



Office of
the Schools
Adjudicator

Determination

Case reference: VAR2189

Admission authority: the governing board for St Anselm's Catholic Primary School, Dartford, Kent

Date of decision: 16 November 2021

Determination

In accordance with section 88E of the School Standards and Framework Act 1998, I do not approve the proposed variation to the admission arrangements determined by the governing board for St Anselm's Catholic Primary School for September 2022.

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

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I specify that the arrangements must be revised by 28 February 2022.

The referral

1. The governing board for St Anselm's Catholic Primary School (the school) has referred a proposal for a variation to the admission arrangements for September 2022 (the arrangements) for the school to the adjudicator. The school is a voluntary aided school for children aged five to eleven in Dartford and the local authority area of Kent County Council (the local authority). The school has a Catholic religious character. The faith body for the school is the Archdiocese of Southwark (the faith body).
2. The proposed variation is to change the definition of a committed and practising Catholic which is used in the oversubscription criteria.

Jurisdiction and procedure

3. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which deals with variations to determined arrangements. Paragraphs 3.6 and 3.7 of the Code say (in so far as relevant here):

“3.6 Once admission arrangements have been determined for a particular school year, they cannot be revised by the admission authority unless such revision is necessary to give effect to a mandatory requirement of this Code, admissions law, a determination of the Adjudicator or any misprint in the admission arrangements. Admission authorities may propose other variations where they consider such changes to be necessary in view of a major change in circumstances. Such proposals **must** be referred to the Schools Adjudicator for approval, and the appropriate bodies notified...

3.7 Admission authorities **must** notify the appropriate bodies of all variations”.

4. The governing board has confirmed that the appropriate bodies have been notified. I find that the appropriate procedures were followed. The governing board originally proposed two changes in its requested variation. One fell within the scope of revisions in order to give effect to a mandatory provision of the Code or admissions law. Admission authorities are able to make such variations without reference to the adjudicator and such variations are not within the adjudicator’s jurisdiction. I am satisfied that one proposed change is within my jurisdiction.

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

6. In considering these matters I have had regard to all relevant legislation, and the School Admissions Code (the Code).

7. The information I have considered in reaching my decision includes:

- a. the referral from the governing board received 23 September 2021, supporting documents and further information provided at my request;
- b. the determined arrangements for 2022 and the proposed variation to those arrangements;
- c. the guidance on admissions provided to the governing board by the faith body (the guidance);
- d. a previous variation determined for the school on 9 November 2020 (VAR1989);
and

e. information available on the websites of the local authority, the school and the Department for Education (DfE).

8. I have also taken account of the information I received during a meeting I convened on 1 November 2021 via Microsoft Teams attended by representatives of the governing board, the local authority and the faith body.

Background

9. The governing board confirmed that it had determined the arrangements and that following the determination the faith body brought two matters to the attention of the governing board. The governing board subsequently requested variations in order to give effect to those suggestions. The school is oversubscribed and has a published admission number (PAN) of 30. The oversubscription criteria determined by the governing board were (in summary):

- 1) Looked after and previously looked after Catholic children
- 2) Baptised Catholic children where at least one parent is a committed and practising Catholic
- 3) Children enrolled in the catechumate
- 4) Other looked after and previously looked after children
- 5) Baptised children where one parent is a committed member of an Eastern Orthodox Church
- 6) Baptised children where one parent is a committed member of other Christian denominations that are part of Churches Together in England
- 7) Children of families who are members of other faiths
- 8) Any other children.

10. The arrangements provide ways of determining the order of priority where there is oversubscription within a criterion. These ways vary depending upon the criterion in question.

11. The governing board proposed a change to the order of the oversubscription criteria so that they complied with the Code; this was one of the two suggestions made by the faith body. This was the change I explain above did not need to be referred to me and was not within my jurisdiction. However, for the sake of completeness, and because it will have an effect on the order of the criteria above, I set out here what the change is and why it is necessary.

11.1. The oversubscription criteria were determined so that children enrolled in the catechumate had a higher priority than other looked after children and previously looked after children, that is to say in this case looked after and previously looked after children who are not Catholics. The Code permits schools with a religious character to give priority to children of the faith before looked after and previously looked after children not of the faith but paragraph 1.37 of the Code says, "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."

