



Office of
the Schools
Adjudicator

Determination

Case reference: REF3743

Referrer: The adjudicator

Admission authority: The governing board for St John's Angell Town Church of England Primary School in Lambeth

Date of decision: 22 September 2020

Determination

I have considered the admission arrangements for September 2020 for St John's Angell Town Church of England Primary School in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that the arrangements do not conform with the requirements relating to admissions 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 88E of the School Standards and Framework Act 1998, (the Act), a request for a variation was made to the adjudicator by the governing board for St John's Angell Town Church of England Primary School (the school) for the admission arrangements for September 2020 (the arrangements). The school is a voluntary aided school for children aged three to eleven. The school is designated as having a Church of England religious character.

2. The arrangements came to my attention as a result of the governing board's request for a variation. As it happened, the governing board then withdrew that request but by that time I had considered the arrangements and considered that they did not or might not conform with the requirements relating to admission arrangements particularly those concerned with clarity and the specific requirements governing supplementary information

forms and their use. I have accordingly used my powers under section 88I of the Act to consider the arrangements as a whole.

3. The parties to the case are:
 - a. the governing board for St John's Angell Town Church of England Primary School which is the admission authority for the school (the governing board);
 - b. Lambeth Council (the local authority); and
 - c. The Diocese of Southwark which is the religious authority for the school (the diocese).

Jurisdiction

4. These arrangements were determined under section 88C of the Act by the governing board on 12 March 2019. This is after the statutory deadline for the determination of arrangements but this does not affect the status of the arrangements or my jurisdiction to consider them. When they were brought to my attention it appeared that the arrangements did not, or might not, conform with the requirements for admission arrangements. I am satisfied that it is within my jurisdiction to consider the arrangements using my power to do so under section 88I of the Act.

Procedure

5. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
6. The documents I have considered in reaching my decision include:
 - a) the minutes of the meeting of the governing board at which the arrangements were determined;
 - b) a copy of the determined arrangements;
 - c) correspondence with the governing board, the local authority and the diocese on the matters raised;
 - d) information available on the websites of the school and the Department for Education; and
 - e) the guidance on admissions provided by the diocese to the school.

Background

7. The governing board requested a variation so that its published admission number (PAN) should be reduced from 90 to 30 for admissions in 2020. The papers provided and

information on the websites for the school and the local authority variously stated that the PAN was 30, 60 and 90. In addition, at the time the request was made I was not provided with evidence that the arrangements for 2020 had been determined and as my jurisdiction is only for determined arrangements I could not consider the request until this was provided. The governing board provided evidence on 16 June 2020 that the arrangements had been determined in March 2019. When I read the minutes of the meeting at which the arrangements were determined for 2020 it appeared to me that the PAN had been set at 30 and so no variation was required to set it at this number. On my behalf, the Office of the Schools Adjudicator wrote to the governing board on 18 June 2020 and explained that this was my understanding and that if no response had been received by 25 June 2020 that I would assume that the governing board agreed that it had set the PAN at 30 and would therefore have no need for a variation. In addition, the letter said that if the governing board asked for more time for this matter then this would be granted. No response was received from the governing board by 25 June 2020 and so the case relating to the request for a variation was closed.

8. In the same letter dated 18 June 2020 the governing board was reminded of my concerns about the arrangements which had been raised in earlier correspondence and the adjudicator's powers to consider the arrangements could still be exercised as a separate matter.

9. I am aware that schools and local authorities are working in difficult and unusual circumstances due to the effects of the Covid 19 pandemic. I have made allowances for this in terms of timescales for communications and would have given more time if the governing board had requested it. No such request has been received. I have, however, allowed additional time for responses and this has led to delays to this determination being completed with the governing board responding to me on some points on 10 September 2020, once children returned for the new term.

10. The school is designated by the Secretary of State as having a Church of England religious character. It is accordingly permitted, as described in paragraph, 1.36 of the Code, to use faith based oversubscription criteria. Paragraph 1.38 requires that in constructing such criteria it "**must** have regard to any guidance from the body or person representing the religion or religious denomination." The diocese provided its guidance to me on 2 July 2020 together with its view on the points I had raised.

