady and St John's Catholic Primary School, TW8 9JF St Lawrence Catholic Primary School, TW13 4AF St Mary's Catholic Primary School, W4 2DF St Mary's Catholic Primary School, TW7 7EE St Michael and St Martin's Catholic Primary School, TW4 7AG The Rosary Catholic Primary School, TW5 0RL

Royal Borough of Kensington and Chelsea

Oratory Roman Catholic Primary School, SW3 6QH Our Lady of Victories Catholic Primary School, SW7 5AQ Servite Roman Catholic Primary School, SW10 9NA St Charles' Catholic Primary School, W10 6EB St Francis of Assisi Catholic Primary School, W11 4BJ St Joseph's Catholic Primary School, SW3 2QT St Mary's Catholic Primary School, W10 5AW

London Borough of Richmond upon Thames

St Edmund's Catholic Primary School, TW2 7BB St Elizabeth's Catholic Primary School, TW10 6HN St James's Catholic Primary School, TW2 5NP St Mary Magdalen's Catholic Primary School, SW14 8HE St Osmund's Catholic Primary School, SW13 9HQ St Richard Reynolds Catholic Primary School, TW1 4LT Sacred Heart Catholic Primary School, TW11 9DD

London Borough of Wandsworth

Holy Ghost Catholic Primary School, SW12 8QJ Our Lady of Victories Catholic Primary School, SW15 1AW Our Lady Queen of Heaven, SW19 6AD Sacred Heart

Catholic Primary School, SW11 2TD Sacred Heart Catholic Primary School, SW15 5NX St Anselm's Catholic Primary School, SW17 8BS St Boniface Catholic Primary School, SW17 8PP St Joseph's Catholic Primary School, SW15 2QD.

11. The school adopted its current arrangements on 26 February 2019. The school was required to carry out a formal consultation prior to determining these arrangements because they are different to the school's arrangements for 2019. It appears to me that the consultation was conducted properly and in accordance with the statutory requirements. 362 consultation responses were received. These were grouped, analysed, and considered fully by the Admissions Committee of governors and by the full governing board. Almost all of the responses related to the adoption of random allocation. None was in favour of this change. However, it is also important to note that most of the objections came from parents and other persons associated with four primary schools situated in close proximity to the school, namely:

- St. Mary's Catholic Primary School, Chiswick (Objection from Parish Priest; 32 emails from parents; 34 signatories to petition; 1 governor; 1 other, likely to be associated with the school);
- Good Shepherd RC Primary (Objection from the objector, Governing Board of the Good Shepherd School; 42 signatories agreeing to a submission from the objector; emails from 3 more parents from the Good Shepherd School); and
- Larmenier and Sacred Heart; and St Mary's Masbro Road (Objection from the Chair of Governors from Larmenier & Sacred Heart; 8 parents from Larmenier; Petition signed by a further 222 parents from Larmenier; and the Governing Board of St Mary's Masbro Road).

12. Parents and children at these four primary schools are particularly affected by the change. Catholic girls attending these schools would have been likely to have received an offer of a place at Sacred Heart based upon attendance at a feeder school and proximity of home address to the school, but the replacement of proximity by random allocation has reduced their chances of being offered a place. Under the new arrangements, all girls meeting the faith criterion who attend any of the 53 feeder schools generally¹ have an equal chance of being offered a place at the school. The school's governing board, having considered the consultation responses, decided nevertheless to proceed with the adoption of random allocation. The school's reasons for making this decision are held strongly, and I will expand upon these reasons later. In summary, the change to the arrangements was made in order to avoid the school becoming "*socially selective by postcode*", and "*to allow Catholic parents an equal opportunity of access which is not wholly dependent upon where they live*" (although priority is dependent upon children attending feeder schools which are

¹ Higher priority is given to applicants who are Looked After or Previously Looked After, have an exceptional social or medical need or who have a sibling attending the school.

in adjoining local authorities, so priority is not afforded to Catholic girls living anywhere in the country).

Consideration of Case

13. I am very grateful indeed to the parties in this case for their clear and comprehensive representations. In relation to objection one, these have comprised a considerable level of detail, and so I thought it would be helpful to set out the structure of this determination. I have divided my consideration into five parts. These are as set out above, namely: failure to have regard to diocesan guidance (numerous examples are cited by Objector One); the selection of feeder schools has not been made on reasonable grounds; the arrangements operate unfairly towards Catholic girls living reasonably close to the school and are therefore also unreasonable; the adoption of random allocation means that no parent can reasonably ascertain whether their child is likely to be offered a place at the school; and the arrangements are unreasonable as they cover a large number of feeder schools which have no clear connection to Sacred Heart High School. Indeed, some are said to be a significant distance from the school.

14. I will consider each part in turn. I will set out my conclusions at the end of my consideration of each part of the objection, and say whether I do, or do not, uphold that part of the objection. However, the objector's arguments about how the school has not had regard to the relevant diocesan Guidance relate to sections of the Guidance which refer to requirements in the Code, and which also fall under other parts of the objection. For example, the Guidance states that feeder schools must be chosen on reasonable grounds, but goes on to say that, in order to ensure this, the diocese must be consulted. In order to avoid overlap, I have dealt with the question of whether the diocese was consulted on the proposed selection of feeder schools under Part 1, and I have dealt with the question of whether the selection of feeder schools is reasonable under Part 2.

15. It is important to explain my remit clearly in relation to the diocesan Guidance. My function is to determine whether the school's admission arrangements comply with the Code. There is an obligation in the Code for an admission authority to have regard to any guidance issued by the relevant faith body in constructing faith-based admission arrangements, and a separate obligation to consult the relevant faith body about how membership and practice of the faith is to be demonstrated. In relation to the first of these requirements, I have taken this to mean that an admission authority must have regard to the Guidance as it relates to the effect of the arrangements as a whole, and I have considered each aspect of the Guidance which the objector alleges has not been followed. In relation to the second requirement, the objector has not suggested that the school has failed to consult the diocese on the question of deciding how membership and practice of the faith is to be demonstrated. It is also clear that the school has followed this aspect of the Guidance by adopting the Catholic Certificate of Practice.

16. Where there are obligations, or expectations, set out in the Guidance which are not also requirements of the Code, the question for me to determine is not whether or not the school has complied with the Guidance but whether or not it has had regard to the

Guidance. So, for example, where the Guidance enshrines an expectation of the adoption of model admission arrangements, my function is to consider whether the school has considered this expectation in constructing its faith-based arrangements. Where a school has decided not to adopt model arrangements, it would need to satisfy the adjudicator in response to any objection that it had had regard to the expectation set out in the Guidance and had a clear and proper reason for departing from it. It would be open to the diocese to raise any concerns with the school if it considered that the school should have adopted one of the model sets of arrangements and, indeed, to object to its arrangements if it did not consider that the arrangements were in line with the Guidance.

17. Objector One has set out multiple specific alleged failures to comply with the Guidance, and the school has responded to each point in detail. I have not set out in full the representations of Objector One and the school because this would have led to an even more lengthy determination, but I have considered all of these representations very carefully. Both the diocese and the LA have sent global responses. I have set out the response of the diocese in full because, in cases where the diocese considers that an admission authority of a school with a religious character has not followed the relevant Guidance or has departed from it without clear and proper reasons for doing so, this would be a persuasive factor in leading to a conclusion that the admission authority had not had regard to the guidance set by its designated faith body. However, this is not the case here. The diocese is not seeking to interfere in the school's arrangements.

18. My starting point, indeed the starting point of any adjudicator is that it is for an admission authority to determine the school's arrangements. With this in mind, I refer to the representations made by the LA in relation to objection one (the LA has not made any representations in relation to objection two). The LA made no objection to the school's arrangements at the consultation stage. It now considers that some aspects of the arrangements may not comply with the Code, and has suggested "*solutions*". I am grateful to the LA for sending in its views, and I have taken them into account but not set them out in this determination. My function is limited to the determination of whether any aspects of the arrangements do not comply with the Code or other relevant requirements of admissions legislation. It is not for me to tell the school which arrangements it must adopt.

19. The LA set out various suggestions for change, I believe in the spirit of being helpful. The school has determined its arrangements for admission in September 2020. It is not permitted to revise these arrangements unless they are determined to be unlawful. The school may consider the LA's proposed "*solutions*" when determining its arrangements in the future if it wishes to do so and finds the suggestions to be helpful. The school has already considered other options prior to determining its arrangements for admission in September 2020, and has concluded that the arrangements it has determined deliver the school's objective and are clear to parents.

20. I understand the arguments of both the objectors and the school. I have no doubt that the school is genuine in wanting to offer more applicants living in deprived areas a better chance of securing a place at the school. Equally, there is no doubt that the objectors are representing the interests of parents living closer to the school whose prospects of

securing a place at the school for their daughters will now be reduced considerably and who, understandably, are very upset about this fact.

The history leading up to the arrangements for admission in September 2020

21. It is important to understand the history of how the arrangements came to be as they are. Prior to 2016, the school prioritised applications from those attending any of the hundreds of Catholic primary schools across the Dioceses of Westminster and of Southwark. This was said to be because the Society of the Sacred Heart wanted their school to be inclusive and the Society itself operates across a wide area of West London. This desire is at the heart of the school's approach to how its arrangements should operate.

22. However, this "*broad and generalised approach*" was determined to be unlawful by the adjudicator in ADA2278, and in 2016 the school reduced the number of its feeder schools to 11 schools situated in Ealing, Kensington and Chelsea, Wandsworth, Hounslow and Hammersmith and Fulham. The feeder schools were named, which had not been the case in the previous arrangements. The school says that the adoption of 11 named feeder schools "*was taken as an immediate and necessary response to the adjudicator's ruling but did not sit comfortably with the school's historic context of serving schools across West London*".

23. The school says that this drastically reduced list did not include one of '*geographically closest*' schools, whose parents are being represented by Objector One in this case, namely St. Mary's Masbro Road, because Sacred Heart historically had not received a sufficiently high number of eligible applications from pupils attending the school, and felt constrained to list a small number of schools as feeder schools. These 11 feeder schools were spread across the London boroughs which traditionally had formed the majority of the school's intake. The school says that the arrangements "*generated an outcry that the group was too narrow and exclusive*".

24. The school says that random allocation was briefly considered for the 2017 admissions arrangements, but instead the school followed a suggestion from the LA to extend the feeder schools to a named list of Catholic primary schools in Hammersmith & Fulham and in the immediately adjoining boroughs of Kensington & Chelsea, Richmond, Hounslow, Ealing, Wandsworth and Brent (as opposed to the broader Diocese area). The proposed named schools had historically provided 76-95 per cent of Sacred Heart's intake. The school says that the LA's view was that this was reasonable. The school now has 53 feeder schools. Originally, priority between applicants within each oversubscription criterion category was based upon proximity of home address to the school. However, the school adopted random allocation instead of this proximity for its 2020 admission arrangements. As mentioned above, the school says that the decision to adopt random allocation was made in order to afford equal access to all Catholic girls attending feeder schools in Hammersmith and Fulham and the adjoining local authorities, and to avoid the school becoming "*socially selective by postcode*".