11.2. A child enrolled in the catechumenate is preparing to be baptised in the faith and so is not yet of the faith. The Code does not permit such a child to have priority before looked after and previously looked after children who are not of the faith. The governing board must address this so that the arrangements meet the requirements of the Code in this regard. As the Code provides for variations to be made without reference to the adjudicator in certain circumstances, including where this is necessary to comply with the Code, I will not consider this point further.

12. Relevant also to my consideration of this case and so mentioned here is a variation made to the arrangements for 2021. That variation (VAR1989), which I will refer to as the Covid variation, was proposed and agreed in response to the Covid-19 pandemic when it was not possible to attend Mass at all or when the numbers who could attend were restricted in the interests of public health. In these circumstances the governing board proposed in 2020 that the arrangements should be varied due to the major change in circumstances. VAR1989 made on 9 November 2020 added the following words to the arrangements: "The suspension of the obligation to attend Sunday Mass was announced on 18th March 2020 by Bishops' Conference of England and Wales. If a parent/carer attended Mass at a certain frequency at a particular parish (or parishes) prior to 18th March 2020 then they will be considered to have attended Mass in that parish (or parishes) at the same frequency since that time. This will remain the case until the Sunday obligation is reintroduced by the Bishops."

13. Guidance issued by the DfE, 'Faith school admission arrangements variation Coronavirus (COVID-19)' published in July 2020 said, so far as is relevant here: "Admission authorities are asked to note that if, having varied their admission arrangements for 2021 entry, they want the variation removed from their arrangements for 2022 onwards, they will need to consult on removal for these changes for the 2022 admission arrangements for any 6 weeks between 1 October 2020 and 31 January 2021, in accordance with the provisions set out in paragraphs 1.42-1.49 of the Code." The governing board published the wording agreed in its Covid variation with the policies section of its website but not its admissions section. This means that while the wording is part of the arrangements, the wording has not been integrated with the rest of the arrangements as

visible on the relevant section of the school's website. This means that the aspect of the arrangements concerned with the Covid variation is unlikely to be seen by any interested party who wished to see the whole arrangements. The governing board will need to address this so the arrangements are clear in this regard. The existence of the Covid variation also has implications for the variation requested to the definition of committed and practising Catholic as I shall explain later in this determination.

14. In this determination I will refer to key paragraphs of the Code at several points, and so provide them here. 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." Paragraph 1.8 of the Code, in as far as is relevant here, says, "Oversubscription criteria **must** be reasonable, clear [and] objective."

15. Paragraph 1.9i of the Code says admission authorities **must not** use oversubscription criteria which "prioritise children on the basis of their own or their parents' past or current hobbies or activities (schools which have been designated as having a religious character may take account of religious activities, as laid out by the body or person representing the religion or religious denomination)". Paragraph 1.37 of the Code says, "Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied." Paragraph 1.38 of the Code says, "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."

The proposed variation and matters in the arrangements which may not comply with the Code

16. In its referral the governing board proposed that the definition of commitment to the faith of a committed and practising Catholic, as required to meet criterion 2, be changed. As determined the arrangements require a parent to have regularly attended Mass for at least 12 months at the time of application in order to meet criterion 2. The proposed change is that it will be necessary for attendance at Mass to have occurred regularly for at least three years. The governing board said in the referral that the increase to three years was necessary to bring the arrangements in line with the guidance provided by the faith body. A requirement to have attended for three years so far as admission in September 2022 is concerned would mean that such attendance would need to have started no later than mid January 2019 given that 15 January 2022 is the deadline for applying for primary places in September 2022. The existing 12 month period by contrast for admissions in 2022 would mean attendance starting no later than mid January 2021. I return later to the particular significance of this in the light of the Covid-19 pandemic and the school's associated Covid variation.

17. Paragraph 3.6 of the Code (as above) requires that admission arrangements, once determined, may only be revised, that is changed or varied, if there is a major change of circumstance or certain other limited and specified circumstances. I will consider below whether the variation requested is justified by the change in circumstances.

18. In addition, I brought to the attention of the governing board that the following matters may not conform with the requirements of the Code (most relevant paragraphs of the Code in brackets) and I will consider these matters using my power under section 88I of the Act.