11. The oversubscription criteria for the school is in two parts. One part is for what are described as foundation places. The arrangements say, "The Governing Body has designated 20 places to be offered to pupils whose families are faithful and regular worshippers at a church of a Christian denomination recognised by Churches Together in England or the Evangelical Alliance. A faithful and regular worshipper is defined as someone who has attended church at least fortnightly for at least two years prior to application." The oversubscription criteria for the 20 foundation places are (in summary):

- 1) Looked after and previously looked after children

- 2) Children whose parents or carers are faithful and regular worshippers at St. John's the Evangelist Church
- 3) Children whose parents or carers are faithful and regular worshippers at a church of a Christian denomination recognised by Churches Together in England or the Evangelical Alliance
- 4) Children with siblings already attending the school
- 5) Children with a medical or social need for attending the school
- 6) Distance of the home from the school with those nearest having the highest priority.

12. The arrangements say that "In the event that two or more applicants have equal right to a place under any of the above criteria [ie 1 – 6 above] the Governing Body will apply the subsequent criteria, in order of priority, to these applicants. If applicants live equidistant from the school the Governing Body will draw lots to decide between applicants."

13. The second part of the oversubscription criteria is for ten open places. If either the foundation places or the open places are not all taken then the unfilled places are made available as foundation places or open places as appropriate. The oversubscription criteria for the open places are (in summary):

- 1) Looked after and previously looked after children
- 2) Children of staff at the school
- 3) Children with siblings at the school
- 4) Children with a social or medical need to attend the school
- 5) Distance of the home from the school with those nearest having the highest priority.

Consideration of the arrangements

14. I raised the matters below with the governing board and said that paragraph 14 of the Code was pertinent because some matters were not clear to me. Paragraph 14 of the Code says, "In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated."

Looked after and previously looked after children

15. Paragraph 1.7 of the Code says, "All schools **must** have oversubscription criteria for each 'relevant age group' and the highest priority **must** be given, unless otherwise provided in this Code, to looked after children and all previously looked after children." The Code does provide, in paragraph 1.39 for different arrangements in schools with a religious

character. The paragraph says, “Admission authorities for schools designated with a religious character may give priority to all looked after children and previously looked after children whether or not of the faith, but they **must** give priority to looked after children and previously looked after children of the faith before other children of the faith. Where any element of priority is given in relation to children not of the faith they **must** give priority to looked after children and previously looked after children not of the faith above other children not of the faith.”

16. The arrangements give first priority for the foundation places to looked after and previously looked after children “whose families are faithful and regular worshippers at a church of a Christian denomination recognised by Churches Together in England or the Evangelical Alliance.” The religious character designated for the school by the Secretary of State is Church of England but the foundation places are open to other Christian denominations. As paragraph 1.39 describes, “Where any element of priority is given in relation to children not of the faith they **must** give priority to looked after children and previously looked after children not of the faith above other children not of the faith.” This means that the arrangements may not be compliant with the Code because the priority afforded to looked after children and previously looked after children eligible for foundation places includes children who are not Church of England but are members of other Christian denominations. The diocese and the governing board responded to my questions on this matter. The diocese said that it accepted “the reasoning of the adjudicator regarding paragraph 1.39 and how this interacts with the school’s formal religious character as ‘Church of England’. This is distinct from how the term ‘Christian’ is used within the context of admission arrangements whose purpose is to serve both Anglican and other Christian families within the local community.” The diocese also expressed its intention to address these matters in the guidance it issues to schools for which it is the religious authority. This is welcomed.

