



Determination

Case reference:	REF4101
Referrer:	A parent
Admission authority:	The governing board for Waddesdon Church of England School, Aylesbury, Buckinghamshire
Date of decision:	21 February 2023

Determination

I have considered the admission arrangements for September 2023 for Waddesdon Church of England School, Aylesbury, Buckinghamshire in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the addition of the word ‘compulsorily’ being added before the word ‘closed’ when making reference to exempt periods for the school’s church attendance test, the arrangements do not conform with the requirements.

I have also found that 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 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 the arrangements must be revised by 24 March 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 about the admission arrangements (the arrangements) for Waddesdon Church of England School, Aylesbury, Buckinghamshire (the school), for September 2023. The date of the objection was 5 December 2022.

2. The objection was submitted after 15 May 2022 (which is the final date for submissions for objections to arrangements for 2023, as set out in paragraph 15 c) of the School Admissions Code (“the Code”). However, having had sight of the school’s arrangements, it appeared to me that the matter raised did not conform with the requirements relating to admissions. I have therefore accordingly considered the arrangements for the school, as determined by the governing board, in accordance with my jurisdiction under section 88I(5) of the Act. As this is being considered under section 88I of the Act, the objection is “the referral” and the parent making the objection is referred to as “the referrer”.
3. The referral raises an objection to an aspect of the faith-based oversubscription criteria.

Jurisdiction

4. The school is governed as a single academy trust. The terms of the academy agreement between the academy trust (the governing board / trust) and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing body, which is the admission authority for the school, on 1 December 2021 on that basis.
5. I have used my power under section 88I of the Act to consider the arrangements as a whole, because they have come to my attention by way of the referral, to determine whether they conform to the requirements relating to admissions and if not in what ways they do not so conform. When I considered the arrangements, I identified some matters, including but not limited to the matter raised by the referrer, which appeared not to meet the requirements. I set out my findings in regard to those matters not raised by the referrer in the sections in this determination which are entitled ‘Other Matters’.
6. The parties to the case are the referrer, the admission authority (that is the governing board of the school / trust), Buckinghamshire Council (the local authority (LA)), and the Diocese of Oxford (the diocese), which is the religious authority for the school.
7. Other matters raised by the referrer (related to the conduct of the consultation and to previous years’ arrangements) are not within my jurisdiction. However, I will make reference to previous years when providing context to the matter that is within my jurisdiction.

Procedure

8. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
9. The documents I have considered in reaching my decision include:

- a) the referrer's form of objection dated 5 December 2022 and subsequent correspondence;
- b) copies of the minutes of the meeting of the governing board of the school at which the arrangements were determined;
- c) a copy of the determined arrangements;
- d) the response from the admission authority on the matters raised, along with supporting documents and subsequent correspondence;
- e) the response from the diocese on the matters raised and a copy of its admission guidance for schools;
- f) the response from the LA;
- g) maps of the area, including those that identify relevant schools; and
- h) information available on the websites of the school, LA, the Department for Education (DfE), diocese and Ofsted.

The Referral

10. As a result of the COVID-19 pandemic, the school added an exemption to its arrangements to provide clarity for parents in respect of how the requirements of faith-based admissions criteria can be met when places of worship had been closed. The referral details an objection to the insertion of the word 'compulsorily' ahead of the word 'closed' when the arrangements make reference to exempt periods for its church attendance test.

11. The referrer set out their objection to the arrangements in detail, as follows:

"[...] the School's admissions rules were altered to ensure the word 'compulsorily' was added before the word 'closed' when making reference to exempt periods for their church attendance test.

This has the effect of excluding parents with children in parishes where churches were 'voluntarily' closed during the pandemic for lengthy periods. For example, our local parish council decided to keep the church closed until May 2021, even though the period of compulsory closure ended in mid-2020.

As a result, no family at all can pass Waddesdon School's church attendance test in parishes such as ours. This is because our church was closed for months on end but it was not 'compulsorily closed' for most of this time."