25. Objector One has referred to the '*volatility*' of the feeder school list, but the school considers that any changes made are because the school has tried to comply with

ADA2278 by naming its feeder schools, whilst also trying to avoid becoming ‘over exclusive’ and wanting to maintain as broad a geographic reach as would be deemed to be reasonable. Despite requests to extend the feeder school list beyond the adjoining borough approach used since 2017 (which would of course enlarge further the number of feeders), the school has chosen not to extend the list.

26. Another important factor in shaping the arrangements, the school says, was changes to diocesan Guidance relating to the date of baptism and use of the new Certificate of Catholic Practice (CCP). The school has followed these diocesan requirements, with the result that the number of eligible applicants (by which is meant in this context those baptised Catholics with a CCP, and thus meeting the definition of practicing Catholic) to the school has “almost tripled” compared with candidates who met the school’s previous definition of practising Catholic. It is I think helpful here to make the point that the standard of practice necessary to obtain a CCP is less demanding than the school’s previous test – hence more people reach the new standard. This necessarily diminished the effective radius from which the school’s intake was derived, limiting it to what the school says are relatively affluent catchment areas. This is something that the school wishes to avoid, and why it has decided to adopt random allocation.

Part One

Failure to have regard to relevant diocesan guidance

27. Objector One considers that the arrangements fail to comply with paragraph 1.38 of the Code which I have set out above, and which requires schools designated as having a religious character “to have regard to guidance issued by the relevant faith body, and to consult with that faith body when deciding how membership or practice of the faith is to be demonstrated”.

28. The relevant guidance for the purposes of this objection is entitled “*The Diocesan Guidance on Admission to Catholic Schools*”, and was issued by the diocese in September 2018. The Guidance states: “*The religious authority for all Catholic schools is the diocesan bishop. In accordance with the Code the admission authority must consult with the religious authority (the diocesan bishop) when deciding how membership or practice of the faith is to be demonstrated. As the local ordinary, it is for the diocesan bishop to decide how membership and practice is to be demonstrated. Therefore, in determining faith-based admission arrangements the governing body may only use the methods and definitions laid out in this guidance by their diocesan bishop.... The governing body is also required to consult with the diocese before making any changes to the school’s admission arrangements. The governing body must propose any changes to its admission arrangements to the diocese for approval in advance of going out to wider consultation. The governing body is also required to provide the diocese with a copy of its determined admissions arrangements*”.

29. The school consulted with the diocese when deciding how membership or practice of the faith is to be demonstrated. Indeed, as I have explained above, the school amended its arrangements to adopt the CCP when this became the recommended method for deciding

how membership and/or practice of the faith is to be demonstrated, and removed its former six month limit on baptisms. Also, the school sought prior approval from the diocese for the changes to its arrangements for admission in September 2020, again in accordance with the Guidance.

30. Obviously, in a case where it is suggested that a faith school has not complied with its obligation to have regard to relevant diocesan guidance, the view of the body which has issued such guidance is important. The Director of Education for the diocese of Westminster sent a response to objection one on 2 May 2019. I have set out the response in full.

“The reason that the diocese has not provided a lengthy response to the objection is because all the advice from the diocese is contained in its Guidance which can be found at www.rcdow.org.uk and in the brief email sent to the school on receipt of the admission arrangements.

*The diocese will alert schools if it is believed that the admission arrangements are not compliant with law and Government guidance. **This does not extend to consideration of whether or not lawful procedures are most appropriate in the given context. It is the governing body that best knows the area and opportunities for local children, based on the school’s history and the changing population** (my emphasis).*

It is noted that there are similarities between the arrangements for Sacred Heart High School and the nearest other Catholic Secondary schools in Hammersmith & Fulham and Kensington & Chelsea.

It is not obligatory to use distance as a tie-break.

It is not prohibited to use random allocation as a tie-break in these circumstances. Disliking random allocation does not make it unlawful.

The number of feeder schools is not unlawful and it is up to the school to persuade the adjudicator that the list is reasonable.

The LA suggests using postcodes or borough boundaries instead of feeder schools but this would be unlawful (Greenwich Judgment 1990 – still good law.) The diocese would suggest parishes or deaneries if an alternative is being sought”.

31. The brief email referred to is the comments made by the diocese in response to the school’s initial consultation with them prior to going out to formal consultation. The diocese made specific minor suggested changes, which were preceded by the comment **“I attach your policies which I have marked up, although they are only cosmetic changes and the policies are fine”** (again my emphasis). The diocese appears content to leave it to the school to determine the detail of the admission arrangements, provided the arrangements are lawful. This is on the basis of its expressed view that the governing board is best placed to decide what is appropriate in the context of the individual school.

32. As I have said above, my view is that the obligation upon admission authorities inherent in having regard to the Guidance is to ensure that the arrangements as a whole follow the principles of the Guidance unless there are clear and proper reasons for them not to do so. This is wider than an obligation to ensure that any specific faith-based oversubscription criteria comply with the Guidance. If I am wrong in this, and the Code envisages a narrower interpretation of the obligation in paragraph 1.38, my conclusion is that the school has followed the Guidance in determining how membership or practice of the faith is to be demonstrated by adopting all relevant definitions set out in the Guidance, naming only Catholic feeder schools and by adopting the CCP.

The general principles of the Guidance

33. The objector cites the General Principles of the published Guidance, one of which is that **no school should act for its own perceived interests alone**. *“It is the responsibility of Catholic schools, in co-operation with each other and other admission authorities, and with the assistance of the diocese, to ensure that the maximum number of Catholic children are able to take advantage of a Catholic education provided at a local Catholic school. Catholic schools should therefore:*

- *work with each other to draw up admission policies which ensure that places are provided equitably for all local Catholic communities (including Eastern Catholic Churches and ethnic chaplaincies); and*
- *co-ordinate their admission arrangements to maximise parental satisfaction with their choice of Catholic school.”*

34. Objector One’s argument is that, whilst the school intends to treat all applicants from feeder schools both near and far equally, other Catholic secondary schools in the London Boroughs of Ealing, Wandsworth and Richmond do not do the same. The schools in these other boroughs give priority to their local residents. The school’s arrangements are not co-ordinated with other nearby Catholic secondary schools, and the result is, in the objector’s view, that the number of Catholic children who are resident in the London Borough of Hammersmith and Fulham who will be able to take advantage of a Catholic education will be reduced when the school’s new arrangements come into operation.

35. Objector One cites chapter 3B of the Guidance which states that this co-ordinated approach recommended in the Guidance will result in less variation between policies and, therefore, parents should have a clearer understanding of how their children may gain admission to their local Catholic schools. The objector considers that *“with a lottery approach after siblings no prospective parent can know how their children may gain admission to their local Catholic school if that school is Sacred Heart unless “winning the lottery” is believed to adequately address that Diocesan requirement”*.

36. The objector also refers to another section in chapter 3B of the Guidance which says that: *“The selection of feeder schools must be made on reasonable grounds. To ensure this the governing body must consult the diocese, which will be able to advise the school about how the selection of the feeder schools fits with the admission arrangements of other*

Catholic schools in the area". The objector did not know at the time of making the objection whether the school had consulted the diocese before naming the 53 feeder schools in the arrangements, but he considers that the selection of feeder schools has not been made on reasonable grounds. He suggests that the lack of reasonableness arises at least in part from the "volatile" nature of the feeder list since the 2015 adjudicator determination on the school's then prevailing admission policy (ADA2278).

37. As stated above, I have set out the detail of the objector's representations on the selection of feeder schools in Part 2 because it seemed to me that the Guidance repeats the requirement in paragraph 1.15 of the Code, and then tells schools that in seeking to achieve this they are to take advice from the diocese.

38. I reiterate that the requirement in paragraph 1.37 of the Code is **to have regard** to the relevant guidance. The Code does not impose a requirement to follow the Guidance. Paragraph 1.37 would be complied with if the school had considered the Guidance and was aware of what it says about the selection of feeder schools, but had clear and proper reasons to depart from the Guidance on this specific point. As I have said, the substantive requirement for the school to select feeder schools on reasonable grounds arises under paragraph 1.15 of the Code.

39. Finally, in relation to the Guidance, the objector cites chapter 3B, page 14: "*The diocesan model policies have been carefully drafted to help schools comply with admissions legislation, including the Code. **Schools are expected to use the diocesan model policies.***" The objector says that there are four model admission policies in appendix 10 of the Guidance; two are for secondary schools; and none include a lottery. Therefore, in his view, the lottery approach in the school's arrangements "*does not merely fail to meet the expectation to use the diocesan model policies; since it must result in reduced access to local applicants, it goes against one of the general i.e. core principles of the Guidance*".

The school's response and consideration of each alleged failure to follow the Guidance

(i) If the guidance has not been followed, the school has clear and proper reasons for departing from it

40. The school's position is that the arrangements for 2020 follow the Guidance, and the school has not departed from it. However, the school also considers that, if my view is that this is not the case, the school has clear and proper reasons for departing from the Guidance. (As per paragraph 58 of the case of *R (on the application of London Oratory School Governors) v the Schools Adjudicator [2015] EWHC 1012 (Admin)* which sets out the test to be used in judging whether a school may depart from the guidance provided by its diocese).

41. The school considers that the objector has failed to acknowledge the text on page 9 of the Diocesan Guidance which states:

“The governing body must have regard to this guidance in accordance with para 1.38 of the Code, unless it does not comply with the mandatory provisions and guidelines of the Code or the school can demonstrate that it has considered and engaged with the guidance and has a clear and proper reason to depart from it. It will be particularly difficult for the governing body to demonstrate a clear and proper reason for departing from this guidance if that departure:

- (i) fundamentally undermines the core or underlying principles of the guidance;*
- (ii) is expressly forbidden by or in conflict with the guidance; or*
- (iii) is substantially different in a material respect from the guidance”.*

42. The school argues that none of these three specific situations in the Guidance (and taken from the London Oratory case), are relevant here. The school says: *“We further believe that the use of random allocation in this context: (i) does NOT fundamentally undermine the core or underlying principles of the guidance; (ii) is not expressly forbidden by or in conflict with the guidance; and (iii) is not substantially different in a material respect from the guidance.*

The school has had regard to the guidance and considered and engaged with it. We have taken on board changes introduced by the Diocese relating to date of baptism and the introduction of the Diocesan Certificate of Catholic Practice in place of our own more structured Priest Reference Form.

We have at length and with great pains tried to analyse the impact that these changes would have to our admissions, wanting to be able to serve Catholic families across a range of socio-economic groups with a broad and balanced ability. This debate and analysis has been going on since 2015....

Neither the Diocese nor the local authority objected to our introduction of random allocation. Both bodies were spoken to verbally in addition to the written email exchange to ensure that there was no possibility of the matter being ‘missed’. The initial consultation email was sent on 8 November 2018 attaching all the relevant documents referring to random allocation.

