



## Determination

**Case references:** ADA3939, AD3940 and ADA3941.

**Objector:** Three members of the public

**Admission authority:** The governing board for St Joseph's Catholic Primary School, Epsom, Surrey

**Date of decision:** 14 July 2022

### Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objections to the admission arrangements for September 2023 determined by the governing board for St Joseph's Catholic Primary School, Epsom, Surrey.

### The referral

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), objections have been referred to the adjudicator by three members of the public (the objectors) about the admission arrangements for September 2023 (the arrangements) for St Joseph's Catholic Primary School (the school), a voluntary aided school with a Roman Catholic religious character for children aged 4 to 11. The objection is to the faith-based oversubscription criteria.
2. The local authority (the LA) for the area in which the school is located is Surrey County Council. The LA is a party to this objection. Other parties to the objection are the governing board of the school, the objectors and the Diocese of Arundel and Brighton (the diocese), which is the school's religious authority.

### Jurisdiction

3. These arrangements were determined under section 88C of the Act by the school's governing board, which is the admission authority for the school. The three objectors submitted their objections to these determined arrangements on 28 April 2022, 5 May 2022 and 5 May 2022, respectively. The objectors have asked to have their identities kept from

the other parties and have met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of their names and addresses to me. I am satisfied the objections have been properly referred to me in accordance with section 88H of the Act and they are within my jurisdiction.

## Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
  - a. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
  - b. a copy of the determined arrangements;
  - c. the objectors' forms of objection dated 28 April 2022, 5 May 2022 and 5 May 2022, respectively, and subsequent correspondence;
  - d. the governing board's response to the objection, including information about the allocation of places for admission in September 2020, 2021 and 2022;
  - e. the diocese's response to the objection, its guidance to schools on admissions, and subsequent correspondence;
  - f. information about the allocation of places published on the local authority's website;
  - g. information available on the website of the diocese including a map showing the location of the school and other Catholic primary schools;
  - h. information available on the Department for Education's website, "Get Information About Schools"; and
  - i. a determination of the adjudicator in relation to the school dated 26 June 2014 (case reference: ADA2602).

## Background

6. The school has a Published Admission Number (PAN) for admission in September 2023 of 60. The school was oversubscribed for admission in both September 2021 and 2022. Priority for places is given first to Catholic children, that is, those for whom evidence of baptism or reception into the Church is provided. Amongst Catholic children, priority is given first to such children who are looked after or previously looked after and then principally determined by three factors, which appear in different combinations in the oversubscription criteria. These factors are:

- children with a sibling at the school at the time of admission;
- children resident in the parish of Epsom; and
- children whose parent/carer attends Sunday Mass at least once a month.

7. Table One below shows the way in which these and other factors appear within the ordering of the oversubscription criteria and the number of places allocated under each criterion for admission over the past three years. Within each criterion, priority is established on the basis of distance from the child's home to the school.

**Table One: Allocation of places for admission in September 2020, 2021 and 2022.**

Oversubscription Criterion	Numbers admitted under each criterion		
	2020	2021	2022
Catholic looked after and previously looked after children	0	0	0
Catholic children + sibling + resident in parish + Mass attendance	17	21	17
Catholic children + sibling + Mass attendance	1	5	4
Catholic children + resident in parish + Mass attendance	21	17	30
Catholic children + Mass attendance	8	7	5
Other Catholic children	2	2	0
Other looked after and previously looked after children	0	0	0
Catechumens, Candidates for Reception into Church and Orthodox children	1	2	0
Other siblings	2	1	4**
Children of other Christian denominations	2	0	
Children of other faiths	2	3	
Other children	2	2*	
“Centrally offered”	2		
<b>TOTAL</b>	<b>60</b>	<b>60</b>	<b>60</b>
Number of first preferences	54	63	64

\*The last child offered a place under this criterion lived 0.221 km from the school.

\*\*The last child offered a place under this criterion lived 0.878 km from the school.

## The Objections

8. Two of the objections (ADA3939 and ADA3941) are phrased in identical terms. They relate to certain details of the faith based oversubscription criteria. The other objection (ADA3940) is quite different. It takes issue with the school's use of faith based criteria in general terms. Nevertheless, I proposed to all of the objectors that the objections should be considered together and none of them expressed any disagreement with this approach.

9. Objections ADA3939 and ADA3941 argue that the oversubscription criteria are both "unreasonable" and "unclear", contrary to paragraph 1.8 of the Code. They draw attention to weekly newsletters issued by St Joseph's Catholic Church in April 2022 that included the following wording:

"In discussion with St Joseph's School, we expect that the current waiver on the obligation to attend Mass on a weekly basis may be changed soon, by the Bishop's Conference. This will impact on you, in terms of admission to Reception Class in 2023, if you have a child of that age. Our admissions policy requires that parents sign in, from the January before (so from 2022) to indicate their child's attendance at Mass."