12. The referrer did not indicate the parts of the Code that he believes the arrangements contravene in respect of the matter he raises. I have determined that the following parts of the Code are applicable in this case:

- Paragraph 14: “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 1.37 (part): “Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied. [...]”
- Paragraph 1.38 (part): “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, to the extent that the guidance complies with the mandatory provisions and guidelines of this Code. [...]”
- Paragraph 1.8 (part): “Oversubscription criteria **must** be reasonable, [and] clear [...]”

Other Matters

13. The aspects of the arrangements which I identified as not or possibly not conforming with the requirements relating to admissions have been identified in detail towards the end of this determination. Broadly, the issues I have raised with the school relate to: the inaccurate use of the term Published Admission Number (PAN); where reasons are not clear to parents in relation to a child’s existing school having to sign a transfer form; not providing information on the independent panel to which an application made under ‘exceptional circumstances’ might be referred; issues with the way that the school’s waiting list is maintained is explained; and an issue of the consistency between the arrangements and the supplementary information form (SIF).

Background

14. The school is a non-selective, co-educational academy for 11 to 18 year olds in Waddesdon, Aylesbury, Buckinghamshire. The DfE’s ‘Get Information About School’s (GIAS) website records that the number of children on roll is 1014 in a school with a capacity for 1000 children. It is a school with a Church of England religious character. Ofsted judged the school to be ‘outstanding’ in 2021.

15. According to GIAS, there is one other school admitting secondary-aged children within three miles of the school’s location which also has a Church of England religious character (The Aylesbury Vale Academy, which is an all through school). There are five schools admitting primary-aged children within three miles of the school, three of which have a Church of England religious character (one of which is The Aylesbury Vale Academy).

16. The arrangements were determined by the governing board on 1 December 2021. The oversubscription criteria can be summarised as follows:

1. Looked after children and previously looked after children.
2. Children who are resident in the catchment area (for which applicants must complete SIF A).
3. Children with a strong connection to the school:
 - a. Sibling(s) already at the school in Years 7 to 10 at the time of application.
 - b. A parent who has been employed at the school for a minimum of three years and who is expected to be employed at the date of admission.
4. Children where a parent has a strong commitment to the Church of England (for which applicants must complete SIF B), in the following priority order:
 - a. Those with a sibling already in roll in Years 11 and 12 at the time of application and who is expected to be on roll at the date of admission of the younger child.
 - b. Those without a sibling at the school.
5. Children where a parent has a strong church commitment to other churches which are members of Churches Together in England or the Evangelical Alliance based in the United Kingdom (for which applicants must complete SIF B), in the following priority order:
 - a. Those with a sibling already on roll in Years 11 and 12 at the time of application and who is expected to be on roll at the date of admission of the younger child.
 - b. Those without a sibling at the school.
6. Children with exceptional circumstances.
7. All other applications.

A 'strong church commitment' is defined as: "a parent has attended church services at least twice a month for the 3 years preceding the date of application".

In the event of a tie-break situation under any of the criteria, the school will use the shortest straight-line distance (from the child's normal address to the nearest open school gate available for children to use) to determine admission. The school says that: "In the event of a tie in distance, both children will be admitted but this will not constitute an increase in the admission number and the first vacancy created will not be filled."

Consideration of Case

17. Prior to considering the matter the referrer has objected to, I pause here to provide some essential, albeit brief, context. The COVID-19 pandemic resulted in the unprecedented introduction, in March 2020, of widespread restrictions on movement across the UK as part of a national and international effort to limit the spread of the disease. Over the course of the following year and a half, the Government reimposed and lifted restrictions in response to the progress of the pandemic and its response resulting in three ‘national lockdowns’ (where the strictest measures were in force) and outside of those, minimal and tiered systems were implemented in different parts of the country. National and locally enforced lockdown measures led to the closure of any places where people gather, such as schools, business and places of worship.

