



Office of  
the Schools  
Adjudicator

## Determination

**Case reference: ADA3730**

**Objector: a parent**

**Admission authority: Portsmouth and Winchester Diocesan Academies Trust for St James' Church of England Primary Academy**

**Date of decision: 11 November 2020**

### Determination

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2021 determined by Portsmouth and Winchester Diocesan Academies Trust for St James' Church of England Primary Academy in the area of Bournemouth, Christchurch and Poole Council.**

### The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a parent, about the admission arrangements for September 2021 (the arrangements) for St James' Church of England Primary Academy (the school), a primary school for children aged four to eleven with a Church of England religious character. The objection is to the consultation carried out before the arrangements were determined, the arrangements not being published and matters relating to the priority for siblings in the oversubscription criteria.
2. The parties to the objections are:
  - a. the Portsmouth and Winchester Diocesan Academies Trust which is the admission authority for the school (the trust);
  - b. the parent who made the objection (the objector);
  - c. Bournemouth, Christchurch and Poole Council which is the local authority for the area in which the school is located (the local authority); and

- d. the Diocese of Winchester which is the religious authority for the school (the diocese).

## Jurisdiction

3. The terms of the academy agreement between the trust and the Secretary of State for Education require that the admissions policy and arrangements for the school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the trust on that basis. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

## Procedure

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

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

- a. a copy of the minutes of the meeting of the trust at which the arrangements were determined;
- b. a copy of the determined arrangements;
- c. the objector's form of objection dated 15 May 2020 supporting documents and further communications in response to the information provided by other parties;
- d. the trust's response to the objection and supporting documents including information on the most recent consultation on the arrangements, admission arrangements for previous years and emails regarding the arrangements for 2018;
- e. information provided by the local authority at my request relating to the consultation, the preferences made for the school, allocations by the oversubscription criteria and its comments on the oversubscription criteria; and
- f. information available on the websites of the school, the trust, the local authority and the Department for Education.

6. I have also taken account of information received during a meeting I convened on Wednesday 12 August. All parties were invited to the meeting which was held virtually. The local authority did not attend.

## The Objection

7. The objection included three distinct matters (relevant paragraphs of the Code in brackets):

- 7.1. The consultation did not meet the requirements of the Code and was flawed (1.42 to 1.45).

- 7.2. The admission arrangements for the school for 2020 and 2021 were not published on the admission authority's website as required by the Code (1.47).
- 7.3. The different levels of priority given to siblings of existing pupils depending on various factors is unfair (1.8, 14 and 1.11).

## Background

8. The school is situated in the town of Bournemouth. The Department for Education website shows 27 state-funded schools, including the school, which admit children to reception year (YR) within a three mile radius of the town centre. The school has a published admission number (PAN) of 60. The arrangements say, "The guiding principle of admission to this Academy is that a church school should serve its local community, defined in the trust deed dated 1856 as the ecclesiastical parish of St James' and St Saviour's." The catchment area for the school is the Ecclesiastical Parish of St James' and St Saviour's which is detailed in the arrangements by providing lists of roads and streets.

9. The objection was made during the COVID-19 pandemic and this has contributed to delays in making this determination. The objection was made on 15 May 2020. The Office of the Schools Adjudicator had at that time decided not to contact schools and admission authorities about objections immediately due to the many urgent and difficult demands on the time of schools so the school and trust were not contacted until 3 June 2020. Members of the trust staff were furloughed at times and there were some delays in accessing information and thus the making of this determination. The trust sent me an explanation of the context on 22 July 2020. The trust explained that there had been significant changes in personnel so that "the current trust board and staff are completely different to that of 18 months ago." Further delays were caused by a lack of availability of local authority officers and demands on their time so responses to my enquiries took longer than is usual. I am grateful to all parties for their efforts and patience in these difficult circumstances.

10. The local authority was created on 1 April 2019 by the merger of the areas that were previously administered by the unitary authorities of Bournemouth and Poole, and the non-metropolitan district of Christchurch. Bournemouth and Poole were both local authorities responsible for education. Education in Christchurch was the responsibility of Dorset Council. The school was previously in the local authority area of Bournemouth Council. There were no community and voluntary controlled schools in the previous area of Bournemouth Council in 2018 and so the local authority at that time did not determine any arrangements for such schools.