We take the lack of any material objection from the Diocese to be their considered opinion that we conform to their guidance. In this way this objection differs significantly from that of the 2015 London Oratory case where the Diocese had expressed concerns about the arrangements for London Oratory not being in compliance with the guidance. That is not the case with Sacred Heart and we have always listened to comments that the Diocese have provided us with and made amendments accordingly”.

43. The school believes that the desire to avoid an overly affluent intake and to ensure that its pupils come from a cross-section of the community and are from different socio-economic backgrounds would be a clear and proper reason for departing from the Guidance. It says that, using random allocation is fair and clear to all concerned, and that

given the way the arrangements are drafted, random allocation would only be used where there are more applications in a category than places available.

44. The school says that it has fully considered different methods of ensuring that its pupils come from a wide section of socio-economic backgrounds. Governors at the meeting on 13 February 2019 considered and rejected the possibility of prioritising geographic areas within which random allocation would then take place (for example an 'inner' and an 'outer' area). However, there was concern about how to fairly delineate these areas and what percentage of places to accord to each area, given the easy accessibility to the school, particularly in relation to the adjoining boroughs. An additional concern was that this would create a lack of clarity for parents because, having first banded all applicants together, the school would then have to separate these groups into the inner catchment area and the outer catchment area. The numbers in each band in the separate catchment areas would be unlikely to be the same.

45. As above, the governing board also recognised the difficulty for parents of different Catholic schools having different admissions policy criteria with no overall coordination by the Diocese. However, the school does not want to limit its socio-economic intake and wishes to remain true to the aims of the Society of the Sacred Heart. The minutes of the governing board meeting reflect that governors concluded: "*There is no 'good' solution, but random allocation was seen as the best option in the circumstances...*

There was some discussion about how the Diocese could work closely with other Catholic schools in the areas that appear to be less popular choices, to help them improve their outcomes.

There was a brief discussion about whether a quota of places should be retained for H&F but approx. the same number of pupils also traditionally come from Ealing and they too would want to be protected. It was accepted that the process would become overcomplicated in terms of banding etc."

46. Clearly, the school has considered the implications of determining the arrangements it has determined, including alternative arrangements which would retain some level of priority for applicants whose daughters attend the four feeder schools close to the school who will be most affected by the adoption of random allocation. **My conclusion is that the school has considered, and engaged with, the Guidance. It has had regard to the Guidance as it is required to do.**

(ii) The obligation to consult the diocese

47. The school consulted the diocese on proposed changes to the arrangements on 8 November 2018 prior to embarking upon the formal consultation, and again on 26 November 2018 as part of the formal consultation. The diocese marked up relatively minor suggested changes, which the school adopted prior to conducting the formal consultation. The diocese made no additional comments in response to the formal consultation. The diocese has made no objection to the proposed selection of feeder schools, nor indeed to the introduction of random allocation. The response of the diocese to the first objection (the

diocese made no response to the second objection) is set out in full above. **My conclusion on this point is that the school has complied with its obligations under the Guidance and the Code to consult the diocese.**

(iii) The school has failed to co-ordinate its arrangements with those of other Catholic schools as envisaged in the guidance

48. Objector One uses the single example of one further away feeder school to support his argument that the school has not co-ordinated its arrangements with those of other Catholic secondary schools. This is the Sacred Heart primary school in TW11, which is 10.5km away from Sacred Heart High School Hammersmith. This primary school is in the Sacred Heart, Teddington parish, in the Upper Thames deanery and also in London Borough of Richmond. Objector One considers that girls at, and living nearby to, Sacred Heart TW11 have access to the following Catholic secondary schools:

- St Richard Reynolds Catholic High School TW1 4LT. This is a co-educational Catholic school for pupils aged 4 – 18. Its admission arrangements afford priority to Looked After and previously Looked After children; applicants attending St Richard Reynolds Primary School; applicants with a CCP whose addresses are located in named parishes; applicants without a CCP whose addresses are located in named parishes; applicants with a CCP whose addresses are not located in named parishes; and other Catholic children. Sacred Heart, Teddington is a named parish in the arrangements for admission in September 2020.
- Gumley House TW7 6XF 5.35km away. This is a single sex Catholic school for girls aged 11 – 18 (with boys admitted to the sixth form). Its admission arrangements afford priority to a specified percentage of applicants who live in named deaneries. First priority is afforded to Catholic Looked After and previously Looked After applicants; applicants with a CCP; other baptised Catholics; other Looked After and previously Looked After applicants; Catechumens; applicants from other Christian denominations; and other applicants. Upper Thames deanery (in which Sacred Heart Teddington is situated) has 16 per cent allocation of places for the purpose of admission in September 2020.
- Ursuline High School SW20 8HA. This is a single sex Catholic school for girls aged 11 – 19. Its admission arrangements afford priority to baptised Catholic Looked After and previously Looked After girls; girls who are baptised and practising Catholics; other Looked After and previously Looked After girls; girls who are practising Christians; and other girls in the following order: siblings, social or compassionate need, and proximity to the school. Sacred Heart Teddington is 6.81km away from Ursuline High School.
- Holy Cross KT3 5AR. This is a single sex Catholic school for girls aged 11 – 18. Its admission arrangements afford priority to Catholic Looked After and previously Looked After girls; baptised Catholic girls; other Looked After and

previously Looked After girls; girls who are members of the Eastern Christian Churches; girls who are members of other Christian denominations; girls of other faiths and other girls in the following order: siblings, social and medical grounds, eligibility for free school meals, daughters of staff members and proximity to the school. Sacred Heart Teddington is 4.82km away from The Holy Cross School.

- St Paul's Sunbury TW16 6JE. This is a co-educational Catholic school for pupils aged 11 – 18. Its admission arrangements afford priority to baptised Catholic Looked After and previously Looked After children; baptised Catholic children with social or medical needs; baptised Catholic children with a sibling at the school; baptised Catholic children living within named parishes; baptised Catholic children living outside the named parishes; other baptised Catholic children; other Looked After and previously Looked After children; other siblings; Catechumens and members of the Eastern Christian Church; children of other Christian denominations; children of other faiths; and other children. St Paul's is 6.56km away from Sacred Heart Teddington, and Teddington is one of the named parishes for admission to St Paul's in the arrangements for admission in September 2020.

By contrast, the objector argues that Catholic girls living within the London Borough of Hammersmith and Fulham do not have as many available options in terms of Catholic secondary schools.

49. In response, the school argues that it has no strategic control over the admission arrangements for other Catholic schools. It says that there is no obligation in the Code for admission authorities to co-ordinate their arrangements with other admission authorities to maximise parental satisfaction with their choice of Catholic school. The school considers it has no jurisdiction to ask another Catholic school to amend its admission arrangements, and says that the Guidance acknowledges that this would need the assistance of the diocese. The school argues that one would expect the diocese to have a role in relation to this, and I note that the diocese did not raise the issue of co-ordination of arrangements with the school upon receiving notice of the school's intention to introduce random allocation. When consulted on the school's arrangements for 2020, the response from the diocese was that "*the policies were fine*".

50. The school identifies other Catholic secondary schools which would be available options for girls living in Hammersmith and Fulham as follows:

- *All Saints Catholic College W10 6EL*. This is a co-educational Catholic school for pupils aged 11 – 18. The school's admissions policy states that in the past six years the school has been able to offer places to children in each oversubscription category 1-9 (that is. including those in Category 9 who are defined as 'those of another faith'). The school says that this Catholic school is in easy reach of the parents raising this objection. I have considered the admission arrangements for this school in detail below.

- *St Thomas More SW3 2QS*. This is a co-educational Catholic school for pupils aged 11 – 16. The admission arrangements afford priority to Catholic Looked After and previously Looked After children, applicants with a CCP; any other baptised Catholic applicants; other Looked After and previously Looked After children; Catechumens; children of other Christian denominations; and other children in the following order: exceptional need, sibling, children attending the neighbouring primary school, children of staff and proximity to the school.
- *Gumley House TW7 6XF (Girls)*. The admission arrangements for this school are summarised above. Priority is afforded to applicants residing in six named deaneries. A proportion of the places are offered in each deanery.
- *St Richard Reynolds TW1 4LT (Co-educational)*. The admission arrangements for this school are summarised above. Priority is afforded to applicants whose addresses are located in named parishes within the Dioceses of Southwark and Westminster.
- *Cardinal Wiseman UB6 9AW (Co-educational)*. This is a co-educational Catholic school for pupils aged 11 – 18. The admission arrangements afford priority to Catholic Looked After and previously Looked After children, Catholic siblings, Catholic children attending 10 named primary schools, other Catholic children with a CCP, other siblings, other Catholics, other Looked After and previously Looked After children, and other applicants. The school says that 30 places are offered to children with a CCP not attending the named primary school, however this no longer appears to be the case for admission in September 2020.

51. Objector One disputes whether some of these schools are realistic alternative options for parents of Catholic girls in Hammersmith and Fulham, and I will return to this point in more detail in Part 3 of my consideration. For the purposes of considering whether the school has followed the Guidance, the school's response is: "*We are confident that the Diocese is maintaining an overall view on the cumulative effects of admissions policies and is satisfied that Catholic families have sufficient access to local Catholic schools. If they did not feel that this was the case, one would assume that they would have objected to the arrangements proposed by Sacred Heart*".

52. The school accepts that there are fewer alternative options which are single-sex girls' Catholic schools, and perceives that this may be the crux of the problem. "*We accept that there are not many single-sex girls' Catholic schools in this part of London. This is beyond the control of Sacred Heart but in part illustrates the important role that Sacred Heart has historically had in offering this type of education to those across a relatively broad geographical area. In the context of this limited supply, we become a local option (easily accessible) for those seeking an education of this type*". The school says that it is served by excellent public transport, which enables it to be accessed easily by girls who do not live in the immediate local area. I can see the force of the school's argument that, in effect, the

fact that there are so few other schools of this type is a reason to *widen* the opportunity of access, rather than limit it to applicants living in a smaller area close to the school.

53. It is not a requirement of the Code that a Catholic school must co-ordinate its arrangements with the arrangements for other Catholic schools. Indeed, a requirement to co-ordinate is not a requirement relating to the content of the admission arrangements themselves, it is a requirement for a process to be carried out prior to adopting a set of admission arrangements. The school does not appear to have engaged in any active attempts to co-ordinate its arrangements with those of other Catholic secondary schools. This may mean that the school has not followed this aspect of the Guidance, but this is not a breach of the Code *per se*. What is relevant in terms of compliance with the Code is that the school has considered what the Guidance has to say on this matter; decided whether (and how) to follow it; or decided not to follow the relevant provision for clear and proper reasons.

54. The minutes of the governors' admissions committee meeting held on 13 February 2019 read as follows: "*Governors also recognised the difficulty for parents of different Catholic schools having different admissions policy criteria with no overall coordination by the Diocese. Reciprocity is a worrying issue but this is outside our control strategically - that would be for the Diocese to influence and co-ordinate. Academies such as Sacred Heart are in any event legally their own admissions authority and would not want to lose this autonomy... Governors felt genuinely sympathetic to those who had submitted concerns but recognised that whatever the school does, there will be many parents dissatisfied with the outcome. If distance is retained, this will now deny access to parents from schools such as those in Ealing which have traditionally provided a significant contribution to Sacred Heart's intake*".