- 18.1. Criterion 2 appears to be unclear (14 and 1.8).
- 18.2. The arrangements determined for 2022 were not published on the admission authority's website. (1.50)
- 18.3. The definition of previously looked after children do not include "children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted." (1.7)
- 18.4. The definitions for criteria 5, 6 and 7 appear to be unclear. (14 and 1.8)
- 18.5. The supplementary information form (SIF) may require information not needed to apply the admission arrangements. (2.4)
- 18.6. The arrangements require all applicants to complete the SIF. Parents cannot be required to complete a SIF in order to make an application for a school place and a completed SIF is not always necessary to consider an application. (2.4)
- 18.7. The arrangements do not meet the requirements of paragraph 2.17 of the Code regarding the admission of children under compulsory school age. (14 and 2.17)
- 18.8. The information on the waiting list may not comply with the Code. (2.15)

Consideration of proposed variation

19. Once arrangements have been determined, they may only be varied in limited circumstances as set out in paragraph 3.6 of the Code. In some cases, an admission authority may seek a variation where they consider it necessary in view of a major change of circumstances. The adjudicator must then consider whether the variation is justified and should be approved. The variation process does not include the wider consultation process required in normal circumstances. In normal circumstances where an admission authority wishes to change its arrangements, it **must** consult in line with the requirements set out in paragraphs 1.45 to 1.48 of the Code. It is the requirements of the Code in these paragraphs that I mean when I refer to consultation below.

20. As there is no formal consultation required for a variation, parents and others do not have the opportunity to express their views. It is desirable that changes are made via the process of determination following consultation as the consultation process allows those with an interest to express their views. In addition, changes made to admission arrangements in accordance with the normal timetable also allow for objections to be made and, again, this is not possible in the case of variations.

21. The variation proposed relates to criterion 2 in the oversubscription criteria which is, "Baptised Catholic children, where at least one parent/carer is a committed and practising Catholic. Evidence of baptism will be required." The definition in the arrangements of committed and practising Catholic is, "The strength of evidence of commitment to the faith as demonstrated by the level of the family's Mass attendance on Sundays. This evidence must be provided by the parents/carers and be endorsed by a priest at the church(es) where the family normally worship. Applications will be ranked in the order shown on the Supplementary Form; firstly, those who attend Mass weekly and have done so for at least 12 months prior to date of application, then once or twice a month and then less frequently." I take this to mean that there must be some attendance at Mass (even if less frequently than monthly) to qualify under this criterion as that is what it says. To put it another way, it would not include a baptised Catholic child whose parent never attended Mass.

22. The proposed change is that the regular attendance at Mass should be for at least three years prior to the date of the application instead of at least 12 months. The expectations of frequency of Mass attendance would remain the same. The governing board said that its reason for the proposed change is to align the arrangements with the guidance provided by the faith body. All schools with a religious character may give priority in their arrangements to children of the faith. In doing so they must have regard to any guidance from the relevant faith body as explained in paragraph 1.38 of the Code. The faith body provided me with its guidance which was dated July 2018. The guidance gives its own account of what is meant by 'having regard' as follows: "The High Court, in the case of the London Oratory, ruled that schools must have regard to diocesan guidance. Mr Justice Cobb held that to 'have regard' meant that they must have a "clear reason" with a "proper evidential basis" for a decision to depart from diocesan guidance." I consider that this is an accurate summary of the relevant part of the judgment in *R (on the application of the Governing Body of the London Oratory School) v School Adjudicator* [2015] EWHC 1012 (Admin).

23. The guidance contains model admission arrangements. The model arrangements for primary schools say in relation to priority on the basis of being a practising Catholic, "The strength of evidence of commitment to the faith as demonstrated by the level of the family's Mass attendance on Sundays over a period of 3 years." The faith body and the governing board therefore said that an increase from attendance at Mass from 12 months to three years would bring the arrangements into line with the faith body's guidance.

24. The faith body explained that the length of the time attending Mass had become particularly relevant as an outcome of the Covid-19 pandemic. As I explained above, the

governing board obtained the Covid variation to their arrangements which included the addition of the following words to the arrangements: "If a parent/carer attended Mass at a certain frequency at a particular parish (or parishes) prior to 18th March 2020 then they will be considered to have attended Mass in that parish (or parishes) at the same frequency since that time. This will remain the case until the Sunday obligation is reintroduced by the Bishops." The ability to attend Mass has varied due to national, local and personal circumstances during the Covid-19 pandemic.