18. As the referral specifically concerns the faith-based criteria in which evidence of attendance at church is required to be prioritised for admission, I will now focus on how these periods of national restriction affected places of worship. The restrictions led to places of worship being compulsorily closed for public worship during national lockdowns and when other periods of restriction required it. At other times, places of worship remained closed voluntarily for local reasons. The closures meant that admission authorities that employed faith-based oversubscription criteria needed to vary arrangements to take account of parents being unable to meet the requirement for regular attendance during the periods in which places of worship were temporarily closed.

19. In 2020, The Church of England Education Office (‘ the CEEO’), after discussion with the Chief Adjudicator and Regional Schools Commissioners (RSC), provided an agreed, streamlined process to enable schools to seek an in-year variation to their admission arrangements, and provided a ‘model clause’ for that purpose. The model clause was as follows:

“In the event that during the period specified for attendance at worship the church [or, in relation to those of other faiths, relevant place of worship] has been closed for public worship and has not provided alternative premises for that worship, the requirements of these admissions arrangements in relation to attendance will only apply to the period when the church [or in relation to those of other faiths, relevant place of worship] or alternative premises have been available for public worship.”

20. The school told me that it submitted its application to vary its arrangements in line with the model clause via the diocese (which co-ordinated the applications) on 31 July 2020. On 9 October 2020, the Education Skills and Funding Agency (ESFA) (as was then responsible for these applications for academies) approved the variation of the school’s 2021 arrangements to include the relevant paragraphs of the model clause. Additionally, the school told me that same wording was used when determining its 2022 arrangements though, at some point, the word ‘compulsorily’ was added to the 2022 arrangements. The school explained that this had been an administrative error and that: “It is [...] believed that no places were prioritised in September 2022 on the basis of the word ‘compulsorily’ being part of the arrangements.”

21. In the determination year for the 2023 arrangements, the school held a consultation which, amongst other things, included the proposal to amend the wording that had previously been inserted so that it diverged from the model clause and would indeed read:

“In the event that during the period specified for attendance at worship the church has been **compulsorily** closed for public worship and has not provided alternative premises for that worship, the requirements of these admissions arrangements in relation to attendance will only apply to the period when the church or alternative premises have been available for public worship.” [The emboldened word is my emphasis].

22. The referrer raises the concern that the inclusion of the word ‘compulsorily’ in the school’s arrangements for 2023, will have the effect of excluding applications from parents with children in parishes where churches were ‘voluntarily’ closed during the COVID-19 pandemic for lengthy periods.

23. Upon my request, the school provided the following rationale for the insertion of the word ‘compulsorily’:

“The model clause provided to seek an in-year variation to admissions arrangements was drafted in mid-2020 when the country was in the midst of the Covid-19 pandemic. The clause was brought in solely to address the situation brought about by the pandemic: there was no intent that it was to cover any other closure of churches. By the time of determination of the 2023/24 policy, lockdowns were in the past and the country was ‘living with Covid’. The school has dealt with past applications where applicants have sought to say that they could not attend church because their place of worship was ‘closed’. It was therefore felt that the model wording had been rendered ambiguous through the passage of time. The insertion of the word ‘compulsorily’ was intended to clarify that the variation applied only in the event of a church closure because of the Covid pandemic.”

24. In respect of the referral, the LA told me that: “Prior to this referral we were not aware that some churches remained closed ‘voluntarily’ after they could have returned to in-person worship so it was not immediately evident to us that there is an issue with the inclusion of the word ‘compulsory’”. The diocese said that its guidance to schools recommends that: “Where schools have sought variations to their admission arrangements for 2020/21 or 2021/22 to cover the situation where the churches are closed because of the pandemic, these changes will continue to form part of the arrangements going forward, including those for 2022/23. To remove them, and we recommend that you retain them for the time being, you would need to seek a variation. In respect of 2023/24 arrangements, to remove the changes, you would need to go out to public consultation.” The diocese said that its guidance does not cover the changes made to include the word ‘compulsorily’ in relation to church closure.