11. The objection relates to the arrangements for 2021 and these are the only arrangements within my jurisdiction. However, to understand the background to the objection it is necessary to take account of the recent history of the school's admission arrangements and the trust has helpfully provide me with information which I have

summarised here. The oversubscription criteria in the arrangements for 2017 can be summarised as follows:

- 1) Looked after and previously looked after children
- 2) Children or families with an exceptional medical and/or social need
- 3) Children living in the catchment area with a sibling at the school
- 4) Children living in the catchment area without a sibling at the school
- 5) Children living outside the catchment area with a sibling at the school
- 6) Children living outside the catchment area.

12. The trust reviewed the arrangements for 2018 and the then local authority, Bournemouth Council, undertook a consultation on the trust's behalf. Following the consultation there was a communication from Bournemouth Council to the trust that appears to have been understood by the trust to mean that schools should not have catchment areas. An email from the trust in December 2017 described the situation as, "The interpretation of the consultation feedback received was that the local authority do not operate catchment areas and the 2018/19 policy was changed as a result at the point of final determination and subsequently disseminated." The oversubscription criteria for 2018 were as a result determined without the previously existing catchment area.

13. In November 2017 (after determining the 2018 arrangements in February 2017) the trust sought advice from the Education and Skills Funding Agency (ESFA). The trust explained to the ESFA that it sought permission to vary the arrangements for 2018 "to re-include references to catchment areas (as were detailed in the document consulted upon)." The trust explained that the catchment area had been removed due to a "clerical error/breakdown in communication and understanding."

14. The ESFA advised the trust that, "Paragraph 3.6 of the Code allows an admission authority to amend any mistakes in their admission policies without seeking the Secretary of State or OSA's permission to do so, however, it would now be unreasonable to do so, given that 6 months have passed since the policy was determined. The current admission policy is clear and local people have not raised objections. Changing the admission policy now due to their error, may lead to maladministration for any future...appeals however, the final decision rests with the admission authority."

15. The trust decided not to vary its arrangements for 2018 which meant that for admissions in that year there was no catchment area and perforce no difference in the level of priority to a siblings on the basis of where they lived. All siblings had a high level of priority; very high indeed, as there would be relatively few children admitted on the basis of being looked after or previously looked after or having exceptional medical and/or social needs. In any case, as I outline below, the school was not oversubscribed for admission in September 2018 and so any child whose parent sought a place would have been admitted.

16. The trust proceeded then to consult on changes for admissions in 2019 and the oversubscription criteria were determined as for 2017 (above) and this continued for admissions in 2020. The trust consulted again for admissions in 2021 and the oversubscription criteria for the school for 2021 were determined as (in summary):

1. Looked after and previously looked after children
2. Children or families with an exceptional medical and/or social need
3. Children living in the catchment area with a sibling at the school
4. Children living in the catchment area without a sibling at the school
5. Children living outside the catchment area with a sibling at the school. Siblings of children who were admitted to the school having not been able to secure a place at their own catchment school ( and were therefore “displaced”) and who still live in the same catchment area will be considered under criterion 3. “Displaced” refers to a child who was refused a place at the catchment school in the normal admission round having expressed a preference for that school and who was not offered a higher named preference school
6. Children living outside the catchment area.

17. The upshot of all this is that children have a higher priority if they live in the (re-instated) catchment area than if they do not.

## Consideration of Case

18. There are three parts to the objection and I consider them separately. The first part of the objection was that the consultation for the arrangements agreed for 2021 did not meet the requirements of the Code and was flawed. The trust proposed to change the arrangements for 2021 from those used in 2020 and so a consultation was required. The differences between the arrangements for 2020 and 2021 were the introduction of the priority for displaced siblings and some other largely presentational changes.

19. Paragraphs 1.42 to 1.45 of the Code set requirements for consultation relating to such matters as when consultation is required; that consultation must last for a minimum of six weeks and take place between 1 October and 31 January in the determination year; and who must be consulted.