25. I explain above that a one year period of attendance in relation to admissions in September 2022 would mean attendance starting no later than 16 January 2021. In the first few months of 2021 there was, of course, a national lockdown in response to Covid-19 and places of worship were either not open for public worship including Mass or numbers able to attend such worship and take part in Mass were severely constrained. However, there remains availability of access to Mass through services provided online. The faith body said that the Covid variation thus made it easier for a parent who was not normally a regular attendee at Mass to present as one.

26. The governing board explained that the school was oversubscribed for the 30 places available in reception year (YR) and it wished, in line with its religious character, to prioritise Catholic children with a parent who was a committed and practising Catholic. The governing board believed that it would be possible for applicants for admissions in 2022 to claim attendance at Mass (including Mass online) when this was not the case. The governing board was concerned that some children would gain priority on this basis when in fact the parent was not someone who attended Mass in person or on line regularly. In other words, some parents might take advantage of the flexibility created by the Covid variation and pretend that in the 12 months before they made their application that they had attended Mass on, for example, a weekly basis online when they had not. By increasing the time required to have attended Mass to three years, this would give a starting date of no later than mid January 2019 and afford scope for evidence of more than a year's attendance before the pandemic began.

27. It was therefore argued that the Covid-19 pandemic had created a change in circumstances since the arrangements were determined and that, if the governing board changed its arrangements in response, the arrangements would come into alignment with the guidance of the faith body. This argument has some force. However, I am aware that parents will be making their applications for 2022, some will already have been made, and these applications will have been made with some parents believing that their child would meet the criterion. If I agreed the variation, some applications made in good faith based on the arrangements as determined, would not meet the varied criterion and thus would be considered under a lower priority. I therefore considered the context and the guidance in some detail.

28. The governing board provided me with information about the number of children admitted to YR under each criterion in 2020 and 2021. The information provided is summarised in table 1 below. In the local authority area, parents can make up to three

preferences. A first preference will be for the school the parent most wants their child to attend. The co-ordinated scheme means that children will be allocated places at the highest preference that can be met.

Table 1: number of preferences for the school and admissions by each criterion

	2020	2020	2021	2021
	Number of applications	Number admitted	Number of applications	Number admitted
Criterion 1: looked after and previously looked after Catholic children	0	0	0	0
Criterion 2: baptised Catholic child with a parent who is a committed practising Catholic	45	30	45	25
Criterion 3: child enrolled in catechumenate	0	0	0	0
Criterion 4: other looked after and previously looked after children	0	0	0	0
Criterion 5: baptised children with a parent is a member of an Eastern Orthodox Church	0	0	2	2
Criterion 6: baptised child with a parent who is a committed Christian	2	0	3	3
Criterion 7: child whose family is of another faith	12	0	16	0
Criterion 8: other children	57	0	66	0
Total numbers of preferences/allocations	116	30	132	30

29. In both 2020 and 2021 there were more preferences expressed for the school than it could accommodate and, indeed, more first preferences. There were 48 first preferences in 2020 out of a total of 116 preferences and 37 in 2021 out of a total of 132 preferences. In 2020, all 30 of the children admitted met criterion 2. Main round admissions in 2020 and the meeting of any requirement to attend Mass to gain priority were not affected by Covid-19 as the deadline for applications occurred before any restrictions had to be imposed. In 2021, 25 of the 30 children admitted met criterion 2. As there were 45 preferences that met criterion 2 in 2021 and 25 children were admitted under criterion 2, it is my understanding that for 20 children, the parents of those children had expressed a higher preference for another school and that preference was satisfied. This is why children who were not

Catholic were able to be admitted. I am reinforced in this view by the fact that not all of the 45 applications that met criterion 2 could have been first preferences as there were only 37 first preferences in total. At the meeting the governing board said that the number admitted under each criterion varied from year to year and that Dartford was an area of high mobility with families moving in and out of the area which was an explanation for the changing patterns.

30. I must now raise a matter of clarity regarding criterion 2. As described above, criterion 2 in the oversubscription criteria is, “Baptised Catholic children, where at least one parent/carer is a committed and practising Catholic. Evidence of baptism will be required.” I understand this to mean that the child must be a baptised Catholic and at least one parent must be a committed and practising Catholic as shown by the parent’s attendance at Mass. I was encouraged in this belief by the definition of Catholic in the arrangements which is, “‘Catholic’ means a member of the Ordinariate and the Latin and Oriental Rite Churches that are in union with the Bishop of Rome. A baptismal certificate or evidence of reception into the Church must accompany the supplementary information form.” There is no mention of the parent needing to prove that the child also attends Mass in order to meet the criterion. I note also in this context that the Catholic canonical law relating to Mass attendance is binding only on children who have reached the age of seven years. Clearly, no child for whom a place is sought in YR will have reached this age. However, the SIF asks for information on the child and the child’s attendance at Mass and at the meeting the governing board explained to me that in order to meet criterion 2 it was necessary for a parent and child to attend Mass and this was why the SIF asked for information on the child’s attendance at Mass as well as the parent’s attendance.