25. The school argues that it seeks to ensure that the part of the arrangements dealing with the closure of churches would be better understood by parents through the addition of

the word 'compulsorily'. However, in my view, this change has had the effect of making this part of the arrangements unclear and could cause unintended disadvantage to some applicants under the faith-based criteria. I do not consider that to be a reasonable decision; that is, one which a reasonable admission authority acting rationally and taking into account all relevant factors and no irrelevant factors would choose. I am of the view, therefore, that the addition of the word 'compulsorily' in the arrangements is in contravention of paragraphs 14, 1.8 and 1.37 of the Code, for the following reasons:

- 25.1 Although explained by the school above, the word 'compulsorily' is not defined in the arrangements. When I asked how the school defined the word in this context, it unhelpfully referred me to a dictionary definition. However, as is apparent from the rationale provided, a dictionary definition is not the meaning the admission authority seeks to convey to parents in this context.
- 25.2 The school stated that: "The clause was brought in solely to address the situation brought about by the pandemic: there was no intent that it was to cover any other closure of churches." Communicating information to parents about how the school will treat applications citing other reasons for the closure of places of worship in a clause which the school concedes is only there to serve the purpose of providing information about closures for reasons of COVID-19 restrictions, is not clear.
- 25.3 The school reports that it has had applications from parents on the basis that they have been unable to attend places of worship because they have been closed for reasons other than COVID-19 restrictions. The change to the arrangements potentially makes it less clear for parents as to how the school's faith-based criteria will be applied in situations where places of public worship have been closed, both for other reasons and when closed 'voluntarily' during the COVID-19 pandemic.
- 25.4 As the arrangements do not clearly state that the paragraph concerning the closure of places of worship (and which includes the word 'compulsorily') is only referring to closures during the COVID-19 pandemic, the act of adding the word 'compulsorily' would appear to have the effect of including applications from any compulsory closures of places of worship and not just because of the pandemic restrictions. This appears to be the opposite of what the school intended to achieve and is therefore unclear.

26. I do not believe the school to have intentionally set out to make a change which has had these effects. The decision to include the word 'compulsorily' in the arrangements is likely to be best described as 'ill thought through'. However, this addition has had the opposite effect to that which is intended, making this part of the arrangements unclear and is likely to have the effect of inadvertently excluding some faith-based applicants. This renders the decision irrational and, in my view, unreasonable. Therefore, I find that the arrangements do not conform with those paragraphs of the Code previously cited.

Other Matters

27. Having considered the arrangements as a whole it appeared to me that the following matters do not conform with requirements of the Code and so I brought them to the attention of the local governing board. These matters are all in respect of the section of the arrangements entitled 'PART A – ADMISSION TO ALL YEAR GROUPS EXCEPT THE SIXTH FORM' (paragraphs of the Code are indicated where relevant):

28. Section 3.2 (entitled 'IN-YEAR APPLICATIONS FOR ENTRY INTO YEARS 7 - 11') of the school's arrangements state that when submitting an in-year application, the relevant form "must be signed by the child's existing school". In respect of this:

28.1 The purpose of an applicant's previous school having to sign the form is not clear.

28.2 It is not clear how applications from families that have moved from out of area / overseas and where a child has not been in education, such as having been previously home educated (this list is not exhaustive) and who are unlikely to be able to get the form signed by a previous school will be treated. The arrangements do not appear to be clear for those parents.

29. The last sentence under Section 5.6 ('EXCEPTIONAL CIRCUMSTANCES') states that: "Prior to the offer of a place, the school may refer the application to an independent panel to determine if the criterion is met." There is no information on the 'independent panel' and how the school would ensure the members of that panel would be qualified to make decisions on admission in the circumstances likely to arise under oversubscription criterion 6. It is also not clear what role the panel will play in the context of the trust being the admission authority.