55. The school says that it cannot have any say about the admission arrangements for other secondary schools. I do not wholly accept this argument. I am aware that, in other areas, secondary schools do meet with the LA and other local secondary schools in order to ensure that the overall effect of the arrangements is that there are sufficient places for those living in the area of the LA. This often relates to the drawing up of catchment areas to ensure that all applicants living within a particular area will have a reasonable prospect of securing a place for their child at a local school. I see no reason why a similar procedure could not be adopted by faith-based schools, given that co-ordination of arrangements with other Catholic schools does appear to be a clear expectation of the Guidance. It would be reasonable to assume that the diocese would perform a central role in coordinating such a process.

56. Based upon the evidence of the minutes of the admissions committee meeting and the school's representations, my view is that the school considered the issue of reciprocity, but took the view that its own goal of providing equal access for Catholic girls in the adjoining boroughs took precedence over the desire to ensure reciprocity, and so the school departed from the Guidance in this regard. In determining whether, or not, the school had clear and proper reasons to depart from the Guidance, I am mindful that the diocese appear to have accepted the school's actions as such by not commenting

adversely upon the school's current arrangements (indeed, saying that they were "*fine*"), and by not raising the school's failure to consider reciprocity as being contrary to its Guidance.

57. As I have said at the outset of my consideration, the setting of admission arrangements is a matter for an admission authority, and I would only interfere with this where necessary to rectify a breach of the Code. This could include a finding that the school had not had regard to the Guidance if it had departed from it without clear and proper reasons to do so. However, any such finding would not enable me to require the school to conduct pro-active engagement with other Catholic schools for the purpose of co-ordinating the school's arrangements with those of the other Catholic schools, however it could lead me to conclude that the effect of such a lack of co-ordination has led to a situation whereby the arrangements operate unfairly towards Catholic girls attending the feeder schools situated nearest to the school. This, in turn, could lead to a conclusion that the arrangements are unfair or unreasonable. It is a requirement of the Code that admission arrangements must be objectively reasonable and must not disadvantage unfairly an identifiable group, and so I will return to this point when considering Part 3 of the objections.

58. In terms of this part of the objection, I will simply say that the school did depart from the Guidance. I accept that the school's overall goal in adopting its current arrangements was a reasonable one, but I am not convinced that it provides sufficient reason to ignore the expectation set out in the Guidance that schools should co-ordinate their arrangements with those of other Catholic schools or to depart from the clearly-stated principle that **no school should act for its own perceived interests alone**. The question of whether the school took into account all relevant factors, applied sufficient weight to each of them, and adequately assessed the effects of determining the arrangements it has now determined is a question I shall return to. However, my conclusion on the specific point of whether the school has had regard to this aspect of the Guidance is that the school has considered the relevant requirements. However it did not take steps to co-ordinate its arrangements with those of other Catholic schools because it considered this to be the role of the diocese, and so the school has departed from this aspect of the Guidance. My view is that the school cannot use the overall reasonableness of its objective as an argument to establish a clear and proper reason to depart from a requirement to coordinate its arrangements with those of other Catholic schools. Neither can the argument be used to establish a clear and proper reason not to act for the school's own perceived interests. Therefore, **in departing from the Guidance without a proper reason to do so, the school has not complied with paragraph 1.38 of the Code**.

59. In reaching this conclusion, I have followed the guidance of Cobb J at paragraphs 58 – 61 in the case of *R (on the application of the Governing Body of the Oratory School) v The Schools Adjudicator, The British Humanist Association & Secretary of State for Education*. I expand on this below in paragraphs 74 – 77.

(iv) The principle of ensuring that the maximum number of Catholic children are able to take advantage of a Catholic education provided at a local Catholic school

60. In relation to the principle of ensuring that the maximum number of Catholic children are able to take advantage of a Catholic education provided at a local Catholic school, the school argues that *'local'* does not mean *'nearest'*. The school says: *"We believe that two factors are important to consider in the definition of 'local'. One is the issue of accessibility and the other is the uniqueness of the school which we believe reasonably broadens the definition of 'local'. Both of these issues have a bearing on what may be considered geographically reasonable"*. The school gives examples of pupils living in Acton Town (two stops away on the Tube) and Brent (an easy bus ride). The salient point here is that, according to the school, *'local'* in the context of this school could be argued to be anywhere in Hammersmith and Fulham or the adjoining boroughs.

61. The school argues that it is unique in West London (indeed in the UK), as it *"forms part of a worldwide network of schools dating back to the 1800's, with distinct charisms for the education of young women"*. As such it is the school of choice for a large number of parents across West London who seek a Sacred Heart education. Additionally it is an all-girls Catholic school and there are very few single sex Catholic girls' schools in West London. The school says there is no single sex Catholic girls' school option for many of the adjoining boroughs, and that it has served these areas for the last 25 years plus. The school says: *"We are also mindful of the 5 May 2015 letter from DfE to the OSA [Office of the Schools Adjudicator] that acknowledges that 'Faith schools, whose mission is to first serve pupils of their faith designation rather than the broader community, can...lawfully draw their 'faith' pupils from a wider area than schools without a faith designation"*. Therefore, the school's view is that *"local"* in the context of a very unique school means arguably *"the geographical focus that might be considered reasonable"*.

62. It is not a requirement of the Code that the admission authorities for Catholic schools must ensure that the maximum number of Catholic children are able to take advantage of a Catholic education provided at a local Catholic school. However, it is something the Guidance says Catholic schools are to do. As above, the Code requires that the school must have regard to the diocesan guidance in setting its faith-based arrangements.

63. From the evidence provided by the school, it is apparent that the governing board has considered the effect of the adoption of random allocation upon applicants from feeder schools situated nearest the school. The school has its own vision of what the area it serves should be, and its own distinct reasons for wanting the catchment to encompass the adjoining boroughs. There is no definition of the term *"local"* in the Guidance. The term would generally be construed to encompass some degree of proximity to the school. However in light of the DfE letter, my view is that the school's interpretation of the term *"local"* in this particular context of the school is a reasonable one.

64. The school has *increased* access for Catholic girls in the adjoining boroughs, and for these girls Sacred Heart is a local school which they will be able to access easily by public transport. Catholic girls attending feeder schools which are close to Sacred Heart will have

an equal chance of being offered a place at the school. These girls have other options in terms of Catholic secondary schools. There are fewer options in terms of Catholic girls' schools, but the Guidance does not require that admission authorities must ensure that the maximum number of Catholic girls are able to take advantage of a Catholic education provided at a local single sex Catholic girls' school. The school has had regard to the principle of maximising access to local Catholic children, and has followed this principle in determining its arrangements. **My conclusion is that the school has had regard to the Guidance in this regard and indeed has followed the Guidance.**

(v) Use of model policies

65. Page 14 of the Guidance says: "*The diocesan model policies have been carefully drafted to help schools comply with admissions legislation, including the Code. Schools are expected to use the diocesan model policies. This aim is to minimise the risk of schools producing policies which are non Code-compliant. It also aims to ensure that governing bodies continue to provide priority to Catholic children.*

Use of the diocesan model documents will also afford a level of consistency across Catholic schools in the diocese. With the proliferation of new admission authorities in the education sector, consistency across the Catholic sector will provide a level of strength in upholding the Catholic requirements and will also mean that parents will see less variation between policies and, therefore, should have a clearer understanding of how their children may gain admission to their local Catholic schools".

66. The school considers that the model policies set out in the Guidance are merely a framework for schools. The school points out that a number of Catholic schools use random allocation, which does not feature in any of the model policies. Examples given are the Cardinal Vaughan Memorial School and the London Oratory. I have looked at the admission arrangements for these schools and they do indeed use random allocation. It is also relevant that these are single sex secondary schools for Catholic boys situated in Hammersmith and Fulham and the adjoining borough of Kensington and Chelsea. Whilst the London Oratory does have one feeder school, the Cardinal Vaughan Memorial School has none. It does appear that the Catholic boys' schools are providing boys from a wide area with the opportunity to attend a single sex Catholic boys' school. The school says it has the desire to offer a similar opportunity for girls.

67. I agree with the school that the model policies provide a framework. Although the wording of the Guidance appears to suggest strongly that schools adopt one of the model policies, it does not appear to be the case that the diocese perceives this to be a requirement. The diocese has effectively confirmed this by not raising it as an issue when consulted upon proposed changes to the school's arrangements, or in response to this objection. Since the Guidance merely enshrines an expectation that schools will adopt the model policies, and since these policies are labelled "*Examples of Admissions Policies for 2020/2021*" rather than, say, "*Permitted types of Admissions Policies*", it appears to me that Catholic schools are not obliged to use one of the model policies, and so can depart from this expectation. The school has chosen not to adopt one of the model policies because it

wants to adopt the arrangements it has determined for the reasons already discussed. **My conclusion, therefore, is that the school has clear and proper reasons to depart from the expectation that one of the model policies should be adopted.**

(vi) The requirement in the Guidance that parents must be able to understand how a child may gain admission.

68. This requirement features in the Guidance, but it also replicates the requirement in paragraph 14 of the Code. The clarity of the arrangements in relation to this particular point has also been raised by Objector Two. I will deal with the question of whether the school's arrangements comply with the Guidance here, and I will deal with the question of whether the school has complied with paragraph 14 in Part 5 of my consideration. There is, however, some degree of overlap.

69. The school considers that Objector One has misconstrued this requirement. I agree. The substantive requirement is that arrangements must describe clearly the process by which an admission authority determines how places are allocated. It is not a requirement that admission arrangements must inform parents whether or not their child will be offered a place at the school in question, or what the prospects of this are. In the words of the school, it is a requirement to provide "*the upfront knowledge of the system that is important, so that parents can make their own minds up about whether or not to list the school as one of their six choices*".

70. The school argues that it is inherent in any admissions arrangement that parents are not going to know definitively whether or not they would have a place. This is undoubtedly true. Indeed, paragraph 2.1 of the Code states that "*admission authorities **must not** give any guarantees that a preference will be met.*" The school considers that, even with the use of distance there is no clear way to guide an applicant definitively because so many other factors come into play. The school points out (as I have) that the diocesan guidance does not differ substantially from paragraph 14 of the Code which states that parents should be able to "*look at a set of arrangements and understand easily how places for that school will be allocated*". The school's view is that it is perfectly clear in the arrangements that where any oversubscription criterion was itself over-subscribed, random allocation will be used to prioritise the offer of places. I agree. Random allocation may mean that the arrangements provide a smaller but equal chance to applicants from all of the feeder schools. This means that it is less likely that applicants from any individual feeder school will be offered a place, but this does not mean that the prospects are less clear. **My conclusion on this point is that the school has followed the Guidance, and that the arrangements are as clear as they need to be.**

(vi) Conclusions on Part 1 of the objections

71. My overall conclusion in relation to this part of the objection is that the school has engaged with the Guidance as it is required to do, and has followed the Guidance to a large degree. It has departed from the Guidance in two respects. The school has not adopted any of the recommended model admission arrangements. It has not done so because it has chosen not to do so for clear and proper reasons.