10. These two objectors say that parents reading this statement would infer that the child's attendance at Mass is required for priority for a place at the school. This is, in fact, not the case, other than in exceptional circumstances to which I refer below. In fact, the oversubscription criteria make clear that it is the parent or carer's attendance at Mass that confers priority for a place at the school.

11. The two objectors also cite two other provisions of the Code. They say that requiring "an infant to attend mass at least once a month" represents a condition, contrary to paragraph 1.9 a) of the Code. This sub-paragraph stipulates that admission authorities **must not**,

"place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements."

12. They also argue that a requirement for an infant to attend Mass breaches paragraph 1.9 h) of the Code as it "discriminates against and disadvantages disabled infants and/or infants with special educational needs", which this sub-paragraph prohibits. They say,

"It is far more difficult for a single parent or parents to arrange an infant described as above to attend mass at least once a month. Such children would require a car and so [the requirement] discriminates and places a burden on those who live further away."

13. The other objector (ADA3940) summarises his objection by quoting a statement by quoting an Irish education minister, who said,

"It is unfair that a local child of no religion is passed over in favour of a child of religion, living some distance away, for access to their local school."

The objector says that it is the case that the school offers places to Catholic children living outside its parish ahead of non-Catholic local children who could walk to school. He believes that this is unfair and “is increasing year on year”, resulting in more car journeys, parking problems and increased pollution. He continues,

“In many cases these children from outside the Parish could attend their local Catholic school, often within walking distance of their homes, but instead their parents choose to travel by car to St Joseph’s School even when Catholic primary schools have unfilled places in neighbouring parishes and boroughs.”

The objector concludes by contrasting the school’s arrangements with those for schools for which the LA is the admission authority, which, he says, give priority to those who live nearest to the school.

14. This objector does not cite a specific section of the Code but refers to unfairness. Paragraph 14 of the Code states that in drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair.

## Consideration of Case

### *Cases ADA3939 and ADA3941*

15. I agree with the two objectors that the newsletters issued by St Joseph’s Church could well lead a parent who had not read the admission arrangements to form the impression that a child’s attendance at Mass was necessary in order to be accorded priority for a place at the school. In correspondence, the objector in ADA3939 argued that the words “In discussion with St Joseph’s School” and “Our admissions policy”,

“render... the newsletter article an unlawful extension to the school’s Admissions Policy.”

This objector went on to say that,

“The newsletter therefore imposed an added unlawful condition to the policy to gain entry to the school...The admissions policy becomes opaque and unclear.”

16. In my view, if the newsletter article were to be taken as part of the admission arrangements of the school, the objectors’ arguments would be strong. Other than in exceptional circumstances, the oversubscription criteria do not require the child’s attendance at Mass. If the admission authority were to require such attendance, it would be in breach of paragraph 1.9 a) of the Code as a condition that does not appear in the oversubscription criteria would be placed on the consideration of applications. Similarly, if the newsletter article were to be accepted as part of the admission arrangements, the oversubscription criteria would be unclear, contrary to paragraph 1.8, as parents and carers could not be sure whether it is their or their child’s attendance at Mass that is taken into account.

17. Paragraph 1.50 of the Code requires admission authorities to “publish a copy of the determined arrangements on the school’s website... by 15 March in the determination year.” The arrangements can readily be found on the school’s website. They include the oversubscription criteria, accompanying notes and the Supplementary Information Form (SIF) that needs to be completed by applicants wishing to be considered under the faith-based admission criteria. Other than in exceptional circumstances, there is no reference to a requirement for a child to attend Mass.

18. The purpose of the article published in the St Joseph’s Church newsletter during April 2022 appears to be explain how parents could confirm attendance at Mass following the expected removal by the Bishops of England and Wales of the suspension of the obligation to attend during the Covid-19 pandemic. The article is misleading in several respects. In addition to the reference to the child’s attendance at Mass identified by the objectors, the mention of weekly attendance is potentially confusing (the oversubscription criteria require at least monthly attendance) as is the implication that parents should “sign in” from January 2022. In fact, the waiver on attendance at Mass was removed by the Bishops’ Conference with effect from 5 June 2022.