20. The objector has a child who was admitted to the school in 2018. As explained above, in that year priority was largely based on having a sibling at the school and thereafter on home to school distance. All siblings enjoyed the same high level of priority and the objector argues that this give him confidence that his second child would in due course be able to be admitted to the same school as the older sibling. The objector lives outside the catchment area and this combined with the fact that not all siblings of children at the school enjoy the same high level of priority mean that the objector’s younger child has a lower level of priority for a place than would have been the case if the arrangements were the same as those determined for 2018.

21. The objector explained that he had wished to engage with the consultation and found it hard to do so. The objector explained that he had raised his concerns with the governing board in October 2019 and was told that the governing board supported the arrangements as determined for 2020, which included a higher priority for all those who lived in the catchment area over those who did not. The letter said that “you may wish to write directly to the Trust Board to share your views and indeed participate in the current BCP (Bournemouth, Christchurch and Poole Council) consultation process.” The objector

explained that he knew that the trust was the admission authority so saw no purpose in writing to the local authority “so felt my options were exhausted.” He expressed the view that there was confusion over which body (the governing board or the trust) was consulting and that information about the consultation was not clearly and appropriately made available. He said that even though he was a very interested party with a child at the school and was seeking a change to the arrangements, he was not aware of a consultation held by the trust before it determined the 2021 arrangements.

22. I therefore asked that the trust explain what actions it took regarding consultation for the arrangements for 2021. The trust explained that the local authority had undertaken the consultation on its behalf. I have seen a screen shot of the local authority’s website taken at the time and this lists 24 schools that are consulting on their arrangements. The list provides a link to the proposed arrangements. The changes for the school were summarised as, “Renumbering of admissions criteria.” The information on the local authority’s website said that “Comments or objections can be submitted directly to the schools or emailed to [school.admissions@bcpcouncil.gov.uk](mailto:school.admissions@bcpcouncil.gov.uk)”

23. Paragraph 1.45 of the Code says, “For the duration of the consultation period, the admission authority **must** publish a copy of their full proposed admission arrangements (including the proposed PAN) on their website together with details of the person within the admission authority to whom comments may be sent.” There is no evidence remaining of what was put on the trust’s website and it may have included details of the person from within the trust to whom comments may be sent. I have been given no reason to doubt that information on the consultation was put on the trust’s website as required by the Code.

24. I asked the local authority to explain what other aspects of the consultation it undertook. The local authority explained that it had been its practice to offer to co-ordinate consultations on behalf of admission authorities if requested to do so (at no cost to the admission authority). An email sent to all schools in the local authority area on 18 October 2019 by the local authority said that the local authority “is happy to coordinate consultations so that we are all consulting at the same time as per previous years. However, the Office of the Schools Adjudicator has made it clear that it is the responsibility of individual admission authorities to decide how best to consult and so you may wish to undertake additional consultation (i.e. target audiences that the LA consultation will not – I can provide you with a list of parties BCP Council will notify about the consultation).” This clearly emphasises that the trust remained the responsible body for any consultation on the admission arrangements for the school.

25. The local authority explained in its response to my request for information that it “sends details of the consultation (including links to the policies) to all schools within the relevant area, education professionals within BCP Council, neighbouring Local Authorities and relevant dioceses. This information is also sent to Early Years providers and children’s centres along with a poster which we ask them to display in their settings. Posters are also displayed in the areas of council buildings open to the public, along with the noticeboard next to the Citizen’s Advice Bureau at Bournemouth Town Hall.”

26. When it is necessary for an admission authority to consult, paragraph 1.44 of the Code says, “Admission authorities **must** consult with:

- a) parents of children between the ages of two and eighteen;
- b) other persons in the relevant area who in the opinion of the admission authority have an interest in the proposed admissions;
- c) all other admission authorities within the relevant area (except that primary schools need not consult secondary schools);
- d) whichever of the governing body and the local authority who are not the admission authority;
- e) any adjoining neighbouring local authorities where the admission authority is the local authority; and
- f) in the case of schools designated with a religious character, the body or person representing the religion or religious denomination.”