72. The Guidance also requires an admission authority to co-ordinate its arrangements with those of other Catholic schools, and provides that no school should act in its own perceived interests alone. Whilst my view is that the school perceives that it has acted in the interests of Catholic girls residing in the adjoining boroughs, as opposed to any self-interest, it has not co-ordinated its arrangements with those of other Catholic schools. The view of the school is that co-ordination is a matter for the diocese, however the Guidance undoubtedly envisages that individual schools also have a responsibility in this regard.

73. Therefore, although the school has complied in most respects with its obligation under paragraph 1.38 of the Code to have regard to the guidance issued by the diocese of Westminster when constructing its faith-based admission arrangements, it has departed from it in one respect without proper reason to do so. **Therefore I partially uphold this part of the objection.**

74. In reaching this conclusion, I have followed the guidance of Cobb J at paragraphs 58 – 61 in the case of *R (on the application of the Governing Body of the Oratory School) v The Schools Adjudicator, The British Humanist Association & Secretary of State for Education* in which it was said:

“58. Governing Bodies must take the Diocesan Guidance into account and if they decide to depart from it, they must have and give “clear reasons” for doing so. As indicated above, in a case of this kind, ‘have regard to’ involves a greater degree of consideration than merely to ‘consult’ (see [49] above) but plainly does not mean (and in this respect I agree with Jackson J in Governing Body of the London Oratory School (& others) v School’s Adjudicator (above)) ‘follow’, or ‘slavishly obey’. I would add that the “clear reasons” referred to by Laws LJ must in my judgment objectively be proper reasons, or legitimate reasons. While recognising that ‘good’ as a qualifying adjective has been widely used by many distinguished judges in previous authorities, I resist Mr. Moffett’s invitation to use that adjective to describe ‘reason’, as ‘good’ in my judgment imports (or may import) a subjective element into the test, which would have the effect of reducing clarity and predictability. I further resist the use of the word ‘cogent’ to qualify ‘reason’; a ‘cogent’ reason, if used in the sense of ‘convincing’ (see the quotations from Munjaz at [52] above), again has a strong and unwarranted subjective element, and probably raises the bar too high in this context. It seems to me that ‘compelling’ introduces a subjective ingredient which is stronger even than ‘good’ or ‘cogent’, and again places the bar far higher than is appropriate in this context.

*59. In considering whether a Governing Body has ‘had regard’ to the Diocesan Guidance, it needs to demonstrate that it has considered and engaged with the Guidance, not ignored it, or merely paid lip-service to it. The reasons plainly do not need to be documented (see Khatun), but it is preferable if they are. The Governing Body must further have a proper evidential basis for its decision to depart from the Diocesan Guidance: *R (Calgin) v Enfield London Borough Council* [2005] EWHC 1716 (Admin), [2006] HLR 58, para 32; it must be clear from the decision that proper*

consideration has been given to the relevant matters required by the SSFA 1998, the Admissions Code and the Diocesan Guidance.

60. What amounts to a 'clear and proper' reason will depend on the individual circumstances of each case. Having heard argument and reviewed the authorities, it seems to me that it would be more difficult for an admissions authority to demonstrate a clear and proper / legitimate reason for departing from Diocesan Guidance where the proposed faith-based criteria:

i) Fundamentally undermines the core or underlying principles of the Diocesan Guidance;

ii) Is expressly forbidden by, or in conflict with, the Diocesan Guidance; or

iii) Is substantially different in a material respect from the Diocesan Guidance.

61. As for the evaluation of the reasons for departing from the Guidance, in my judgment a Schools Adjudicator should:

"...scrutinise the reasons given by the [addressee] for departure [from the Code] with the intensity which the importance and sensitivity of the subject matter requires" (per Lord Bingham in Munjaz at [21]).

Where an admission authority departs from the Diocesan Guidance in a significant or extensive way, then plainly the scrutiny which will be brought to bear upon its reasoning will be greater than if the departure is minimal. I do not consider that this calls for reasons of a different quality, or a 'sliding scale' as applied by the Adjudicator.

75. The test in the London Oratory case is that an admission authority "*needs to demonstrate that it has considered and engaged with the Guidance, not ignored it, or merely paid lip-service to it*". This school has undoubtedly engaged with the Guidance, and sought advice from the diocese appropriately. As I have said, in most respects, the school has followed the Guidance.

76. In a situation where a school has departed from diocesan Guidance, I am required to scrutinise the reasons given for departure with the intensity which the importance and sensitivity the subject matter requires. In relation to the non-adoption of one of the model policies, I consider that the school has demonstrated clear and proper reasons for departing from the Guidance. The school has not co-ordinated its arrangements with those of other Catholic schools. I accept the school's arguments that the Code does not make co-ordination a substantive requirement, nevertheless it is a requirement and an underlying principle of the Guidance which has not been followed, and there appears to be no clear and proper reason to depart from the Guidance in this respect.

77. It is not open to me to require the school to take any particular action in relation to the co-ordination of its arrangements with other schools. Neither does the lack of co-

ordination, of itself, render a set of admission arrangements unlawful where they comply with the Code as to their content.

Part Two

The selection of feeder schools is not transparent and has not been made on reasonable grounds

78. The objector considers that the arrangements fail to comply with paragraph 1.15 of the Code which states: *“Admission authorities may wish to name a primary or middle school as a feeder school. The selection of a feeder school or schools as an oversubscription criterion must be transparent and made on reasonable grounds”*.

79. As I have set out above, prior to the 2015 adjudicator determination (ADA2278), the school had identified all Catholic primary schools in the Dioceses of Westminster and Southwark as feeder schools. The arrangements did not name these feeder schools. Paragraph 16 of the adjudicator determination indicated that this required revising. The adjudicator concluded: *“...I would expect a feeder school to be one that has strong links with the secondary school, where most of the pupils are likely to transfer to the secondary school and where there are arrangements that will help the children to make a successful transition from one school to the next. I have been shown no evidence of such links and the reasonable grounds for their selection described is concerned with ensuring a Catholic education has been provided for an applicant. The list of Catholic primary schools in these two Dioceses is extensive and it is a list of a type of schools not a list of normal feeder schools in the sense set out above. I do not consider that it is reasonable to call these schools feeder schools as allowed by paragraph 1.15 of the Code and they may not therefore be considered as named feeder schools as permitted by paragraph 1.9b of the Code.”*

80. The crux of the issue in this case is whether the schools named as feeder schools in the arrangements can properly be described as feeder schools. There is no definition of the term *“feeder school”* in the Code. Where a term is not defined in legislation, it is taken to have its ordinary and everyday meaning. The Cambridge Dictionary defines *“feeder”* as an adjective *“used to refer to something that leads to or supplies a larger thing of the same type”*. My view is that, in the context of admission arrangements, a feeder school is simply a school which is named as such, and which is selected transparently on reasonable grounds.

81. The determined policy for September 2016 admission to year 7 included only 11 feeder schools. The objector considers that this shorter list *“aligned with the OSA Determination”* because these 11 schools had strong links with the secondary school, where most of the pupils were likely to transfer to the secondary school. However, this *“alignment”* with the adjudicator Determination lasted only one year. The arrangements determined for September 2017 expanded the list to 56 named schools which were all Catholic primary, junior and some infant schools in the six adjoining boroughs plus primary schools in the London Borough of Hammersmith and Fulham. The objector considers that the inclusion of three infant schools as feeder schools is indicative of how little

consideration was given to the list, as infant schools cannot be feeder schools for a secondary school. The school has removed these infant schools from the list prior to determining its arrangements for admission in 2020. The objector considers that the effect of the large number of feeder schools was limited by the having proximity as an oversubscription criterion until the arrangements for 2020 were determined.

82. The objector argues that, under the arrangements for September 2020, with 53 feeder schools and a PAN of 198 before sibling preference it is not possible that the adjudicator's approach to reasonableness set out in paragraph 16 of determination ADA2788, namely that "*most of the pupils are likely to transfer to the secondary school*" can be met. The objector says that a reasonable estimate of the number of applicants from the feeder schools meeting the Catholic criteria is 795. This is based upon 30 children per class split evenly between boys and girls ($53 \times 15 = 795$). The number is likely to be higher as some of the feeder schools will be more than one form of entry. This exceeds the PAN by 597. The objector argues that the fact that the Sacred Heart School TW11 is a feeder school demonstrates that the school has not met the requirement that feeder schools must be chosen on reasonable grounds because it is not reasonable to have selected this school as a feeder school. Pupils attending that school have a number of other options, whereas pupils attending feeder schools in Hammersmith and Fulham do not. It is not, therefore, reasonable to choose Sacred Heart School TW11 as a feeder school. The objector considers it likely that similar arguments could be made for at least some of the other non-Infant-school Feeders, "*even if the cases would not be quite so egregious*".

83. Paragraph 1.15 of the Code requires firstly that the selection of feeder schools must be transparent. I have no doubt in concluding that the selection of feeder schools in this case has been transparent. The school has named the schools, and consulted on its arrangements in accordance with the legislative requirements. It is also my view that the selection of feeder schools has been made on reasonable grounds. The school's reasons for adopting the named feeder schools have been set out above. Offering priority to more Catholic girls living in disadvantaged areas is an objectively reasonable basis for naming all Catholic feeder schools in the adjoining boroughs in the case of a school which has good transport links to the areas where the feeder schools are situated, and there is an established historical link between the school to these particular boroughs.

84. I do not accept the objector's reasoning that it is not reasonable to select a primary school as a feeder school because those attending that school may have more Catholic secondary school options than some children attending Catholic primary schools in Hammersmith and Fulham. Co-ordination of the arrangements with those of other Catholic schools is a requirement of the diocesan Guidance, and I have reached a conclusion on this issue. Co-ordination with other Catholic schools is not a requirement of the Code. However it is possible that a lack of such co-ordination could result in a situation whereby a school adopts a set of arrangements which operate unfairly. I have considered the question of fairness under Part 3 below.

85. Paragraph 1.9b of the Code provides that "*Admission authorities must not take into account any previous schools attended, unless it is a named feeder school*". In ADA2278, the

adjudicator determined that the school's arrangements were not compliant with the Code. I have reached a different conclusion to that reached by the adjudicator in ADA2278 as to what may or may not lawfully constitute a feeder school for this particular school. It is open to me to do so because previous determinations do not form binding precedents. The adjudicator in ADA2278 was considering a different set of arrangements. These were clearly unlawful as the feeder schools which the school had purported to select were not named in the arrangements, and constituted a list of a type of school as opposed to a list of identifiable individual schools. The number of schools purported to be feeder schools was very large indeed. By contrast, the arrangements for 2020 comprise a list of named feeder schools which are all Catholic primary schools situated in the London boroughs adjoining Hammersmith and Fulham, where the school is situated. The feeder schools are situated in areas traditionally served by the school, and the school has a rational basis for selecting the schools it has selected as feeder schools.