31. These different understandings of what criterion 2 means suggests that the criterion is unclear and so I discuss this matter below when I consider the arrangements as a whole under my power under 88I of the Act. However, there are implications for the proposed variation. Extending the requirement for attendance to three years for a child is even more significant than for a parent or carer. For the child to have attended Mass for three years prior to the application, the child would have been very young when they started to attend as the children would be three or four at the time of the application. While many parents may, as a matter of course, take their child to Mass with them from a very young age, to introduce this as a requirement via a variation rather than following the consultation required by the Code when there are plans to change arrangements would need significant justification.

32. The variation process is designed for use when there is a “major change in circumstances” occurring since the arrangements were determined. There is no doubt that Covid-19 represented a major change in circumstances and, indeed, on this basis the variation to the school’s arrangements in VAR1989 was approved. However, the question for me is whether this new proposed change for 2022 is justified by any change in circumstances since the arrangements for 2022 were determined. The change identified by the governing board is that it wishes to bring its arrangements into line with the guidance

from its faith body as the guidance relates to attendance at Mass in the light of concerns that some parents may be saying that they attend Mass online when they do not.

33. What the guidance says is relevant here. The guidance says, “The Archbishop expects all Catholic schools to give first priority to baptised Catholic children (including those from Eastern Rite Catholic Churches and children of members of the Ordinariate).” A key point in the admission arrangements for this school is that they do not in fact contain any priority for children purely on the basis of being baptised Catholics (unless they are also looked after or previously looked after Catholic children). The only priority for Catholic children who are not looked after or previously looked after is such children who have at least one practising Catholic parent. The arrangements seem from the outset to be out of line with the guidance, although as I explain above, it is accepted by all that schools may depart from the guidance in some circumstances. Within the overarching aim of ensuring that baptised Catholics always have a higher priority than non-Catholics, the guidance specifically admits of different approaches in different circumstances. In a section headed, “Schools oversubscribed with applications from Catholic families” the guidance says that where this occurs, “governing bodies may give priority to applicants from practising families by measuring ‘practice’ using the frequency of attendance at Sunday Mass. They may give a higher priority where there is a greater frequency of attendance and priests will be asked to provide confirmation of the frequency of Mass attendance.” I have added underlining for emphasis. Similar words also appear elsewhere in the guidance where it refers to schools “consistently heavily oversubscribed with Catholic children” using frequency of attendance at Mass to distinguish between Catholics. Table 1 shows that 30 Catholic children were admitted in 2020 and if others met criterion 2 and put the school as a first preference, the school would have been oversubscribed with Catholic children. Table 1 also shows that the school was not oversubscribed with Catholic children in 2021. It is my view that this means the school is not “consistently heavily oversubscribed by Catholic children”. I cannot therefore see any urgent imperative to change its arrangements in order to introduce a provision which the faith body’s guidance makes clear is both permissive (something the school may do) and intended for circumstances (consistently heavily oversubscribed with applications from Catholic families) which do not seem to pertain each year at this school.

34. The guidance says, “The model admission policies are provided to give governing bodies ‘templates’ to use in drawing up their own policies.” The model set of arrangements for primary schools provide an example and this has criterion 2 as: “Catholic children, a baptismal certificate or evidence of reception into the Catholic Church must accompany the supplementary information form.” This requires no evidence of attendance at Mass by any party in order to be met and is different to that determined for the school. I discuss this matter further below where I consider the clarity of criterion 2.

35. The model provides ways of prioritising within criterion 2 where there are more children that meet criterion 2 than there are places available. The first priority would be “The strength of evidence of commitment to the faith as demonstrated by the level of the family’s Mass attendance on Sundays over a period of 3 years. This evidence must be provided by

the parents/carers and be endorsed by a priest at the church(es) where the family normally worship. Applications will be ranked in the order shown on the Supplementary Form; firstly, those who attend Mass weekly, then once or twice a month etc.” It is to this example that the governing board is referring to when it says that the variation is needed to comply with the guidance.