19. The article does not purport to form part of the determined admission arrangements of the school but the objector in ADA3939 argues that certain phrases imply that it is “an unlawful extension” of the arrangements. I am not inclined to agree. I take the words, “In discussion with St Joseph’s School” simply to indicate that representatives of the church and the school had had conversations about the implications of the removal of the waiver. The reference to “Our admissions policy” is confusing, as it is unclear whether it refers to the policy of the church, that is, the way in which it confirms attendance at Mass, or the school. The school’s admission arrangements make no reference to “signing in”; they simply specify that the requisite attendance should be confirmed by the parish priest on the SIF. It should also be noted that it is attendance at Sunday Mass that confers priority under the oversubscription criteria; the criteria do not give any additional priority if Mass is attended at St Joseph’s Church, rather than any other church. Logic would suggest, therefore, that it is the policy of the church about confirming attendance at Mass that is being referred to. What is also clearly true is that the school’s admission authority – that is, its governing body – is not the body responsible for the newsletter.

20. The newsletter article published in April was unhelpful in several respects but I do not consider that it can be regarded as part of the school’s determined admission arrangements. This conclusion means that I do not find that the oversubscription criteria are unclear (contrary to paragraph 1.8 of the Code) nor does the article provide evidence that the admission authority places any condition on the consideration of applications beyond what is stated in those criteria (contrary to paragraph 1.9 a)). I do not uphold this aspect of the objection.

21. The headteacher of the school commented that the reference to the child’s attendance at Mass was a “typo” that would be corrected. Both objectors take issue with this term and allege particular motives for the wording, which are unsubstantiated and about which I do not comment. They have provided me with copies of the St Joseph’s

Church newsletters of 12 and 19 June 2022, which contain the following article, which I reproduce in full.

“In St Joseph’s Catholic Primary School’s admissions criteria, priority is given to Catholic children whose parent/carer attends Sunday Mass (this can include the Saturday evening vigil Mass) at least once a month. Normally this is expected to have been the case for at least one year prior to the closing date for applications. However, due to COVID, the Bishops of England & Wales suspended the obligation to attend Sunday Mass on 18 March 2020.

On 6 May 2022, the Bishops announced that they were lifting the suspension of the obligation from Pentecost Sunday (i.e. 5 June 2022). This means that for those Catholic parents/carers who are seeking priority of admission to St Joseph’s that reference Mass attendance, they need to attend Mass at least once a month from now through to the closing date for applications (i.e. 15 January 2023). In the parish of St Joseph’s, Epsom, such parents will need to sign in at Mass when they attend Mass between now and 15 January.

Just for further clarification, the school’s admission policy states:

“In most cases, attendance at Mass will be by the parent/carer. However, it is recognised that in certain circumstances, such as those involving bereavement, a separation or where one of the parents is not a Catholic, a child may attend Mass with another family member, such as a grandparent. In such circumstances, governors will accept this attendance as meeting the requirement of the policy as long as the duration and frequency of Mass attendance is met. If such a situation does apply to a family, they will need to ensure that the priest is familiar with their particular circumstances and can verify it, providing an explanation of the Mass attendance on the Supplementary Information Form.”

I consider that this article gives a thorough and entirely accurate account of the school’s admission arrangements.

22. The objector in ADA3939 draws attention to the final part of the revised article, which says that the admission arrangements provide in certain circumstances for the attendance at Mass of the child with a family member other than the parent or carer to be taken into account. The objector says that this provision breaches paragraph 1.9 h) of the Code for the reason given in paragraph 12 above.

23. The provision in question is found in note (k) of the arrangements, which applies to all of the oversubscription criteria that require attendance at Mass. The wording of note (k) is identical to that reproduced in the final paragraph of the article in the church newsletters of 12 and 19 June above. On behalf of the admission authority, a representative of the diocese confirmed that the attendance of the child is required in the circumstances of note (k). He stressed,

“This is only to allow for exceptional cases where there have been particularly difficult family circumstances...If one of these difficult circumstances arises and a family member takes the children to Mass in the interim, this is considered acceptable to governors as an alternative, but only if the parent/carer explains the situation accordingly to the priest (and the priest can explain it to governors on the SIF). This situation is only available as a genuine back-up for parents in such a situation and needs the agreement of the parent/carer and priest. There is no condition involved.”

The wording of note (k) is found in the model admission policies for primary schools provided by the diocese in its guidance on admissions. The governing board of the school has included it verbatim in its arrangements.

24. The objector supports his argument that note (k) breaches paragraph 1.9 h) of the Code by making reference to a previous determination relating to the school, dating from 2014 (ADA2602). At the time, the admission arrangements for the school were different and did give a higher priority for places to children who attended Mass with their family. As a consequence, a baptised Catholic child unable to practise at the church because of a medical or social need would have a lower priority. The adjudicator found that the arrangements might discriminate against or disadvantage children with a disability or special educational needs and so did not comply with the Code at paragraph 1.9 h).

