



Office of
the Schools
Adjudicator

Determination

Case reference: ADA3943

Objector: A parent

Admission authority: The Governing Board of Runnymede St Edward's Roman Catholic Primary School, Liverpool.

Date of decision: 18 October 2022

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2023 determined by the governing board for Runnymede St Edward's Roman Catholic Primary School, Liverpool.

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

By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of the determination unless an alternative timescale is specified by the adjudicator. In this case I determine that in relation to the admission of boys only at Year 3, the definition of looked after children, the priority given to looked after and previously looked after children at Year 3 and the process of random allocation the arrangements must be revised within two months of the date of the determination. I further determine that in relation to the test used for selection the arrangements must be revised by 28 February 2023.

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 (the objector) about the admission arrangements (the arrangements) for Runnymede St Edward's Roman Catholic

Primary School (the school), a voluntary aided Roman Catholic primary school for 3 to 11 year-olds for September 2023. The objection is to the admission of only boys at Year 3 (Y3).

2. The local authority for the area in which the school is located is Liverpool City Council. The local authority is a party to this objection. Other parties to the objection are the school, the Liverpool Archdiocese in its capacity as the faith body for the school (the Archdiocese) and the Catholic Education Service (CES).

Jurisdiction

3. The admission arrangements for the school were determined by the governing board, which is the admission authority for the school, on 24 January 2022. The objector submitted her objection to these determined arrangements on 10 May 2022. The objector has asked to have her identity kept from the other parties and has met the requirement in regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of her name and address to me. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

5. The documents I have considered in reaching my decision include:
- a. a copy of the minutes of the meeting of the governing board at which the arrangements were determined;
 - b. a copy of the determined arrangements, which include a Supplementary Information Form;
 - c. the objector's form of objection dated 10 May 2022;
 - d. the school's response to the objection;
 - e. the local authority's response to the objection;
 - f. the Archdiocese's response to the objection; and
 - g. communications with a representative of the Catholic Education Service.

The Objection

6. The objector cites the following extract from the arrangements; 'The School is mixed and admits boys and girls into Reception (YR). Published Admission Number (PAN) of 60. The school admits a maximum of six baptised Catholic boys aged seven who have had a successful voice trial at the Metropolitan Cathedral of Christ the King and been offered a place in the cathedral choir.' The objector points out that this admission is not open to girls, and she asks, 'Are mixed schools able to do this lawfully?' She references paragraph 6 Appendix 1 of the Code which itself refers to the Equality Act 2010 (the Equality Act).

Other Matters

7. I have looked at the admission arrangements as a whole and identified the following issues which may not comply with the Code;

- a. The identification of Y3 as a year of admission and making it a 'relevant year group' as defined by paragraph 1.2 of the Code which states that 'As part of determining their admission arrangements, all admission authorities must set an admission number for each 'relevant age group'.
- b. The admission of boys who have had a 'voice test' and have been offered a place in the Cathedral choir. I question whether this is the introduction of selection by ability. Only designated grammar schools and those schools which have had pre-existing partial selection prior to 1998 are permitted to select by ability. This is referenced in paragraphs 1.18 and 1.21 of the Code. Paragraph 1.18 says 'Only designated grammar schools are permitted to select their entire intake on the basis of high academic ability. They do not have to fill all of their places if applicants have not reached the required standard.' And paragraph 1.21 says 'Partially selective schools select a proportion of their intake by ability. Where schools can partially select, they must publish the entry requirements for a selective place, and the process for such selection. They must offer places to other children if there are insufficient applicants who have satisfied the published entry requirements for a selective place.' So far as selection by aptitude is concerned, paragraph 1.24 of the Code explains that schools are permitted to select up to ten per cent of their intake on the basis of aptitude in prescribed subjects, one of which is the performing arts, or any one or more of those arts. This includes music. The primary legislation which underpins this provision in the Code is section 102(1)(b) of the Act.
- c. Oversubscription criteria 1 and 5 concern the admission of looked after and previously looked after children but do not include those previously looked after children who appear (to the admission authority) to have been in state care outside of England as required by paragraph 1.7 of the Code. This paragraph states that 'all references to previously looked after children in this Code mean such children who were adopted (or subject to child arrangements orders or special guardianship orders) immediately following having been looked after and those 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.’