17. The governing board responded in similar terms, expressing its willingness to address this matter. This is welcomed. The arrangements are not compliant with paragraph 1.39 of the Code (as above) because the priority for looked after children and previously looked after children within the foundation places offered in the arrangements include children who are not Church of England and such children have a higher priority than looked after children who are not Christian or, indeed, are Christian but do not meet the practice requirements set out for foundation places. In practice, this would cause a problem only if there were more than ten looked after and previously looked after children who did not meet the requirements of being a faithful and regular worshipper seeking a place. This is because the highest priority for open places is also for looked after and previously looked after. However, the school must ensure that all Church of England children (whether or not their families are faithful and regular worshippers according to the school’s definition) have the highest priority and that all other looked and previously looked after children have either the highest priority after Church of England children or share the absolute highest priority with Church of England looked after and previously looked after children. It is not for me to tell the school which of the permitted approaches to adopt but it must adopt one or the other in order to comply with the Code.

Clarity

18. The diocese brought to my attention that the reference to children “whose families are faithful and regular worshippers” was unclear. The diocese suggested that “the school change the term ‘families’ in this opening paragraph to ‘parent/carer’, and also remove any plural usage of parent/carer in the oversubscription criteria. In our view only one parent should need to qualify as a ‘regular and faithful worshipper’ in order to receive priority under the oversubscription criteria.” I agree that the term ‘families’ is unclear and so not compliant with the Code.

19. The governing board agreed to change its wording to that suggested by the diocese; this is welcomed.

Order of application of arrangements

20. As I set out above the arrangements state that “In the event that two or more applicants have equal right to a place under any of the above criteria the Governing Body will apply the subsequent criteria, in order of priority, to these applicants. If applicants live equidistant from the school the Governing Body will draw lots to decide between applicants.” This is an unexceptional and often sensible approach taken in admissions arrangements. However, the nature of the criteria does not actually allow this to be done in all circumstances, including for some of the criteria used by this school. Criterion 2 is “Children whose parents or carers are faithful and regular worshippers at St. John’s the Evangelist Church” and criterion 3 is “Children whose parents or carers are faithful and regular worshippers at a church of a Christian denomination recognised by Churches Together in England or the Evangelical Alliance.” All children falling within criterion 2 will also meet criterion 3 as the Church of England is of course a denomination belonging to Churches Together in England and the Evangelical Alliance and St John’s is a Church of England church. If the school means criterion 3 to cover those attending churches other than St John’s then criterion 2 and criterion 3 are mutually exclusive and criterion 3 cannot be used to distinguish between those meeting criterion 2. It may be that the school intends only criteria 4 – 6 to be used to distinguish between children meeting criterion 2 or criterion 3. Either way, the arrangements as they currently stand are not clear and need to be amended.

Publication of arrangements

21. Paragraph 1.47 of the Code requires that arrangements are determined annually and then published for the whole of the admission year. The arrangements on the website are the arrangements for 2019. The arrangements for 2020 and 2021 are not published. The governing board has not complied with the Code as the arrangements for 2020 and 2021 have not been published and were still not available on the school’s website at the time of completing this determination.

Measurement of distance

22. The oversubscription criteria for both foundation places and open places include a priority based on distance of the home from the school. Paragraph 1.13 of the Code says, "Admission authorities **must** clearly set out how distance from home to the school will be measured, making clear how the 'home' address will be determined and the point in the school from which all distances are measured." The arrangements say in one place that the entrance in Linton Grove will be used to measure distance for foundation places and the entrance in Angell Road for open places. While there might be some reason for using different addresses for the different categories and this could be clear, another part of the arrangements sets out a definition of the measurement of distance and says that distance is measured from the entrance in Angell Road. This makes it unclear how distances are measured and so not compliant with the Code.

23. The governing board has confirmed that the reference to the Linton Grove entrance was an error and this will be addressed. This is welcomed.

Waiting list

24. Paragraph 2.14 of the Code says that "Each admission authority **must** maintain a clear, fair and objective waiting list until at least **31 December** of each school year of admission." The arrangements say that a waiting list will be maintained until 31 August. It was not clear to me whether this was for the year of admission, in which case this would be compliant with the Code, or until 31 August after the offer was made, in which case this would not be compliant with the Code.