36. It is my reading of the guidance that the guidance does not require that every Catholic school will prioritise admissions on the basis of regular attendance at Mass; it is offered as an option where there are more baptised Catholics seeking a place than can be accommodated. The school is not consistently heavily oversubscribed with Catholic children with at least one parent who is a committed and practising Catholic and I cannot reach a definitive view about the level of subscription of baptised Catholic children whose families do not practise their faith as there is no such category in the arrangements. All this means that the case that this variation is necessary in order to meet the guidance is not supported by my understanding of the guidance.

37. I have considered the evidence and the arguments provided to me. The governing board must have regard to the guidance provided by the faith body; in 2020 the school was oversubscribed with Catholic children from families claiming priority on the basis of Catholic practice; and the governing board is concerned that some parents will take advantage of the flexibility provided by the Covid variation and lie about their attendance at worship, for example saying that they had attended Mass online when this was not the case. However, it would seem to me that the guidance provides options, not requirements in this matter and to introduce, without consultation, that a parent (and possibly the child) must have attended worship for at least three years at the time of application, as parents are making applications for 2022 would be unjustified. The concern that some parents might lie does not appear to be sufficient reason for such a significant change. I do not approve the variation.

38. The governing board has the opportunity to consult on changing its arrangements so that Mass attendance must occur for at least three years at the time of application for admissions in 2023 if they wish to do so.

Consideration of the arrangements

39. I consider the other aspects of the arrangements I brought to the attention of the governing board below in the same order as provided above.

40. As above, criterion 2 is: “Baptised Catholic children, where at least one parent/carer is a committed and practising Catholic. Evidence of baptism will be required.” The potential ambiguity of criterion 2 only became apparent to me in the meeting. Until that point, I had understood that the criterion was met if the child was a baptised Catholic and a parent was a committed and practising Catholic as shown by their attendance at worship. However, a representative of the governing board said that criterion 2 also requires that the child is a

committed and practising Catholic as shown by the child's attendance at worship in order to be met.

41. In order to explore this matter I looked first at the guidance which says, "In the context of school admissions Catholic children are defined as: "Children who are baptised or received into the Catholic Church, children baptised or received into the Eastern Churches in union with Rome and children of members of the Ordinariate." This would be consistent with my understanding of the criterion. In addition, the guidance says, "For the purpose of admissions to a Catholic school a practising family is regarded as one where at least one parent or carer is attending Mass weekly." Again, this is in line with my understanding of criterion 2. The guidance also says, "The Archbishop expects all Catholic schools to give first priority to baptised Catholic children (including those from Eastern Rite Catholic Churches and children of members of the Ordinariate). When there are insufficient places in a particular school for all Catholic children (including those from Eastern Rite Catholic Churches and children of members of the Ordinariate) who apply, the governing body may then give priority to children from practising families or, in the case of older children, to those who are themselves [are] practising." The guidance would therefore appear not to require three to four year olds to attend Mass regularly in order to meet oversubscription criterion 2.

42. Be that as it may, it seems that criterion 2 is ambiguous. This ambiguity is shown by the inclusion in the SIF of a section for the priest to provide information on the child's attendance at worship. This would not be necessary unless this were relevant to the application of the oversubscription criteria. I note that the same information is requested on the child in the model SIF provided in the guidance. I also note that at times the arrangements refer to 'parent/carers' and at other times refer to 'family' in connection with criterion 2; these are not the same and the term 'family' could include the child. The arrangements in this regard do not comply with paragraphs 14, 1.8 and 1.37 of the Code, as quoted above, and the requirement for the arrangements to be clear and easily understood.

43. As described above, criterion 2 is different to the example provided in the model arrangements. The difference has a fundamental effect. The model arrangements give a priority to children who are baptised Catholics. The arrangements for the school only give priority to children who are baptised Catholics and where at least one parent is a committed and practising Catholic. The implication of this is that if the child is a baptised Catholic but does not have a parent who is a committed and practising Catholic then criterion 2 cannot be met. It is my understanding that such a child would have to be considered under criterion 8 of the oversubscription criteria. This would not be in line with the guidance that seeks that Catholic children have as high a priority as possible and, I surmise, not the intention of the governing board.