- d. The admission arrangements state that, if oversubscribed within oversubscription criteria 2 to 8, places will be allocated via a random allocation process. There is no explanation of this process in the admission arrangements as required by paragraph 1.34 and 1.35 of the Code. Paragraph 1.34 states ‘Admission authorities that decide to use random allocation when schools are oversubscribed must set out clearly how this will operate, ensuring that arrangements are transparent, and that looked after children and previously looked after children are prioritised’. Paragraph 1.35 states ‘The random allocation process must be supervised by someone independent of the school, and a fresh round of random allocation must be used each time a child is to be offered a place from a waiting list.’
- e. Two dates on the Supplementary Information Form (SIF) refer to siblings on roll and parent as a member of staff in September 2022; the admission arrangements state ‘at the time of admission’ which is September 2023. This inconsistency in the dates is contrary to paragraph 14 of the Code which states that ‘In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of schools 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’.

Background

8. The school opened as a voluntary aided Roman Catholic primary school on 1 September 2020. It succeeded The Runnymede St Edward’s Primary School which closed on 31 August 2020, and which was an independent school. The school is proud of its traditions and particularly that it is the Choir School for primary aged members of the choir of the Roman Catholic Cathedral in Liverpool.

9. The school is a mixed, primary school for 3 to 11 year-olds in Liverpool. The arrangements for admission in September 2023 were determined by the governing board on 24 January 2022. At that time, they were not published on the school’s website. The school has explained that this was a technical error on its part and, when it was drawn to the school’s attention, the arrangements were published on the school’s website in accordance with the requirement in paragraph 1.50 of the Code which states ‘Once admission authorities have determined their admission arrangements, they must notify the appropriate bodies and must publish a copy of the determined arrangements on the school’s website or their own website (in the case of a local authority) by 15 March in the determination year and continue displaying them for the whole offer year (the school year in which offers for places are made).’

10. Unusually for a primary school, the school admits pupils to Y3 as well as to Reception (YR). While unusual, this is not unique to the school and is not in itself in contravention of any statutory or Code provision. Taking YR first, the school has a YR PAN of 60 pupils. The school is oversubscribed with 129 first preference applications in 2021 and 127 in 2022.

11. The oversubscription criteria for YR can be summarised as follows;
 1. Baptised Catholic children who are looked after or previously looked after
 2. Baptised Catholic children who have a sibling at the school
 3. Baptised Catholic children who are children of members of staff at the school
 4. Other Baptised Catholic children
 5. Other looked after and previously looked after children
 6. Other children who have a sibling at the school
 7. Other children who are children of members of staff at the school
 8. Other children.

If the PAN is reached and exceeded within any of the oversubscription categories, then a random allocation process is carried out to determine which children will be allocated places.

12. Turning to Y3, after the YR oversubscription criteria described above, there appears another paragraph in the arrangements as follows; 'Year 3. In September 2023 and in subsequent years, Runnymede St Edward's Catholic Primary School will admit a maximum of 6 Baptised Catholic boys aged 7, who have had a successful voice trial at the Metropolitan Cathedral of Christ the King and been offered a place in the cathedral choir.'

Consideration of Case

13. I received responses to the objection from the headteacher at the school, the local authority and the Archdiocese. The local authority chose not to make any comments on the objection, the Archdiocese sent me its most recent admission policy template for the structure of admissions policies and oversubscription criteria (all of which it provides as part of its guidance for schools) and pointed out that the school is not compelled to use the template. The Deputy Director of Schools and colleges for the Archdiocese confirmed that no specific guidance has been sought from, or provided to, the school with reference to its arrangements for 2023. He concluded his response with 'The Archdiocese recognises the historic and distinctive role that Runnymede Catholic Primary School plays in providing Catholic chorister education for boys and girls in Liverpool.'

14. The school responded as follows;

'When Runnymede became a Voluntary Aided school, it was accepted and understood by all parties involved (school, Archdiocese of Liverpool, Liverpool LA, Department for Education) that the school was primarily the choir school to Liverpool Metropolitan Cathedral and, as such, has the education of choristers as a primary aim of its work.'

The Cathedral recruits boy choristers from age 7/8 and girl choristers from age 10/11. This is because the onset of puberty will curtail a boy's singing as a treble by the age of 12/13, whereas girls will be able to sing until aged 15/16. Thus, a girl's chorister ship will last approx. 4-5 years, and so will a boy's (age 7/8-13/12 approx.).

To achieve an equality balance within the cathedral choir, whilst also achieving the necessary choral voice arrangement, it is necessary to admit boys at Year 3 age because boys are significantly underrepresented within the choir beyond a certain age.

Changing admissions will dilute the gender balance in the choir and threaten the choral voice arrangement.