27. The evidence provided to me shows that the local authority informed the majority of these bodies of the consultation on behalf of the trust but I asked the local authority to clarify how “parents of children between the ages of two and eighteen” were consulted as it was not obvious to me (with the exception of the posters provided to early years providers and displayed in other public buildings) how parents might know of the consultation. The local authority said that the communication with schools asked them to inform parents of the consultation. This relies on schools carrying out this request, but it is a sensible approach. As described above, the local authority also provided information through children’s centres in an effort to reach the parents of children not yet at school.

28. I therefore asked for clarification from the trust if it had consulted with the parents at the school. The trust explained that information on the consultation was provided on the website for the trust which has a link to the school’s website. The trust said that “The school was advised by the trust to ensure that parents were aware of the consultation. I cannot confirm whether the school sent anything to parents directly.” The trust provided this information on 21 October 2020 and so on the same day I asked for clarification from the school on what information on the consultation was provided to parents of children at the school. The communication sent on my behalf explained that if the school had not responded by 28 October 2020 I would assume that no communication had been sent to parents with children already at the school. No response was received. It is therefore my assumption that the parents at the school were not informed of the consultation. This assumption is supported by the objector not knowing that there was a consultation on the arrangements despite having a child at the school and seeking ways to express his views on the arrangements.

29. The evidence provided to me supports the view that the local authority undertook its part of the consultation diligently. The evidence indicates confusion regarding

communications with parents of children at the school. The Code requires that parents of children aged between two and eighteen are consulted and a fundamental step in consulting such parents is making them aware that a consultation is taking place. It is to be hoped that other schools, as requested by the local authority, made their parents aware of the consultation, but the trust had a responsibility to make sure that the parents of children at the school were consulted but it does not appear that this occurred. Unless a parent is told of a consultation then it is unlikely that he or she would look on the admission authority's website, where there should have been information on the consultation. The evidence shows that parents with children at the school were not informed of the consultation so the consultation did not meet the requirements of the Code in this regard and I uphold this part of the objection.

30. The second part of the objection was that the admission arrangements for the school for 2020 and 2021 were not published on the admission authority's website as required by the Code. Paragraph 1.47 of the Code says, "Once admission authorities have determined their admission arrangements, they... **must** publish a copy of the determined arrangements on their website displaying them for the whole offer year (the school year in which offers for places are made)." The Code therefore required that from March 2020 that the arrangements for 2020 (as it is the offer year for 2020) and the arrangements for 2021 (as they have been determined) were published on the trust's website. Not publishing arrangements is not just a trivial bureaucratic matter. Admission authorities must determine their arrangements by 28 February in the determination year and then publish them. The publication gives opportunity for consideration of the arrangements by any interested party and allows, if there are concerns, for objections to be made by 15 May to the adjudicator. If the arrangements are not published then this is, at best, hampered and due process, including the important right to object to arrangements, may be thwarted.

31. When I first began this case in May 2020, the arrangements for 2020 and 2021 were not published on the trust's website and so the admission authority did not comply with the Code in this regard. I uphold this part of the objection. I do note that at time of writing the trust's websites displays the school's admission arrangements for 2021. This is welcomed but the arrangements for admission in the school year beginning September 2020 are also required to be available on the trust's website in order to meet the requirements of the Code as this is the current school year. The school's website displays the arrangements for 2020 and 2021.

32. The third part of the objection relates to the priority given to siblings of those already attending the school. There are two inter-related strands to the objector's case. The first strand is that families of children admitted in 2018 had a reasonable expectation that younger siblings would have a high priority when they were seeking a school place. This is because in 2018, after the first two criteria (looked after and previously looked after children and then children with a serious medical, physical or psychological condition which makes it essential that the child attends the school) the third criteria was for all siblings of children at the school. The school was unlikely to meet its PAN of 60 with children meeting the first two



criteria and so the sibling of a child already at the school might have high expectations of being allocated a place.