25. The diocese said that it would welcome a revision to the information about waiting lists so it read, "The school operates a waiting list which is ordered in accordance with the oversubscription criteria – it is not a chronological list. The waiting list is held until 31st December. Parents may request in writing to join the waiting list. If an application is received and a child is added to the waiting list, the list will be re-ranked in accordance with the oversubscription criteria."

26. The current arrangements are not clear and so not compliant with the Code. The governing board has said it will address this matter which is welcomed.

Supplementary information form

27. Paragraph 2.4 of the Code explains that it may be necessary for an admission authority to use a supplementary information form (SIF) in order to process applications. In this case, due to the foundation places, a SIF is required and the governing board publish one on their website. Paragraph 2.4 continues to explain that if admission authorities do use a SIF then they, "**must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria."

28. The SIF on the school's website asks for information on whether the child is looked after and for evidence of this; and for information on siblings. These matters are already

included on the common application form co-ordinated by the local authority for all admission authorities and so this is not additional information necessary to apply the oversubscription criteria. The arrangements do not comply with the Code in this regard.

29. The SIF also asks for information on the child's gender, whether the child has previously attended a nursery or school and whether the child has come from another country. None of this information is required to apply the oversubscription criteria and so it is not compliant with the Code to include requests for this information in the SIF.

30. Paragraph 2.14 of the Code also lists information which **must not** be asked for in a SIF. This includes "details about...a child's disabilities, special educational needs or medical conditions." The SIF asks, "Does your child have any special or additional educational needs – If yes please give details" It is specifically prohibited by the Code to ask for this information when considering admitting a child at the normal point of admission so the arrangements do not comply with the Code in this regard.

31. The SIF is only relevant for the foundation places and this is not clear on the SIF itself particularly because these redundant and prohibited questions are asked. The only part of the SIF which is relevant (apart from the questions necessary for identification) is to be completed by a representative of the clergy. The requirement regarding the foundation places is described in the arrangements as, "pupils whose families are faithful and regular worshippers at a church of a Christian denomination recognised by Churches Together in England or the Evangelical Alliance. A faithful and regular worshipper is defined as someone who has attended church at least fortnightly for at least two years prior to application." The section in the SIF relevant to the representative of the Clergy says, "Please do not take this form to the Vicar of St John`s Church if you have not been a regular (twice a month) member of the church for a least one year."

32. There are three distinct problems with this. First, the criterion relating to worship is satisfied only if the family has worshipped for two years. In the light of this it is unclear and potentially misleading to refer to a year's attendance. Second, the SIF is a generic form for those children "whose families are faithful and regular worshippers at a church of a Christian denomination recognised by Churches Together in England or the Evangelical Alliance." The wording in the SIF "Please do not take this form to the Vicar of St John`s Church if you have not been a regular (twice a month) member of the church for a least one year," could imply that only this particular vicar can complete the form which is not the case and so makes the arrangements unclear. Thirdly, it is possible that a member of the clergy presented with this form will have no knowledge of the arrangements. He or she could sign the form in good faith on the basis of knowing the family has attended for a year. This again makes the SIF and the wider arrangements unclear.

33. The governing board, following suggestions from the diocese, said that it would address these matters and this is welcomed.

Clarity regarding membership of Christian organisations

34. The arrangements say, “The Governing Body has designated 20 places to be offered to pupils whose families are faithful and regular worshippers at a church of a Christian denomination recognised by Churches Together in England or the Evangelical Alliance.” The guidance provided by the diocese says, “The terminology used in policies must also refer exclusively to ‘membership’, not being ‘recognised’ or ‘associated’ with a church as these organisations [Churches Together in England or the Evangelical Alliance] offer no such options.” The governing board recognised that it was not in line with the diocesan guidance and has said that it will amend its arrangements accordingly which is welcomed.

Determination

35. I have considered the admission arrangements for September 2020 for St John's Angell Town Church of England Primary School in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that the arrangements do not conform with the requirements.

36. 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: 22 September 2020

Signed:

Schools Adjudicator: Deborah Pritchard