The Cathedral choristers offer a cultural and spiritual enhancement to the life of the local community which is an essential part of the Cathedral's service toward the people of Liverpool. Hardly any choir schools exist within the state sector, and we have regarded it as a matter of considerable pride that Liverpool is able to offer a chorister experience to any boy or girl (at slightly different ages due to the nature of boys' and girls' voices) without reference to their parents' ability to pay school fees.

As the choir school we have not wanted to restrict access to our oversubscribed school for local children, so have determined to recruit up to 6 additional children to serve as choristers on top of the normal class numbers, so their recruitment is to nobody's detriment when compared to admission numbers in any normal primary school.

We emphasise that the same chorister opportunity, on the same terms, with the same duties and rewards and status, is equally open to both boys and girls, but at slightly different ages due to facts of nature. The arrangement over choristers was part of the city-wide consultation on our admissions which preceded our becoming a Voluntary Aided school in 2020.'

15. The school is understandably and justifiably proud of its traditions as a choir school, but it is required to comply with the law concerning admissions as set out in relevant legislation – including equalities legislation - and the Code. Whilst the explanation of why boys and girls are admitted at different ages due to the maturity of their voices is understandable, the Code requires every maintained school to comply with its requirements and each individual admission authority, in this case the governing board of the school, to make sure that the arrangements comply with the Code. Equalities legislation is also directly binding on the governing board.

16. Paragraph 1.8 of the Code makes clear that “oversubscription criteria **must**... comply with all relevant legislation, including equalities legislation”. The relevant provisions of the Equality Act are summarised in Appendix 1 of the Code in very clear and plain terms. Paragraph 3 of Appendix 1 states that: “An admission authority **must not** discriminate on the grounds of disability, gender reassignment; pregnancy and maternity; race; religion or belief; sex or sexual orientation, against a person in the arrangements and decisions it makes as to who is offered admission as a pupil”. Paragraph 6, so far as is relevant here, explains that single-sex schools are lawfully permitted by means of specific primary legislation provisions to discriminate directly on the grounds of sex in their admission arrangements. The effect of this is that a boys school need not admit girls and a girls school

need not admit boys. This school, however, is not a single-sex school; it is a mixed school and it cannot therefore discriminate against girls by offering the chance for admission at Y3 only to boys. I pause here to emphasise that this is a straightforward matter of what the law requires; it is not a matter of my judgement or an issue where I have any discretion. It follows from this that, while I understand the school's arguments about the different ages at which boys' and girls' voices may develop, those arguments do not and cannot render lawful a set of admission arrangements which are directly discriminatory against girls and for which there is no relevant exemption in equalities legislation and are therefore unlawful.

17. I therefore uphold the objection. The arrangements do not conform to the Equality Act or the Code because they discriminate against girls by restricting admissions at Y3 to boys alone.

Other Matters

18. When I considered the admission arrangements as a whole, I identified a number of issues which I thought may not comply with the Code and I shared these concerns with the parties. Neither the Archdiocese nor the local authority chose to comment on these issues but the headteacher responded on behalf of the school;

19. I deal first with the identification of Y3 as a year of admission and making it a 'relevant year group' as defined by paragraph 1.2 of the Code. The school says that this is the 'choristers' clause' and has been included in the arrangements for the sake of transparency.

20. It is for the governing board to determine into which year or year groups the school will admit pupils (other than as in-year admissions). There is no reason why a school should not have more than one relevant year group and no reason why a school should not each year admit pupils into Y3. Doing so, however, renders Y3 a 'relevant age group' and means that the arrangements for these admissions must comply with the law and the Code, including the setting of a PAN and oversubscription criteria. The PAN must relate (as must all PANs) only to children who are to be admitted into the school for the first time and not, in this case, transferring from year 2 and the oversubscription criteria must conform with the Code.

21. I turn next to the admission of boys who have had a 'voice test' and have been offered a place in the Cathedral choir. I question whether this is the introduction of selection by ability. Only designated grammar schools and those schools who have had pre-existing partially selection prior to 1998 are permitted to select by ability. This is referenced in paragraphs 1.18 and 1.21 of the Code.