86. My conclusion in relation to this part of the objection is that the feeder schools are named; they have been selected transparently following consultation; and it is reasonable for the school to have selected the feeder schools it has named based upon its objective of offering priority to Catholic girls attending schools in the adjoining boroughs. **Therefore I do not uphold this part of the objection** for the reasons I have set out above. I should add, though, that even though my view is that the selection of feeder schools is reasonable, this does not necessarily mean that I consider the arrangements as a whole to be reasonable, or that they operate fairly. I now move on to address these questions which I have considered very carefully indeed.

Part Three

The arrangements are unreasonable and operate unfairly to local Catholic girls

87. Reasonableness and fairness are two separate questions. The essential difference between reasonableness and fairness is that reasonableness is determined by examining objectively whether all relevant factors have been considered without giving undue weight to any of these factors, whereas fairness is determined by assessing whether there is an adverse impact upon any identifiable group which is disproportionate to the aim which is sought to be achieved. In considering fairness, the focus of the consideration will be exclusively upon the effect or the practical application. The question is to whom are the arrangements unfair, how and why?

88. Turning first to reasonableness, as I have said above, my view is that the school's reasons for adopting this particular set of admission arrangements are objectively reasonable. The objectives of widening the realistic prospects of access to this outstanding school, and including more applicants from disadvantaged areas are both reasonable objectives in the context of this particular school. The school says it has been mindful of comments from the Sutton Trust (Selective Comprehensives 2017: Admissions to High-Attaining Non-Selective Schools for Disadvantaged Pupils, March 2017) which state as follows:

“[Recommendation 1]....reducing the emphasis on geographical proximity will allow fairer access to the best schools and limit socially divisive incentives for home buying and gaming the system. Ballots can ensure a wider mix of pupils have the possibility of attending the best schools..’

[Page 14]: ‘Faith schools are among the most socially selective category of top school, more than three times as socially selective compared to their catchment area than non-faith schools, with an average 6% FSM gap, compared to 2%. Of the faith schools in the top 500, three-fifths are Roman Catholic...’

[Page 18]: One way of tracking the behaviour of parents within the constraints of the school admissions system is through their decisions of where to live. In surveys, substantial proportions of parents regularly indicate a willingness to buy or rent a property based on a school catchment area. This is borne out in their behaviour, with widespread international literature demonstrating a link between school quality and house prices. This relationship is well established, with consequential negative effects for the social composition of the schools perceived to be of the highest quality.

[Page 19]: House buyers willing and able to pay a substantial premium to live in the catchment area of a top school are likely, over time, to lower the accessibility of the school to those from disadvantaged backgrounds. This undermines the nature of the comprehensive system, and introduces an element of de facto selection based on ability to pay”.

89. The school says that the Sutton Trust has published another report on admissions (*‘Selective Comprehensives: Great Britain’* March 2019) and its effect on social mobility. Specifically, the report makes the point (on page 4) that: *“A divided state school system, where the top schools are located in affluent areas, serving pupils from advantaged backgrounds, is a disaster for social mobility. This is why we want to see more use of priority for disadvantaged pupils, and ballots - where a proportion of places is allocated randomly, to achieve a genuinely balanced intake.”* The report goes on to make a recommendation that random allocation is used by more admission authorities, especially in urban areas [page 10].

90. Objector One purports to challenge the reasonableness of the arrangements, but most of his points actually relate to the question of whether the arrangements operate unfairly to an identifiable group of children. He does not overtly challenge the overall objective of the arrangements, but he has produced evidence suggesting that the school’s analysis of whether the arrangements achieve their objective is flawed. Accordingly the arrangements may not achieve the objective of offering access to greater numbers of applicants from disadvantaged areas.

91. As a proxy for affluence of a geographic area, the school has looked at the average value of house prices in the post codes of the named feeder schools. The school has then compared the number of offers made over the past four years to pupils from all of the feeder schools, and has observed a *“marked spike”* in admissions from those attending Larmenier & Sacred Heart Catholic Primary School and Good Shepherd Catholic Primary School and increases for St Mary’s W14 and for St Mary’s Chiswick. The school considers that this is at the expense of others who can access the school very easily but attend

schools further away. The school acknowledges the limitations of using house prices as a proxy, as school admissions commonly spread well beyond a school's postcode and affluent postcodes also include areas of social housing (which will not be reflected in house price averages), though some more than others. The school nevertheless still believes that it is valid to consider average house prices in the postcodes of the named feeder schools as a proxy for affluence, accepting that there will of course be exceptions within schools.

92. The school has set out an analysis of how the use of distance to determine priority between feeder school applicants has increased its intake from certain primary schools which are situated in closest proximity to the school, and has produced the following table relating to admissions in 2019.

Named Feeder School	Average House Price (rounded)	Admissions to the Primary School
Larmenier & Sacred Heart H&F	£985,000	Prioritises those in the Parish of Holy Trinity, Brook Green W6 & distance.
Our Lady of Victories, Wandsworth	£815,000	Prioritises those in the Parish of Our Lady of Pity & St Simon Stock with random allocation in each category.
Our Lady of Victories - K&C	£2,344,000	Prioritises those living in the Parishes of Our Lady of Victories and Our Lady of Mount Carmel & St Simon Stock – all covering very affluent areas. Random allocation within this.
Good Shepherd H&F	£734,000	Distance to the school. The furthest distance from which a child secured a place in 2018/19 was 0.49 miles.
St. Augustine's - H&F	£985,000	Prioritises those living in the Parish of St Augustine.
St. Mary's Chiswick	£1,112,000	Names 123 roads but within that they use random allocation to avoid social exclusivity.
St. Mary's W14, H&F	£1,122,000	Prioritises those in the Parish of Holy Trinity Brook Green W6.
Holy Cross H&F	£1,134,000	Prioritises those in the Parish of Holy Cross & Our Lady of Perpetual Help.
St Thomas Canterbury H&F	£1,134,000	Priority to those in the Parish of St Thomas of Canterbury & distance

93. The school's analysis has identified that there has been an overall increase of 24.2 per cent from those in areas where house prices are over £700,000, and that the majority of this increase is in areas where house prices are over £1m. Also, the school's area of intake has reduced significantly, and this has primarily affected applicants on the middle and lower ability bands as can be seen from the following table.

Distance of furthest successful applicant in each band:

	Band 1 (Higher ability)	Band 2 (Middle Ability)	Band 3 (Lower Ability)
2018	3.637	6.469	8.182
2019	3.254	2.238	2.480

94. The objector's view is that estimating affluence based upon the first half of postcode level assigns the same affluence estimate to large numbers of the poorest and the richest. For example, he says, W11 includes both extremely wealthy and famous named individuals and the Grenfell Tower. Estimated house values, irrespective of accuracy, are he says of very limited relevance to the affluence or disadvantage of those renting privately or in social housing, and disadvantage is connected to **not** being a homeowner. The objector also argues that proxy data should only ever be used in the event of actual data being unobtainable. I agree with the objector on this point. As a former resident of West Kensington, and a lifetime London resident, I am fully aware that London boroughs, and Hammersmith and Fulham in particular, comprise pockets of both affluent and deprived areas.

95. The objector points out that the Department for Education collects and publishes figures on the percentage of disadvantaged pupils in schools. The objector says that it took him less than an hour to find and analyse this data. He has compiled a table showing the average levels of disadvantaged pupils in the feeder schools situated in the London Borough of Hammersmith and Fulham and adjoining boroughs (with the exception of St. Richard Reynolds TW1 4LT and Holy Family W3 ODY for which information is not available). This, he claims, shows almost a complete reversal of the picture the school provides with their proxy data for affluence. The objector says that the reference in the table to PTFSM6CLA1A is to the percentage of Key Stage 2 disadvantaged pupils.

LEA Name	LEA No.	Average of PTFSM6CLA1A	Count	Order by % Disadvantaged (Highest=1)	Order by Lowest "Affluence" (Lowest=1)
LBHF	205	33%	6	1	6
RBKC	207	31%	7	2	7
Brent	304	26%	8	3	3
Wandsworth	212	23%	9	4	4
Hounslow	313	17%	6	5	2
Ealing	307	15%	9	6	1
Richmond	318	13%	6	7	5
Grand Total		23%	51		

96. The objector says that school's analysis shows the London Borough of Hammersmith and Fulham and the Royal Borough of Kensington and Chelsea to be the two boroughs with the highest average house price, but these are the boroughs which also have the highest average percentage of disadvantaged pupils. In a similar inversion, he argues that, the two boroughs with the lowest average house price, Hounslow and Ealing, are both in the lowest boroughs for percentage of disadvantaged pupils.

97. The objector claims that the school uses its analysis of affluence data to rationalise the disadvantage that the arrangements will cause to applicants from the London Borough of Hammersmith and Fulham, whereas the feeder schools in this borough have a disadvantaged pupil percentage that is more than twice as high as those in the borough which the school's analysis identifies as the least affluent. The objector considers that the school's detailed analysis of flawed proxy data for affluence, its relevance to applicants from its feeder schools, and the further use of that analysis to justify the adoption of random allocation is invalid. His view is that, by increasing the number of applicants from Hammersmith and Fulham, the school would increase the number of disadvantaged children who would be offered places.

98. The objector also challenges the school's assertion that the school is in "*a very affluent part of the Capital*". He says that, whilst the very nearest residential streets to the school are unambiguously affluent – extremely affluent might be more accurate - it is incorrect to assume that nearby applicants (that is applicants from the four schools represented by Objector One) are uniformly affluent or advantaged. He refers to page 3 of the latest full Ofsted inspection report for the second closest feeder school, which is St Mary's Masbro Road W14. The report states: "*the proportion of disadvantaged pupils eligible for the pupil premium is above average*", and also page 3 of the latest Ofsted inspection report for the feeder school which the objector is connected to as Parent Teacher Association Treasurer, namely The Good Shepherd School W12. This states that "*the proportion of disadvantaged pupils eligible for the pupil premium is ... a little above average*".

99. The school says in response that, regardless of the fact that the DfE figures show Hammersmith and Fulham and the Royal Borough of Kensington and Chelsea as areas of high deprivation, this level of deprivation has simply not been reflected in the school's intake. The previous arrangements, although they included feeder schools, used proximity to determine the level of preference afforded to feeder school applicants, and so the home address was the ultimate determining factor. As a result of the extent of oversubscription, the radius of the school's intake narrowed to the extent that middle and lower band applicants (in particular) who received offers were living in the affluent areas which are close to the school. The school points out that, whilst some schools in the borough may have relatively high levels of disadvantaged pupils, the determining factor of affording priority under the previous arrangements was where pupils lived, not where they were at school.