33. As noted above, the objector's oldest child was admitted to the school in 2018. The objector and his family live outside the catchment which was reintroduced in 2019 and he said that the arrangements for 2018 had led him to believe that his younger child would have a very good chance of being admitted. The arrangements for 2019 meant that a child living in catchment would have priority over a child with a sibling at the school but who lived outside catchment. The objector said that he understood why the admission arrangements for the school favoured those who lived within its catchment area but sought that there should be recognition, through protection, of siblings of those who were admitted to the school in 2018 and whose parents had an understanding that a younger sibling would have a high priority. This could have been a 'transitional protection' so applying only to out of catchment siblings of those children admitted in 2018.

34. Admission authorities determine their arrangements annually and have the right to change them, including their oversubscription criteria following consultation (or unless the change relates to matters listed in paragraph 3.6 of the Code). Here, the trust has introduced arrangements that prioritise those who live inside the catchment area over those who live outside it. This is a common approach which is usually found to be reasonable and fair, although the test for me is whether it is reasonable and fair in the circumstances of this school. In this case, those living outside the catchment area with at least one child at the school are prioritised over those living outside the catchment area with no sibling at the school. This seems a fair way to prioritise those with siblings at the school. It was within the power of the trust to provide 'transitional protection' by giving a higher priority for younger siblings to those who had joined the school in 2018 but it chose not to do so and the Code does not require it to do so.

35. As described above, there are nearly 30 schools admitting children to YR in Bournemouth including three closer to the objector's home than the school. I have been given no evidence that any child would not be able to gain a place at a school near his or her home if that child could not gain a place at this school. I recognise that there are many good reasons why parents would wish for their children to attend the same school but there is no absolute right to be able to do so and there are various circumstances which may prevent it from occurring. To give priority to siblings of children from outside the catchment area could prevent children who lived within its catchment area, but without an older sibling at the school, from being admitted. It is my conclusion that it is not unfair that the arrangements do not give priority to siblings of those children admitted in 2018 who do not live in the catchment area over those children who live in the catchment area but without a sibling at the school.

36. The second strand raised by the objection, is the displaced sibling provision. Criterion 3, as described above, is for children living in catchment with a sibling at the school. Criterion 5 is, after the admission of all other children living in catchment, for those with a sibling at the school who live outside catchment. Criterion 5 continues, "Where a

sibling was allocated a place at the academy in the normal admission round in a previous year because the child was displaced from the catchment school for their address, the application will be considered under criteria 3 above, subject to the siblings still living in the catchment area for the school from which they were displaced.” There is a definition in the arrangements which says, “Displaced refers to a child who was refused a place at the catchment school in the normal admission round having named it in the application and was not offered a higher named preference school.”

37. I asked for an explanation for the displaced sibling provision which was introduced for 2021. The trust explained to me that the diocese had schools in several local authorities and that the use of the displaced sibling provision was the practice of Hampshire County Council. The trust and the diocese said that they regarded Hampshire County Council as providing best practice and so the wording in the arrangements had been adopted. The trust could not explain the anticipated effect of the displaced sibling provision on admissions; this was partly as the trust was not familiar with the arrangements for other schools in the area.

38. The objector said that he believed that the use of the displaced sibling provision further disadvantaged children who lived outside the catchment area but had siblings admitted in 2018 as it increased the number of children likely to be admitted in 2021 before them.

39. I looked at the arrangements for the schools for which the local authority was the admission authority and there was no use of a displaced sibling provision. Such a difference is not necessarily important as it is for the admission authority to determine its arrangements. The objector explained that it was his view that as other schools in the area had oversubscription criteria that differed, some with catchment areas and some without, that there was a danger that some children would be disadvantaged. At the meeting the objector also said that at least one school had a very big catchment area which overlapped with that of the school so some children were advantaged over others in the sense that they enjoyed catchment area priority for two schools. There was no further evidence provided on this.

40. In order to understand the effect of the displaced sibling provision and assess whether it created any unfairness I asked the local authority for information on preferences made for the school and the allocations by each criterion. As the criteria have changed several times it is not easy or straightforward to make direct comparisons but some useful insights can still be gained. All data is based on the allocations made in April of the relevant year, not on the numbers admitted.