22. The school assures me that the choristers are admitted by musical aptitude and not by ability. The school has not, however, provided me with details of the test used. Nor are there any details of the test used on its website or currently on the website of the Cathedral. However, information from the website of the secondary school which educates cathedral choristers reports that 'Choristers of the Metropolitan Cathedral are selected on the basis of their musical aptitude as displayed during a voice trial. In the voice trial, candidates are

marked on their musical aptitude in rhythm, pitch and vocal/instrumental ability. Trials are assessed by members of the Cathedral Music Department, and the process is moderated by an external assessor for the sake of independence.’ I am unconvinced that a test which states that it includes ‘vocal/instrumental ability’ can be considered to be purely and solely a test of aptitude in music. As the school is a new school it cannot have historically pre-existing partial selection by ability. To the extent that the test for music is a test of musical ability rather than musical aptitude it is contrary to the Act, and it does not conform to the Code. The Code also requires at paragraph 1.17 that the entry requirements for a selective place and the process for such selection be published in the admission arrangements. The school’s arrangements do not currently meet this requirement. As a maintained school which does not have pre-existing partial selection by ability, this school cannot continue to select by musical ability. I note finally in this context that it is undoubtedly possible to select for musical aptitude and many schools do so.

23. The school is also subject to other requirements relating to those admitted at Y3. It must at any normal year of admission, Y3 as at YR, give the highest priority to all those looked after and previously looked after children who are Catholic. It can then give priority to Catholic children who are not looked after and then to other looked after and previously looked after children ahead of other children. The school’s arrangements are not in conformity with the Act or the Code in this respect for admission to Y3. Further, the arrangements state that only Catholic boys can join at Y3. Leaving aside the fact that this is unlawful discrimination on the grounds of sex as explained above, no maintained school can keep places empty if there are children who would like them. It might be unlikely that there would be fewer baptised Catholics who would like to join the school at Y3. However, this is a possibility and if there were, say only four such applicants, but other non-Catholic applicants, then as the school is a maintained school the latter would need to be offered the two remaining places.

24. Oversubscription criteria 1 and 5 concern the admission of looked after and previously looked after children but do not include those previously looked after children who appear (to the admission authority) to have been in state care outside of England as required by paragraph 1.7 of the Code. The school has indicated that this amendment will be made to the admission arrangements on the website.

25. The admission arrangements state that, if oversubscribed within oversubscription criteria 2 to 8, places will be allocated via a random allocation process. There is no explanation of this process in the admission arrangements as required by paragraph 1.34 and 1.35 of the Code. Again, the school has indicated that it will amend the arrangements to accommodate this requirement.

26. Two dates on the SIF refer to siblings on roll and parent as a member of staff in September 2022; the admission arrangements state ‘at the time of admission’ which is September 2023. This discrepancy in dates will be very confusing to parents and is contrary to paragraph 14 of the Code which states that ‘In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of schools 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'. The school described these as 'typos' and has now updated the dates on the SIF for September 2023. As this has been done, no further changes are needed in this regard.

Summary of Findings and date for changes to be made

27. I understand that the school is proud of its tradition as the primary school for cathedral choristers and that the choir is a very important part of the school. I acknowledge that the school is also very proud that the choir school is within the state sector and is one of a very small number of such schools which is able to offer a chorister experience for children without reference to their parents' ability to pay schools fees.

28. As matters currently stand the arrangements are not compliant with the Code or the Act or the Equality Act. The restriction of admission at Y3 to boys only is unlawful under the Equality Act and therefore not permitted. I uphold the objection and the arrangements require amendment. I have also explained how the arrangements breach requirements relating to selection and in other ways.

29. Paragraph 3.1 of the Code says, "The admission authority **must**, where necessary, revise their arrangements to give effect to the Schools Adjudicator's decision within two months of the decision (or by 28 February following the decision, whichever is sooner), unless an alternative timescale is specified by the Schools Adjudicator." In this case I determine that in relation to the admission of boys only at Y3, the definition of looked after children, the priority given to looked after and previously looked after children at Y3 and the process of random allocation the arrangements must be revised within two months of the date of the determination. This will address the concern raised by the objector, namely that the restriction of places at Y3 to boys which breaches equalities legislation and cannot be allowed to continue. In order to allow the school to ensure that the test it uses is a test of musical aptitude and not ability, I determine that in relation to the test used for selection, the arrangements must be revised by 28 February 2023. This should avoid causing more disruption than necessary to the choir and to parents' expectations for their children.

Determination

30. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2023 determined by the governing board for Runnymede St Edward's Roman Catholic Primary School, Liverpool.

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

32. 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 determine that in relation

to the admission of boys only at Year 3, the definition of looked after children, the priority given to looked after and previously looked after children at Year 3 and the process of random allocation the arrangements must be revised within two months of the date of the determination. I further determine that in relation to the test used for selection the arrangements must be revised by 28 February 2023.

Dated: 18 October 2022

Signed:

Schools Adjudicator: Ann Talboys