30. In respect of Section 5.7 ('WAITING LISTS'):

30.1 The first sentence reads: "A waiting list is maintained in respect of each year group which is over the PAN."

As set out in paragraph 1.2 of the Code, the PAN only relates to the 'relevant age group'. Footnote 11 of the Code defines 'relevant age group' as: "[...] the age group at which pupils are or will normally be admitted to the school e.g. reception, year 7 and year 12 where the school admits external applicants to the sixth form". Other year groups do not have a PAN and so the statement opening the waiting list section of the arrangements is inaccurate. The only test outside of the 'normal year(s) of entry' is one where admission would prejudice the efficient provision of education or use of resources (as set out in paragraph 2.28 of the Code).

30.2 Paragraph 2.15 of the Code states that "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" (underlining has been added by me). The waiting list section of the arrangements does not include the required information.

30.3 The second sentence of this section of the arrangements states:
"Unsuccessful applicants will be placed on a waiting list ONLY if a written request to join the waiting list is received." Parents are not expected to 'request' to be placed on a school's waiting list. However, it is permissible for the school to ask parents to confirm if they wish their child(ren) to stay on the waiting list.

31. As in Section 5.7, Section 5.8 ('FAIR ACCESS PROTOCOL') also inaccurately uses the term 'PAN' in respect of every year group.

32. The word 'compulsorily' does not appear on SIF B (Church Commitment) in respect of explaining the situation regarding the closure of churches (under the 'NOTE TO CLERGY' section), which means that it does not currently match the arrangements and could potentially be unclear for parents and the clergy completing the form. (However, the school should bear in mind that, given my findings in respect of the main referral, it should seek only to ensure that the SIF reflects that which is expected to be in the arrangements).

33. I note here that the LA and diocese have provided their comments on the matters I raised with the school and they have both expressed agreement that the areas need addressing. The school has told me that it intends to address these matters and has provided revised sections of its arrangements. I have not commented on those revisions as they do not yet form part of any determined arrangements and are therefore not within my jurisdiction. However, the school's willingness to take the steps necessary to adhere to the Code is welcomed.

Summary of Findings

34. I have found that the addition of the word 'compulsorily' before the word 'closed' when making reference to exempt periods for the school's church attendance test renders that part of the arrangements unclear and could cause the inadvertent exclusion of some faith applicants (where places of worship have been closed voluntarily during the COVID-19 pandemic or closed for reasons other than the pandemic). I therefore view this as unreasonable and find that the arrangements do not comply with paragraphs 14, 1.8 and 1.37 of the Code.

35. This determination will be published as National Offer Day approaches. In my view, expecting the school to change its arrangements at such a late stage in the admissions process for 2023 would in all likelihood cause chaos and would certainly substantially inconvenience the hundreds of families who will have already applied for any of the places available for their children by that time. Therefore, I do not propose to require the school to change its arrangements for admission into the school for 2023. However, the deadline set for changing the arrangements will ensure that any late applications or any waiting lists will

deal with admissions on the basis of the arrangements as they will be after the deadline date. Given that the end of the last national lockdown was in March 2021 and the current determination year is for the arrangements for admission in September 2024, it is also the case that arrangements are increasingly less likely to need to take account of periods of COVID-19 closure of places of worship in any event.

36. I have found a number of other issues with the school's arrangements which I have listed in detail in the 'Other Matters' section. The school has said it will address them and it must do so in the timescale set out in this determination.

Determination

37. I have considered the admission arrangements for September 2023 for Waddesdon Church of England School, Aylesbury, Buckinghamshire in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that in relation to the addition of the word 'compulsorily' being added before the word 'closed' when making reference to exempt periods for the school's church attendance test, the arrangements do not conform with the requirements.

38. I have also found that there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

39. 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 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 the arrangements must be revised by 24 March 2023.

Dated: 21 February 2023

Signed:

Schools Adjudicator: Dr Robert Cawley