44. The arrangements determined for 2022 were not published on the admission authority's website which does not comply with paragraph 1.50 of the Code. I note that the arrangements for 2022 are now published and this is welcomed.

45. The definition of previously looked after children do not include “children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted.” When the arrangements for the school were determined, the 2014 Code then in force provided that children previously looked after in England and then adopted or made subject to a child arrangements or special guardianship order should have equal highest priority with looked after children in school admission arrangements (subject to certain exemptions in schools with a religious character). The new Code has extended the level of priority for looked after and previously looked after children to children who appear (to the admission authority) to have been in state care outside of England and ceased to be in state care as a result of being adopted. All admission authorities were required to vary their admission arrangements accordingly by 1 September 2021 and the faith body brought this to the attention of the governing board. It remained that the arrangements provided on 23 September 2021 with the proposed variation did not include this definition. Therefore, the arrangements do not comply with paragraph 1.7 of the Code in this regard.

46. I will now consider criteria 5, 6 and 7. These are, in full, as below:

“5) Baptised children, where at least one parent/carer is a committed member of an Eastern Orthodox Church. Evidence of baptism will be required.

6) Baptised children, where at least one parent/ carer is a committed member of other Christian denominations that are part of Churches Together in England. Evidence of baptism or dedication provided by a priest or minister of a designated place of worship will be required.

7) Children of families who are members of other faiths. Evidence of membership of the faith provided by a minister or religious leader of a designated place of worship will be required.”

47. No definition is provided for criterion 5 of “a committed member of an Eastern Orthodox Church.” The SIF has a section 3 that asks the faith leader, where the child is not a Catholic, to tick the relevant statement or statements as follows:

- “I confirm that this family are members of our faith community
- This family have been known to me for ...(please state months and years)
- The family is not known to me”

48. Whether the parent or carer is a committed member is left to the discretion of the individual faith leader. Different faith leaders could make different decisions on the same evidence. This makes the arrangements subjective and so not meet the requirements of paragraph 14 and 1.8 of the Code to be objective. In addition, a parent will not easily understand if they meet the criterion or not. Therefore the arrangements also do not meet the requirements of paragraph 1.37 of the Code. At the meeting the faith body explained

that it seemed better that the leaders of other faiths decided if the parent concerned were a committed member of that faith or not. This may be true, but the arrangements are those of the admission authority and as such the admission authority must make sure that the arrangements comply with the Code. There is, of course, the possibility of consulting other faiths, such as the appropriate representatives of the Eastern Orthodox Church, on their definitions of such matters.

49. Criterion 6, as above, requires “at least one parent/ carer is a committed member of other Christian denominations that are part of Churches Together in England.” As for criterion 5, there is no definition of being a committed member of these denominations and the same section of the SIF as described above applies. The admission authority may not wish to dictate what constitutes a committed member of other Christian denominations but again it is possible to consult the relevant faith leaders on such matters.

50. Criterion 7 is “Children of families who are members of other faiths. Evidence of membership of the faith provided by a minister or religious leader of a designated place of worship will be required.” There is no definition of other faiths and no definition of membership. I will not repeat the points I have made above but the same lack of clarity and objectiveness applies. The faith body did say that it has a definition of other faiths in its guidance and I hope that the admission authority will be supported in addressing these matters by the faith body. I also note that, as table 1 shows, parents have applied for places at the school under criteria 5, 6 and 7 in the years 2020 and 2021 and children have been admitted under criteria 5 and 6 in 2021.

51. When there is oversubscription within any of these criteria the arrangements say that priority is decided by, “The strength of evidence of commitment to the faith as demonstrated by the level of the family’s attendance at services of worship. This evidence must be provided by the parents/carers and be endorsed by a priest/ minister/ faith leader at the place where the family normally worships.” There is no definition of what level of attendance would demonstrate commitment to the relevant faith. Again, different faith leaders could come to different conclusions on the basis of the same evidence. This makes the prioritisation method unclear and subjective. There is also inconsistency in the language as the criteria refer to the commitment of a parent to a particular faith, while this paragraph on prioritising within the three criteria refers to “the family’s attendance at services of worship.” A parent and a family are not the same thing and so this also makes the arrangements unclear.

52. In summary, the lack of definitions for criteria 5, 6 and 7, the ambiguity of the arrangements and the lack of clarity regarding how the admission authority will prioritise when there is oversubscription within any of those criteria do not meet the requirements of paragraphs 14, 1.8 and 1.37 of the Code to be clear, objective and easily understood.