41. In 2018 there were 54 places allocated to children whose parents had expressed a preference for the school; there was for this year no catchment area used in the arrangements. In addition, there were five places “offered to redirected children.” I understand this term to mean children who could not be admitted to any of the schools for which their parents had expressed a preference. At this point the school was not oversubscribed. It is possible that all or none of these “redirected children” may have not

been able to be admitted to their catchment area school. I do note that not all schools include catchment areas in their oversubscription criteria so it is possible that some of these children may have lived in a location which was not in the catchment area for any school. In these instances, the child could have been described as redirected but not displaced. All this means that there was a maximum of five children who might or might not have a sibling who could meet the criterion of being a displaced sibling in the sense used in the arrangements.

42. In 2019 60 children were allocated a place at the school including 23 who lived outside the catchment area with 14 children who had siblings already attending the school. No children were “redirected” and so none could affect the allocations for 2021 by virtue of being a displaced child in the sense used in the arrangements.

43. In 2020 there were 270 preferences expressed for the 60 places at the school. Parents can express up to three preferences under the co-ordinated admissions scheme used in the area. For the school, 89 of the preferences were first preferences, meaning that the school was the school the parents most wanted their children to attend. Based on allocations made on 9 April 2020, no places were available to those living outside the catchment area. It appears that all those living in the catchment area were allocated places. There were nine first preferences stated for those children with existing siblings at the school who lived outside the catchment area and none was offered a place.

44. The data suggests accordingly that the displaced sibling provision may only give an advantage in 2021 to siblings of any of the five children admitted to the school in 2018 following ‘redirection’. It is not known if there are any such children who will be seeking a place in 2021 and there is no evidence that the displaced sibling provision gives these children an unfair advantage.

45. Demand for the school has increased since 2018. I recognise that for those parents whose children were admitted in 2018, when there was no catchment area, there could have been a hope and expectation that in due course their younger children would have a higher priority for admission to the school than other children who did not have a sibling already at the school.

46. The Code allows the use of catchment areas within admission arrangements and the trust re-introduced the use of the catchment area after consultation on the arrangements for 2019. No-one has provided evidence or suggested that the catchment area is unreasonable or not clearly defined or that the area does not “serve... its local community” as stated in the original trust deed for the school. The objector recognises the fairness of this but considers that the arrangements should afford protection by way of a higher priority for children who live outside the catchment area and have siblings who were admitted in 2018. The trust, as above, chose not to give this protection and it is not required to do so. The Code requires that every admission authority determines its admission arrangements annually and they have the right to change them. I do not uphold this part of the objection to the oversubscription criteria as they relate to siblings.

## Conclusion and Summary of Findings

47. The consultation made on the arrangements met most of the requirements of the Code but based on the evidence provided to me, it appears that the trust did not consult with the parents of children at the school. This means that the trust did not effectively meet the requirement of the Code to consult with parents of children aged two to eighteen. I uphold this part of the objection.

48. The arrangements for 2020 and 2021 were not published on the trust's website as required by the Code. I uphold this part of the objection.

49. It is, as the Code makes clear at paragraph 1.10, for each admission authority to decide its own oversubscription criteria. My jurisdiction allows me to determine if arrangements including oversubscription criteria meet the Code's requirements. There is invariably more than one set of Code compliant arrangements for any school and it is not for me to say which set of Code compliant arrangements a school should have. The arrangements give a lower priority to siblings who live outside the catchment area than to those who live in the area with the exception of displaced siblings. This is not unfair. The trust was not required to give protection to siblings of those admitted in 2018 when the arrangements did not include a catchment area and has chosen not to do so. The displaced sibling provision which gives protection to those children whose siblings were displaced as there was no place available at their own catchment area school, as if they lived in the catchment area, is not unfair. I do not uphold this part of the objection.

## Determination

50. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for September 2021 determined by Portsmouth and Winchester Diocesan Academies Trust for St James' Church of England Primary Academy in the area of Bournemouth, Christchurch and Poole Council.

Dated: 11 November 2020

Signed:

Schools Adjudicator: Deborah Pritchard