100. The objector suggests that there is no plausible reason to expect West London Catholic feeders to match the national average, even before the complicating effect of the School's past admissions policies which have resulted in the present key stage 4 pupil body. He also says that the PTFSM6CLA1A figure (percentage of Key Stage 2

disadvantaged pupils, according to DfE figures was “18 per cent for 2015-16, 16% for 2016-17 and 12% for 2017-18”. He says: “I submit that had the school been focussed on the disadvantaged % instead of house prices that it might not have fallen by 1/3 in the last 2 years for which the data is publicly available... I am surprised that the School elect to highlight the gap to the feeder average 23% since it points to the admissions criteria or other aspects of the application process in recent years having inadvertently worked against the disadvantaged applicants from the feeders”.

101. I have relied upon the following facts in reaching my conclusions on this point. The school’s intake of disadvantaged pupils has been less than the national average since 2015/16. I do not have figures prior to 2015/2016. The latest figure I have been provided with is that the percentage of pupils eligible for free school meals at the school at any point in the past six years (the Ever6FSM measure) was 16.4 per cent as compared to the national average of 28.6 per cent. It would, therefore appear to be the case that, even if the percentage of disadvantaged pupils in two of the feeder schools closest to the school is above average, as the objector has pointed out, the effect of admitting pupils from 11 named feeder schools and then predominantly admitting children from the feeder schools closest to the school has resulted in an outcome of having an intake of disadvantaged pupils which is lower than the national average. The school clearly wishes to change this outcome, and must therefore change how its intake is determined. The question then is whether it is reasonable to suppose that the change to the arrangements it has determined is likely to achieve the desired result, and whether there is any available data which will enable this to be predicted.

102. In order for an applicant to have any reasonable chance of being offered a place under the school’s arrangements, that applicant would – because of the school’s historic popularity - need to be Catholic, attend one of the 53 feeder schools, be successful in the ballot and fall within the required percentage of the relevant ability band. I cannot see from the available data how the overall outcome in terms of the admission of disadvantaged applicants is capable of being predicted with any accuracy under these circumstances, not least because the number of applications from disadvantaged applicants will always be unknown. The school has used house prices as a proxy for wealth, which is not an accurate predictor of the likelihood of increasing the number of disadvantaged applicants. The objector has used a local authority average of the number of disadvantaged applicants in 51 of the 53 feeder schools to demonstrate that Hammersmith and Fulham is a disadvantaged area overall, but this doesn’t address the point that what is relevant here is the home addresses of individual applicants.

103. As I have said, most London boroughs are mixed in terms of affluence and deprivation. I have spent some considerable time looking at the DfE data, attempting to ascertain whether there is any available information which would enable me to predict whether the school’s percentage of disadvantaged pupils will increase by widening the area of its intake. My conclusion is that, as the majority of the school’s intake under the 2019 arrangements was confined to a narrow radius, and the school is situated in a predominantly affluent area, it is more likely than not that widening the area of intake will lead to the admission of a higher number of applicants from disadvantaged areas. In order for this not to be the case, the successful applicants under the 2020 arrangements would all need to reside in areas which are equally as affluent as the areas which have formed the

majority of the school's intake under the 2019 arrangements. Since the area of intake for September 2020 will consist of large sections of seven London boroughs, as opposed to a radius within 2 – 3 miles of the school, this would be unlikely. In order to assess accurately whether the school's current arrangements achieve the school's objective, the school would need to monitor the number of disadvantaged pupils being offered a place at the school in order to see whether this number increases, and this would need to be done over a period of several years. If the school is serious in its objective of admitting more disadvantaged applicants, and I have no reason to doubt that it is, it will keep this under review.

104. In reaching a conclusion about whether the arrangements are objectively reasonable, I have also taken into account that the school's reasons for offering access to a wider area are not simply in the hope of being able to offer places to an increased number of disadvantaged applicants, the school also wishes to offer the opportunity to attend an Outstanding single sex Catholic girls' school to applicants other than those who live in reasonably close proximity to the school. This is entirely reasonable from an objective perspective. There is no requirement in the Code for admission authorities to offer places to applicants living in close proximity to the school. Whilst proximity is a lawful oversubscription criteria, as the diocese has said, "*it is not obligatory to use distance as a tie break*".

105. I now reach the heart of both of these objections, which is whether the school's arrangements will operate unfairly to the girls who are currently attending the four feeder schools closest to Sacred Heart and have a CCP. Under the 2019 arrangements, these girls would have almost certainly been offered a place at the school (before this, their priority would have depended on whether they were practising Catholics as defined in the School's admission arrangements). Under the current arrangements, this is much less likely. These girls will now have exactly the same chance of being offered a place as any other girl attending one of the 53 feeder schools. When considering fairness, an adjudicator must focus upon the effect, or the consequence, of the arrangements upon any relevant group. The adjudicator must then weigh the advantage said to accrue to children who would be offered places at the school in consequence of the arrangements, against any disadvantage or unfairness caused to any other relevant group of children who would not be offered places.

106. Objector One has identified a group of girls to whom he suggests that the arrangements will operate unfairly. The crux of his argument is effectively that the arrangements disadvantage applicants who attend The Good Shepherd, Larmenier and Sacred Heart, St Mary's Masbro Road and St Mary's Catholic Primary School, Chiswick, whilst 'overly advantaging' (my words) applicants from some of the other 49 feeder schools.

107. I have to say that I am not attracted to the argument that the applicants from these four schools are disadvantaged unfairly because applicants from some of the other 49 feeder schools are more advantaged than they were under the previous (2019) arrangements by now having an equal chance of being offered a place at Sacred Heart. I note that the change in the Diocesan guidance that introduced the CCP meant that, for the first time, almost all girls from the four closest schools would be offered a place. This was not previously the case unless they met the School's own definition of "practising Catholic". Schools will be reacting in different ways to the impact this has on their admission arrangements, and whilst co-ordination would be desirable in my view the arrangements

would only be unfair if a group of girls was left with no reasonable prospect of attending a Catholic secondary school. It is the inevitable effect of oversubscription criteria that some groups of children will have a greater chance of being awarded a place at the type of school they prefer than others, and fairness does not require that all children have an equal chance of being awarded such a place. It is only if the detrimental impact on an identified group is disproportionate to the intended benefits of the admission arrangements that they are likely to be unfair.

108. The benefits of the arrangements are that they are more likely than not to increase the likelihood of more disadvantaged applicants being offered a place at the school; they will extend the unique opportunities offered by this Outstanding single-sex Catholic girls' school to applicants from a wider area; they will offer an equal opportunity to all feeder school applicants, and so in this respect they can be said to operate more fairly than the previous arrangements; the local single-sex Catholic boys' schools (Cardinal Vaughan Memorial School and the London Oratory) both use random allocation to determine the level of priority for applicants, and Sacred Heart seeks to offer similar opportunities of access to a single-sex girls' school.

109. The disadvantage of the arrangements is that they will reduce the prospect that girls attending the four feeder schools will be able to secure a place at a single-sex Catholic girls' school. The question is whether the change to the arrangements will also leave these girls with little or no prospect of being offered a place at any Catholic secondary school. Whilst strictly speaking, there is no entitlement under admissions legislation for any person to be provided with education at a Catholic school, and it cannot be said that Sacred Heart has a responsibility to ensure this, in my view the arrangements could be said to operate unfairly if their effect was to remove this possibility entirely. I have therefore considered very carefully the evidence in relation to available options for a Catholic secondary school education (or lack thereof) for girls attending the four feeder schools.

110. I can see that, at the time of adopting the 2020 admission arrangements, the governing board did give some consideration to this point, though not an extensive amount. As mentioned above, the school identified the following Catholic secondary schools as alternative options for girls attending the four feeder schools: All Saints Catholic College W10 6EL; St Thomas More SW3 2QS; Gumley House TW7 6XF (Girls); St Richard Reynolds TW1 4LT; and Cardinal Wiseman.

111. The objector has also looked at possible alternative Catholic secondary schools. He suggests that three local Catholic secondary schools "*actively discriminate*" against London Borough of Hammersmith and Fulham and W4/Chiswick applicants. Consequently, applicants from the four Sacred Heart feeder schools "*have substantially no chance to attend*" these schools, which are: Saint Richard Reynolds in Richmond, Saint John Bosco in Wandsworth and Cardinal Wiseman in Ealing. The schools either prioritise deaneries which do not comprise areas in the London Borough of Hammersmith and Fulham or Chiswick W4, or they have feeder schools which do not include the four feeder schools which are the focus of this objection.

112. The objector says that Saint Gregory's in the very north of the London Borough of Brent has a maximum distance that does not even cover the South part of the London Borough of Brent, and that All Saints in the Royal Borough of Kensington and Chelsea will prioritise Catholic children from six of the seven Catholic schools situated in the Royal

Borough followed by Catholic children attending the non-Catholic schools within 1km of the school in its arrangements for September 2020. The objector suggests that only Gumley House in the London Borough of Hounslow, the Convent of Jesus and Mary in the London Borough of Brent and St. Thomas More in the Royal Borough of Kensington and Chelsea primarily use a distance criterion and therefore do not actively discriminate against London Borough of Hammersmith and Fulham and W4/Chiswick applicants.

113. There is some dispute between the parties as to whether All Saints Catholic College is a realistic prospect. The objector rightly points out that it has seven feeder schools which do not include the four Sacred Heart feeder schools under consideration. However, the All Saints' admissions policy does state (as the School has pointed out) that in the past six years the school has been able to offer places to children in each oversubscription category 1-9, including those in Category 9, 'those of another faith'. Its arrangements state that the school will only prioritise applicants from its feeder schools if there are more applicants than places available in categories 1-9.

Last year, the school offered (in descending order of priority)

- I. 5 places to Catholic siblings
- II. 55 places to baptised practising Catholics
- III. 12 places to other practising Catholics
- IV. 19 places to other practising Catholic siblings
- V. 2 places to Eastern/Orthodox
- VI. 10 places to other applicants.

114. Applicants from The Good Shepherd, Larmenier & Sacred Heart Catholic Primary School, St Mary's W14 and St Mary's Chiswick would presumably fall under oversubscription category II, namely baptised practising Catholics (if they did not, they would have very low priority for a place at Sacred Heart and so cannot be said to be disadvantaged by any change in the school's admission arrangements). Based upon last year's offers, there would need to have been more than 125 applicants under category II in order for the school to afford priority within that category to applicants attending a feeder school, whereas there were only 55 applicants falling within this oversubscription criterion. The school observes that this is an 'Ofsted Good' Catholic school which has not filled up with Catholic applicants and has taken those in lower categories. I have looked on the map, and All Saints does appear to be within reasonably easy reach of the locations of the four feeder schools by public transport as it is situated close to Ladbrooke Grove Underground station, which is just a few stops from Goldhawk Road Underground station (journey time between the two stations is six minutes). TFL says that the distance between the two Underground stations is 2.7km (1.67 miles). This is a 39 minute walk taking a route on minor roads which run parallel to the A3220 and the Westway, which are busy roads. Applicants living in Chiswick could take the District Line to Hammersmith and then the Hammersmith and City Line to Ladbrooke Grove (journey time 42 minutes), or the 272 bus to Latymer Upper School playing fields plus a 22 minute walk (total journey time 63 minutes). The PAN for the school is 120. My view is that, contrary to what the objector says, this school is an option for pupils attending the four feeder schools.