53. Paragraph 2.4 of the Code says, “In some cases, admission authorities will need to ask for supplementary information forms in order to process applications. If they do so, they **must** only use supplementary forms that request additional information when it has a direct

bearing on decisions about oversubscription criteria". It is appropriate for the arrangements to include a SIF in order for the governing board to apply some of the oversubscription criteria. However, in addition to the points raised above regarding section 3 of the SIF and the information requested on the child's attendance at worship, there are the following matters regarding the SIF.

53.1. The arrangements say, "If the Supplementary Information Form is not completed, the governing body of the school will only be able to consider the application after all applicants who have completed a Supplementary Information Form." The information provided in the SIF is not required to apply criterion 8 and so this statement is not accurate or appropriate. The guidance says, "Completion of a SIF cannot be made mandatory. Where a SIF has not been returned, governing bodies must still consider the application against their criteria, but they may have to rank the child below applications for those where forms have been returned."

53.2. The SIF requires that the gender of the child be provided, this is not necessary to apply the oversubscription criteria. The local authority did raise the possibility that the gender of the child may be necessary for identification purposes in addition to the name, address and date of birth of the child but I did not find this suggestion convincing.

53.3. The SIF asks for information on both parents and refers to parents in the plural in various places when asking for information. The oversubscription criteria only ever apply to at least one parent (setting aside the occasional references to 'family') and so requiring information on both parents makes the SIF unclear and non-compliant with paragraph 2.4 as it is not necessary to have the details of both parents to apply the oversubscription criteria.

54. The SIF does not meet the requirements of the Code in the ways described above.

55. Paragraph 2.17 of the Code says, "Admission authorities **must** provide for the admission of all children in the September following their fourth birthday. The authority **must** make it clear in their arrangements that where they have offered a child a place at a school:

a) that child is entitled to a full-time place in the September following their fourth birthday;

b) the child's parents can defer the date their child is admitted to the school until later in the school year but not beyond the point at which they reach compulsory school age and not beyond the beginning of the final term of the school year for which it was made; and

c) where the parents wish, children may attend part-time until later in the school year but not beyond the point at which they reach compulsory school age."

56. The arrangements provide information on these matters but refer to parents being able to request that the child's admission is deferred or that the child attends part-time until the child reaches compulsory school age. The wording in the arrangements does not make it clear that the parent has the right to make these decisions and so the arrangements are not compliant with paragraphs 14 and 2.17 of the Code.

57. Paragraph 2.15 of the Code says, "Each admission authority **must** maintain a clear, fair, and objective waiting list until at least 31 December of each school year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria." The arrangements say that the waiting list will be updated in the autumn term and so it is not clear that the waiting list will be maintained until 31 December. The arrangements do not comply with the Code in this matter.

58. The governing board has told me that it will address these matters, as permitted by paragraph 3.6 of the Code, which is welcomed. It is apparent to me that some of these matters are relatively easily addressed in order to comply with the Code but that addressing the breaches I have identified in criteria 5, 6 and 7 may involve more fundamental changes to the arrangements. I am conscious that the governing board will want to consider carefully how to address my findings. I expect that they will wish to talk to faith leaders and that they will want to consult on how best to revise the arrangements so that these criteria meet the requirements of the Code. I am conscious too that applications for school places for 2022 have already begun to be made. In the light of these factors, I have set 28 February 2022 as the latest date by which the arrangements must be revised as this is the date by which arrangements for 2023 must be determined. This means that the changes to these criteria will not affect the normal round applications for admissions for 2022. It remains open to the governing board to determine changes to the arrangements so that they comply with the Code before that date.

Summary

59. The proposed variation is to require a parent to have attended Mass for at least three years at the time of application instead of 12 months. The guidance provided by the faith body is not prescriptive in this matter and to change the arrangements at this juncture is not justified by the circumstances.

60. There are other matters as described above where the arrangements do not meet the requirements of the Code.

Determination

61. In accordance with section 88E of the School Standards and Framework Act 1998, I do not approve the proposed variation to the admission arrangements determined by the governing board for St Anselm's Catholic Primary School for September 2022.

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

63. 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 unless an alternative timescale is specified by the adjudicator. In this case I specify that the arrangements must be revised by 28 February 2022.

Dated: 16 November 2021

Signed:

Schools adjudicator: Deborah Pritchard