



Office of  
the Schools  
Adjudicator

## Determination

**Case reference:** ADA3700

**Objector:** Wigan Council

**Admission authority:** The Governing Board for St Bernadette's Catholic Primary School, Wigan

**Date of decision:** 19 August 2020

## Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2021 determined by the governing board for St Bernadette's Catholic Primary School, Wigan.

I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

## The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by Wigan Council (the objector), about the admission arrangements (the arrangements) for St Bernadette's Catholic Primary School (the school), a voluntary aided school for children aged 3 to 11 for September 2021. The objection is to the inclusion in the first oversubscription criterion of children who have been adopted having been in state care outside of England.

2. The local authority (LA) for the area in which the school is located is Wigan Council. Other parties to the objection are the governing board of the school and the Archdiocese of Liverpool (the Archdiocese), which is the religious authority for the school.

## Jurisdiction

3. These arrangements were determined under section 88C of the Act by the school's governing board, which is the admission authority for the school. The objector submitted the objection to these determined arrangements on 14 May 2020. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

## Procedure

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. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
- b. a copy of the determined arrangements, which include the Supplementary Information Form (SIF);
- c. the objector's form of objection dated 14 May 2020 and supporting documents;
- d. the Archdiocese of Liverpool's response to the objection; and
- e. a copy of the guidance on admissions provided to the school by the Archdiocese entitled "*Consultation on Proposed Changes to School Admissions Policies from September 2021*".

## The Objection

6. The school, under the Trusteeship of the Archdiocese of Liverpool, has, with other Catholic schools in Wigan, adopted a common admissions policy. The first oversubscription criterion, which thus affords the highest degree of priority for places when the school is oversubscribed, states,

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

The objection is that the inclusion of children who were adopted having been in state care outside of England within this criterion does not comply with paragraph 1.7 of the Code.

## Other Matters

7. Having considered the arrangements as a whole, it appeared to me that a number of other aspects of the arrangements also do not or may not conform with requirements.

These are:

- a. the arrangements give priority to children of other Christian denominations and other faiths but do not define these, making the arrangements unclear in breach of paragraph 14 of the Code;
- b. the SIF requires evidence of membership of a Christian denomination to be provided by an appropriate Minister of Religion or the “*appropriate faith leader*” for faith group membership but as these groups have not been defined, the arrangements are also unclear in this respect;
- c. the definition of previously looked after children includes the term “*residence...order*”. Residence orders were replaced with child arrangements orders by the Children and Families Act 2014.
- d. the definition of home address may not be capable of giving an accurate indication of the child’s actual address which would render the arrangements unclear and unfair in breach of paragraph 14 of the Code;
- e. information in the arrangements about the admission of children below compulsory school age is unclear; and
- f. the arrangements do not make clear the process for seeking a place outside the normal age group as required by paragraphs 2.17, 2.17A and 2.17B of the Code.

## Background

8. The school has adopted the common admissions policy set out by the Archdiocese of Liverpool for all Catholic schools for which it is the religious authority. The school’s oversubscription criteria, following the common admissions policy, are as follows:

1. Looked after children and previously looked after children. This includes children who appear to have been in state care outside of England and ceased to be in state care as a result of being adopted.
2. Baptised Catholic children who have a sibling in the school at the time of admission.
3. Baptised Catholic children resident in the parish of Our Lady of the Annunciation and St Bernadette’s.
4. Other baptised Catholic children.
5. Other children who have a sibling in the school at the time of admission.

6. Children from other Christian denominations. Proof of Baptism in the form of a Baptismal Certificate or confirmation in writing that the applicant is a member of their Faith community from an appropriate Minister of Religion is required.
7. Children of other faiths. An appropriate Faith Leader would need to confirm in writing that the applicant is a member of their Faith group.
8. Other children.

The arrangements are accompanied by Notes that provide more detail about the oversubscription criteria and other requirements of the Code.

## Consideration of Case

9. Paragraph 1.7 of the Code makes clear that *“the highest priority in oversubscription criteria **must** be given, unless otherwise provided in this Code, to looked after children and all previously looked after children.”* Footnotes define those terms but the definition of previously looked after children does not include children who have been in state care outside of England. The Minister of State for School Standards wrote to admission authorities on 4 December 2017 about the admission of children previously in care outside of England. The minister acknowledged that this group could not be included in the first, highest oversubscription criterion, which was limited to those looked after and previously looked after in England. He also encouraged admission authorities to consider giving such children the second highest priority in oversubscription criteria. The issue was addressed in the adjudicator’s determination, VAR884, dated 27 August 2019, where the school concerned, St John Fisher Catholic High School in Wigan, which is part of the same Archdiocese, had included children in state care outside of England in the first priority of the oversubscription criteria. The determination explained that the Code currently in force does not permit children previously in care outside of England to be included in the first, highest oversubscription criterion and required the governing board of the school to revise its arrangements on this matter to comply with the Code.

10. The local authority responded on 24 January 2020 to the consultation carried out by the Archdiocese to highlight its concern that the inclusion of children in state care outside of England remained in the first oversubscription criterion of the admission arrangements for Catholic schools in Wigan, which was a breach of the Code. The local authority told the Archdiocese that it should advise schools in the Wigan area to make their admission arrangements compliant with the Code as, if they were not compliant, the local authority would refer them to the Schools Adjudicator. No changes were subsequently made by the school and its arrangements were determined including children adopted from state care outside England within the first oversubscription criterion.