115. The objector's view, (having dismissed All Saints as an option) is that only three girls and mixed Catholic secondary schools offer any prospect of admission to London Borough of Hammersmith and Fulham or W4/Chiswick applicants. He also considers that the removal of the distance criterion from Sacred Heart's arrangements will encourage applicants living further away to apply. When that occurs, he says, the probability of any applicant "*winning the Sacred Heart lottery*" is further reduced, which will exacerbate the disadvantage to London Borough of Hammersmith and Fulham and W4/Chiswick applicants. The second point may, or may not, prove a reality. On the one hand, applicants from feeder schools situated in Hounslow, Brent, Richmond and Ealing who may have been deterred from applying to Sacred Heart under its previous arrangements may wish to put their hat in the ring for the ballot, but their prospects of being offered a place are no greater than applicants living close to the school. If, as the objector points out, there are other options for these applicants where the outcome is more certain, they may decide to exercise their preferences for more local schools precisely because the outcome will be more certain.

116. All in all, though, since the objector acknowledges that there are at least three Catholic secondary schools which offer a prospect of admission to London Borough of Hammersmith and Fulham and W4/Chiswick residents, I have looked at these schools.

117. Gumley House is an all-girls Catholic school which offers 13 per cent of its places to applicants from the deaneries of Hammersmith and Fulham, Kensington and Chelsea and North Kensington. This is 49 minutes on the 237 bus from Goldhawk Road or 38 minutes on the 237 and 267 buses. The distance between Goldhawk Road Underground station and Gumley House School is 5.5 miles, and the furthest distance from the school at which a place was offered to applicants in this deanery last year was 6.632 miles. For applicants living in Chiswick, the school is accessible via the 267 bus.

118. The Convent of Jesus and Mary is also an all-girls Catholic school. Baptised Catholic children are afforded second priority (after Catholic Looked After and previously Looked After children). Priority within this category is afforded firstly to siblings and then on the basis of proximity from home to school. The school is a 30 minute bus ride from Goldhawk Road station, or 30 minutes by Overground. The distance is three miles. Applicants from Chiswick can access the school taking two buses, the 237 and 220. The distance from school to school is 4.1 miles.

119. Saint Thomas More School is a mixed school which operates banding arrangements. Last year all of the places were offered to Practising Catholic children from Practising Catholic families. This school is accessible via the District Line from Hammersmith or Turnham Green to Sloane Square. Hammersmith station is said to be a 15 minute walk from Goldhawk Road. The school is also accessible via the 49 bus from Shepherds Bush station.

120. I am aware that very many Catholic parents will seek to send their children to Catholic schools, but as I have said above, this is not an entitlement. The LA has an obligation to secure that there are sufficient school places for residents in its area. If the parents of the girls in the four feeder schools consider that they would prefer their

daughters to attend a school in Hammersmith and Fulham, it would appear that there are five possibilities – Fulham Cross (girls), Hammersmith Academy, Hurlingham Academy, Phoenix Academy, and the West London Free School. While I have not considered how reasonable it is to assume that places would be offered at each of these schools, I note that there has been no suggestion that girls living in Hammersmith and Fulham who cannot obtain a place at Sacred Heart will not be able to find a place at another non-Catholic secondary school in the borough or a conveniently located school in a neighbouring borough.

121. I understand absolutely that the parents of girls attending the four feeder primary schools and others who are closely involved with these schools will perceive that the adoption of random allocation by the school operates unfairly towards these girls. However, my conclusion on this point is that the arrangements do not operate unfairly. This is because, in my view, the advantages of the arrangements outweigh any disadvantage that will be caused to this group of girls. The operation of the arrangements may result in these girls not being offered a place at Sacred Heart, but this will not mean that these girls will be denied the opportunity to attend a Good or Outstanding Catholic school, or indeed a Good or Outstanding non-Catholic school.

122. It is for an admission authority to determine the admission arrangements for the school. An adjudicator can only interfere with a set of arrangements where they are unlawful or fail to conform to the Code. If the arrangements in question operated unfairly to an identifiable group, they would not so conform. I accept that the school's arrangements may disadvantage girls attending the four feeder schools when compared to the 2019 arrangements where applicants from these schools are not offered a place under the arrangements for random allocation. However I do not consider this to be unfair. The school has valid reasons to adopt the arrangements it has for 2020, and the adoption of these arrangements has not left this group of girls without prospect of attending a Good or Outstanding Catholic or non-Catholic secondary school.

Part Four (objection two)

As a result of the adoption of random allocation no parent can reasonably ascertain whether their child is likely to be offered a place at the school

123. I can deal with this part of the objection reasonably succinctly. Paragraph 14 of the Code requires that admission arrangements must be sufficiently clear so that parents are able to look at a set of arrangements and understand easily **how** places for that school will be allocated. Admission arrangements are defined 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 offered*". (see p.5 of the Code).

124. I have emphasised the word 'how' because I have seen paragraph 14 misinterpreted. It does not require admission arrangements to tell parents whether or not their child will get a place at the school, or even how likely this is as a prospect. It requires

the arrangements to tell parents the factors which determine how places will be allocated in the event of oversubscription, and the procedure used to decide allocation. The procedure, practices, criteria and supplementary information must all be clear. The school's arrangements are clear in relation to all of these aspects. They do not tell parents whether they can be reasonably certain that their child will be offered a place, but there is no requirement that they must do so. The arrangements tell parents that, if their child is attending a feeder school, that child will have the same chance of being offered a place at the school as any other child attending one of the named feeder schools. This is sufficient to comply with paragraph 14 in terms of the requirement for clarity. Therefore, I do not uphold this part of objection two.

Part Five

The arrangements are unreasonable because they incorporate such a large number of feeder schools

125. I have dealt with the selection of feeder schools to a large extent above. This part of the objection relates specifically to the question of whether a school is permitted lawfully to have such a large number of feeder schools. 53 is a large number in this context. It is clear that the potential number of applicants from feeder school pupils exceeds the PAN of the receiving school. It is conceivable, given the use of random allocation to determine the priority of feeder school applicants, that no applicants from a feeder school will be offered a place in any admission year. The Code places no specific limits upon the number of feeder schools which is permissible, however the number must be reasonable in any given context.

126. If the approach to the selection of "feeder schools" adopted in ADA2278 were to be followed, none of the 53 schools named in the arrangements would meet the definition. Some of them have however been afforded priority as feeder schools since 2016. More have been afforded such priority since 2017. Applicants from some feeder schools have secured more places at the school than others by virtue of being closer to the school, but I have seen no evidence of strong links between these particular schools and Sacred Heart, and no specific arrangements for these schools that will help the children to make a successful transition from one school to the next, other than the induction arrangements which are in place for all applicants. The school says it has no special relationship with any of the primary schools whose pupils transfer to Sacred Heart in Y7.

127. As I have said above, the term "*feeder school*" is not defined in the Code, and I have concluded that the feeder schools named in the arrangements have been selected transparently and on reasonable grounds. So, the question here is purely whether having such a large number of feeder schools effectively makes a nonsense of what could be argued to be the overarching rationale for the concept itself. If I am right, though, that the term "*feeder school*" can be construed to mean any school provided it is listed as such in the arrangements, because this is the extent of the requirement in the Code; and there is no limitation on the numbers of feeder schools imposed by the Code, it must logically follow that a set of arrangements cannot be construed to be unreasonable purely on the basis that

the number of feeder schools is so high that the receiving school is not able to accommodate all potential applicants.

128. Objector Two also raised the question of why the school has adopted feeder schools in the adjoining local authority areas. He/she gives examples of Catholic primary schools in Westminster which are closer to the school than many of the feeder schools which have been selected. My office asked the school to comment on this. The response was as follows: "*Westminster was excluded at the recommendation of the Tri-borough who felt that there needed to be a simple and unambiguous approach of all Catholic schools in LBHF and its adjoining boroughs. The simplicity of LBHF and surrounding boroughs was seen as an advantage.*

It is the danger of opening ourselves up for challenge (and the school time that this can take up) which contributed to the school accepting the Tri-borough's simple and unambiguous recommendation. If we included Westminster, then why not Lambeth and Southwark (Vauxhall for example is in Lambeth and easily accessible to the school)?

Of course the school wants to be as open as possible to all those in Catholic primary schools that can easily access the school but the school also needs a system that is as far as possible clear and simple...

Westminster was only excluded as a result of the Tri-borough's preferred approach to creating a simple and easily understood approach to naming feeder schools. We simply seek to avoid repeated challenges either because of the number of feeder schools or from those who live in another borough arguing that they too can easily access the school. Many boroughs beyond LBHF and its adjoining boroughs can easily access the school but we have been advised that without a simple cut off, we may be repeatedly challenged".

129. Provided the basis for selection of the named feeder schools is reasonable, the arrangements would not then be rendered unreasonable because a large number of schools meet the criteria for selection. In other words, if the objective is to afford equal priority to all Catholic girls attending primary schools in the adjoining boroughs, and this is a reasonable objective, it would not become unreasonable because (say) 1000 girls fulfilled the criteria. They would all have an equal chance of being offered a place. Neither would it be unreasonable to select only feeder schools in the adjoining local authorities in order to have a clear cut-off which can be understood easily by parents. For these reasons, I do not consider that the arrangements are unreasonable either because they incorporate such a large number of feeder schools or because the feeder schools selected are those in the adjoining boroughs. **Therefore I do not uphold this part of the objection.**

Summary of Findings

130. I find that the school has engaged with the diocesan Guidance and has consulted the diocese appropriately in determining its admission arrangements for September 2020. In most respects, the school has followed the Guidance. I have found that the school has departed from the written Guidance in two respects. The diocese has not made any similar

observation, and has made clear that it does not seek to interfere in any way with the school's arrangements. In one respect, the school has what I consider to be good reasons for departing from the Guidance. In another respect, it has not. The school has not taken steps to co-ordinate its arrangements with those of other Catholic schools. I have no power to require the school to take active steps to co-ordinate its arrangements with other Catholic schools, but the School, the Diocese and other schools should of course bear in mind that part of the Guidance when it comes to determining admission arrangements in the future.

131. For the reasons given above, I find that the school's arrangements are clear; the selection of feeder schools is reasonable and has been conducted transparently; the adoption of random allocation is reasonable, and does not operate to cause an unfairness to the group of girls identified by objector One. I do not require any aspect of the arrangements to be revised.

132. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I partially uphold the objections to the admission arrangements for September 2020 determined by the governing board for Sacred Heart High School in the London Borough of Hammersmith and Fulham.

133. By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. In this case I have determined that the arrangements need not be revised.

Dated: 16 September 2019

Signed:

Schools Adjudicator: Marisa Vallely