25. The arrangements determined for admission in September 2023 do not require the attendance of the child at Mass except in the circumstances outlined in note (k). Nevertheless, it is in my view conceivable that where a family has, for example, experienced bereavement, a parent or carer may be unable to attend Mass for a period and the child’s disability or special educational needs may make it impossible for them to attend with another family member. In such a case, which I imagine would be extremely rare, on the face of it note (k) would not assist the applicant and there would be a similar disadvantage to that found by the adjudicator in ADA2602 to be a breach of paragraph 1.9 h).

26. I raised this concern with the representative of the diocese. He replied, saying,

“If there was a set of very rare circumstances so that the parent/carer couldn’t attend mass and it was impossible for the child to attend, due to exceptional or medical need, this could be explained and verified by the priest on the SIF.”

It is the case that there is a space on the SIF for the priest to “clarify the Mass attendance” and this is mentioned at the end of note (k). The explanation from the diocese is sufficient to convince me that, in practice, the arrangements do not discriminate against or disadvantage disabled children or those with special educational needs, and that there is no breach of paragraph 1.9 h). It might be helpful if the note were to state that the priest’s clarification could relate to circumstances when a particular need made it impossible for a child to attend Mass, but I do not consider that the absence of such wording is sufficient to render the arrangements unclear. I do not uphold this aspect of the objection.



27. For the avoidance of doubt, I should state that it follows from my findings about the oversubscription criteria that I do not consider them to be unreasonable as the objectors argue.

#### *Case ADA3940*

28. The objector in case ADA3940 is right to point out that the school's oversubscription criteria give a higher priority to Catholic children who do not live in the parish of Epsom than to non-Catholic children who live close to the school. Table One indicates that a large majority of children admitted to the school do live with the parish of Epsom, but the school told me that for admission in 2021 there were 11 children admitted who lived outside the parish and in 2022 there were nine. These children were allocated places under the third and fifth oversubscription criteria (one child originally allocated a place did not take it up). Taking into account the distance from the school of the last child to be allocated a place in both of these years, it is safe to assume that there were a few children in each year (up to three and four, respectively), who lived closer to the school than Catholic children outside the parish of Epsom, and whose parents had made the school their first preference, who were not allocated places. The objector believes that this is unfair; the Code requires that the practices and the criteria used to decide the allocation of school places are fair.

29. The law allows schools designated with a religious character to use faith-based oversubscription criteria and to allocate places by reference to faith where the school is oversubscribed. The school does this, in accordance with guidance provided by its religious authority, the diocese. In doing so, it meets the requirements of paragraphs 1.36 – 1.38 of the Code, which relate to faith-based oversubscription criteria. The diocese states,

“Catholic school governing bodies have an over-riding duty to offer places to Catholics first. This is a requirement of the Trust Deed and therefore a legal requirement on governing bodies.”

30. Of the Catholic children living outside the Parish of Epsom who were admitted to the school in 2021 and 2022, five live in the adjacent parishes of Ashted or Tadworth, neither of which has a Catholic primary school within their boundaries. Other children live in parishes that do have a Catholic primary school but their parents may well have chosen St Joseph's because of family links with the school or the church; it is not possible to know for certain.

31. The fact that children who live further from a school have a higher priority for places than those who live closer does not of itself constitute unfairness. As well as faith-based arrangements, a range of other entirely legitimate oversubscription criteria can have this effect, including, for example, a priority for siblings, the use of feeder schools and even the operation of some catchment areas. Unfairness may occur when the effect of admission arrangements is to cause a particular group of children difficulty in obtaining a place at any local school, not necessarily their nearest school. It has not been suggested by the objector that this is the case and the local authority has not drawn my attention to any such difficulties. There are four other primary schools within a mile of St Joseph's Catholic Primary School.

32. The objector makes reference to the environmental impact and the parking problems he says are caused by the car journeys made to transport children to the school from outside the parish. I cannot comment on these matters as my jurisdiction is limited to considering the compliance of the school's arrangements with the requirements for admissions. Similarly, the fact that priority for places in schools for which the LA is the admission authority is accorded on a different basis is not germane to my consideration of the school's arrangements.

33. I do not consider that the arrangements are unfair and therefore do not uphold this aspect of the objection.

## Summary of Findings

34. A church newsletter contained inaccurate and misleading information about the school's admission arrangements that was subsequently corrected. The newsletter is not part of the arrangements. The oversubscription criteria are reasonable and clear and the admission authority does not impose any condition that does not appear in the arrangements. The faith-based oversubscription criteria follow diocesan guidance. They do not discriminate against or disadvantage disabled children or those with special educational needs. The arrangements do not cause unfairness to any specific group of children. I do not uphold the objections.

## Determination

35. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2023 determined by the governing board for St Joseph's Catholic Primary School, Epsom, Surrey.

Dated: 14 July 2022

Signed:

Schools Adjudicator: Peter Goringe