11. The local authority objected to the arrangements, as it had indicated its intention to do. The Archdiocese responded on 23 July 2020 as follows:

*“In respect of the initial objection, and the findings conveyed in your correspondence, it has always been accepted by the Archdiocese, and our schools, that Looked After*

*Children must be given first priority in school admissions arrangements. The additional reference to children from outside England was not intended to conflict with the Code as in practice Looked After Children are always given priority before Looked After Children from outside England. The percentage of children within this criterion is so low that this would never be an issue in practice, and we have no evidence that Looked After Children have been in any way disadvantaged. Wigan Council have also advised us in writing that, in the opinion of their officers, this inclusion is 'unlikely to disadvantage any children'. We are, however, willing to separate these points if you advise us that this is necessary.*

*We have always endeavoured to provide advice to our schools to provide clarity, consistency, and compliance with the Code when it comes to admissions. We note the observations made in your correspondence and will work with our schools to ensure adherence to any judgements made. We have no further observations to make on the school-specific matters raised in your letters. Any advice offered by the OSA in correcting or strengthening the advice we give to our schools will be considered in furtherance of improving the admissions policies and arrangements of all of our schools."*

12. I recognise that the Department for Education is currently consulting on a number of proposed changes to the Code. The consultation, launched on 26 June 2020 with a final response date of 16 October 2020, includes the following:

*"We propose to make the following change:*

*Amend all references to previously looked after children in the Code to include children who appear (to the admission authority) to have been in state care outside of England and have ceased to be in care as a result of being adopted (or subject to child arrangement orders or special guardianship orders) immediately following having been looked after in England."*

13. I must make clear that my duty is to apply the law and Code as they currently stand. I cannot, as it were, jump the gun on proposed changes. This is not an area where I have any discretion. I appreciate that it will be frustrating for the governing board to make the change I have set out in this determination, only to make further amendments in the future, if the proposed change comes into effect. However, as matters currently stand, the arrangements are not compliant with the Code currently in force and this is the Code that will govern admissions in 2021. I uphold the objection.

## **Other Matters**

14. I turn now to the other matters where I identified possible breaches of the requirements relating to admissions.

15. In relation to the oversubscription criteria at 6) and at 7), there is no definition of "Other Christian denominations" and "other faiths". Thus, the arrangements are not clear and do not comply with paragraph 14 of the Code which states:

*“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.”*

These oversubscription criteria require confirmation on the SIF from an appropriate Minister of Religion or appropriate Faith Leader. As these groups have not been defined, the arrangements are also unclear in this respect.

16. The Notes state:

*“Home address is considered to be the address where the child normally lives. Where care is split and a child moves between two addresses, the household in receipt of the child benefit would normally be the address used but the admission authority reserve the right to request other proofs to fit the individual circumstance.”*

This definition may not give an accurate indication of where the child lives “*between two addresses*” as it relies in part on determining this by reference to which parent receives child benefit for the child. In the first place, it is possible that the child might spend the majority of his or her time at one address and the child benefit be received by a parent who resides at another address. There is no requirement for child benefit to be paid to the parent with whom the child lives during the school week or for most of his or her time. The eligibility requirements for the receipt of child benefit require rather that the child lives with the parent concerned for some of the time as part of “*a settled course of daily living*” or that the parent concerned contributes towards the cost of supporting the child (at least the amount of the child benefit claimed) and regardless of whether the child ever lives with that parent. It is possible that both parents may be eligible but only one may claim. Moreover, in some families neither parent may be eligible for the benefit and no claim will be made. Because the definition of home address may yield an address which does not reflect where a child actually lives, this risks causing an unfairness to the child, and so does not comply with paragraph 14 of the Code. Also, the definition is unclear, as it does not explain when there might be a departure from the normal procedure; in which circumstances other proofs might be required; or what those other proofs might be.

17. Paragraph 2.16 of the Code sets out information about the admission of children below compulsory school age and deferred entry to school. The arrangements set out in the Notes about the admission of children below compulsory school age are unclear as they begin by making reference to “*summer born*” children. These provisions apply to all children in the age group.

18. Paragraphs 2.17, 2.17A and 2.17B of the Code apply to the admission of children outside their normal age group including summer born children. The Notes to the arrangements state that

*“Parents of a summer born child, born between April and August, may choose not to send that child to school until the September following their fifth birthday. The*

*expectation would be that parents have decided that their child miss the reception year and would be applying for a year 1 place”.*

There is, in fact, no “*expectation*” that the child would miss the reception year and apply for a place in Year 1. Paragraph 2.17 makes clear that parents “*may request that they are admitted out of their normal age group – to reception rather than year 1.*” The arrangements are therefore unclear in this respect. Paragraph 2.17 also states that “*Admission authorities must make clear in their admission arrangements the process for requesting admission out of the normal age group.*” The school’s arrangements do not make clear the process for requesting admission out of the normal age group and so are in breach of the Code.

19. The Archdiocese made no specific comment on the other matters about which I am concerned. I find, in all of the respects listed in paragraph 7 above, that the arrangements do not comply with the requirements relating to admissions.

## Summary of Findings

20. I uphold the objection submitted by Wigan Council and I also require the other changes set out in this determination to be made. I thank the Archdiocese for their response and the support they offer their schools.

## Determination

21. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2021 determined by the governing board for St Bernadette’s Catholic Primary School, Wigan.

22. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

23. By virtue of section 88K(2) the adjudicator’s decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination.

Dated: 19 August 2020

Signed:

Schools Adjudicator: Peter Goringe