



## Determination

<b>Case reference:</b>	<b>REF4144</b>
<b>Referrer:</b>	<b>Office of the School Adjudicator (OSA)</b>
<b>Admission authority:</b>	<b>The governing board of St Bernard's Catholic High School on behalf of St Francis Catholic Multi-academy Trust for St Bernard's Catholic High School.</b>
<b>Date of decision:</b>	<b>4 July 2023</b>

## Determination

I have considered the admission arrangements for September 2024 for St Bernard's Catholic High School in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that elements of the admission arrangements as outlined in the determination do not conform with the requirements.

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.

## The referral

1. Following a meeting and written communication with Rotherham Secondary Headteachers in July 2022 the OSA reviewed the published admission arrangements for St Bernard's Catholic High School in April 2023. As the arrangements had been brought to the attention of the OSA I decided to use the power conferred under section 88I(5) of the School Standards and Framework Act 1998, (the Act). This referral concerns the admission arrangements (the arrangements) for St Bernard's Catholic High School (the school), for September 2024.
2. The referral relates to the determination, clarity, accuracy, conformity to the School Admissions Code (the Code), responsibility for and publication of the school's admission arrangements.

3. The parties to the case are the governing board of the school, St Francis Multi-academy Trust (the Trust), Rotherham Metropolitan Borough Council and the Catholic Diocese of Hallam.

## Jurisdiction

4. The terms of the Academy agreement between the academy trust and the Secretary of State for Education require that the admission arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined under section 88C of the Act by the school's governing board, which is the admission authority for the school, on 4 October 2022 on that basis. When they were brought to my attention it appeared that the arrangements did not, or might not, conform with the requirements for admission arrangements. I therefore decided to use my power under section 88I(5) of the Act to consider them as a whole. I pause here to note that the school and the local authority refer frequently to the admissions policy. I have used the term admission arrangements, which is that used in the Code and the primary and secondary legislation, unless I am quoting from what the local authority or school has said, in which case I follow the term they have used.

## Procedure

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

6. 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 acting principal's comments on the matters raised, supporting documents and subsequent correspondence;
- d) the Diocese of Hallam's comments on the matters raised;
- e) comments from the local authority on the matters raised, supporting documents and subsequent correspondence; and
- f) the local authority's composite prospectus for parents seeking admission to schools in the area in September 2023.

## The Referral

7. The referral relates to;

- 1) The admission arrangements in full must be determined by the admission authority (in this case the Saint Bernard's Catholic High School Governing Board) annually (paragraphs 15b and 1.49 of the Code). The minutes of the meeting held on 23 November 2022 indicate that only the published admission number was agreed.
- 2) Children in receipt of an Education Health Care Plan must be admitted to the school if the school is named in the EHCP (Paragraph 1.6 of the Code). The arrangements do not state that the school must be named in the EHCP.
- 3) On the school's website under the admission section, published admission numbers are used in years 8,9,10 and 11. The PAN is only applied to the relevant years of entry – in this case year 7. (Paragraph 1.2 of the Code)
- 4) Paragraph 1.50 of the Code explains that the admission arrangements for the specific year must be published the school's website. In the case of the school website, when the referral was made there were no published arrangements for admission in 2024.

## Background

8. In June 2022 the OSA received an objection to the admission arrangements for a school in the Rotherham Metropolitan Borough Council. The objection was later withdrawn but not before the OSA had viewed the admission arrangements for that school and others in the area. The school and, as it turned out, most of the other academy schools in the local authority were under the impression that the local authority co-ordinated admission process extended to and in fact was the determined arrangements for the schools. The OSA met the headteachers and it was confirmed that they thought that the local authority was the admission authority for the schools even though all sixteen of the secondary schools in the local authority's area are, in fact, academies. This means that the admission authorities for these academy schools are either the academy trust (whether a single academy trust or a multi academy trust) or the governing board of the school if so delegated by the trust. As a result of this fundamental misunderstanding, many of the schools had no determined arrangements.

9. Following correspondence with the admissions lead in the local authority and the representative of the secondary headteachers group, admission arrangements for each individual school were formulated.

10. A review of the academies' arrangements was undertaken by the OSA as a follow up to the actions in July 2022 and the arrangements for some of the schools were found to be non-compliant with the Code and the law. This case concerns one of those schools.

## Consideration of Case

11. I shared my concerns about the arrangements with the school, the Catholic Diocese of Hallam and the local authority. The Diocese of Hallam agreed with the issues raised and

provided a copy of the guidance provided by the Diocese to the school. The local authority replied to say that it agreed with points 1 to 4 (above) raised by the adjudicator. The local authority also said that although the arrangements were not on the school's website at the time, the school had provided a copy of the policy to the local authority and it was displayed on the local authority's website.

12. The Head of Service Access to Education went on to say that 'Rotherham Metropolitan Borough Council has a sound working relationship with Academies within the borough and is committed to ensuring the compliance of the Local Authority and all admission authorities moving forward. A new Head of Service has recently been appointed and has reviewed current arrangements in respect of admissions. A plan to enhance the service is in place:

- Communications with all own admission authorities in June 2023 to reinforce their responsibilities in respect of admissions;
- Webinar for all own admission authorities in July 2023 to follow this up;
- Externally commissioned training in September 2023 for Local Authority and academy admissions leads to support compliance of future arrangements;
- Checklist for colleagues in the Local Authority admissions team has been created to enable them to be assured of compliance in respect of content of policies, consultation and determination, and refer on to the Adjudicator any academies believed to be non-compliant.

The Council will support necessary changes following any determination issued by the Adjudicator.'

13. The acting principal replied on behalf of the school and from her response it is clear that she remains under the impression that the process of administering the admission arrangements which is undertaken by the local authority (the co-ordinated scheme) is synonymous with the admission arrangements and this is not the case. When asked about the annual determination of the arrangements by the Governing Board she responds 'The Governors' Raising Achievement Committee considers the 'consultation on admission arrangements' for each admission year. This Committee Meeting takes place in October and discussed again at the Full Governing Body Meeting in November each year. Governors receive a report of the number of students who have applied, with the breakdown of the category they fall under.' She goes on to explain why the arrangements were not published on the school's website and says 'this is an oversight as we were awaiting the consultation period to have ended.'

14. When this committee considered the consultation on admission arrangements in autumn 2022 these would be for the 2024 arrangements. Any consultation about admission arrangements, either because the governing board are seeking a change or because there has not been a consultation for seven years, should be prompted by the governing board and not the local authority. The local authority may support the governing board in the process of consultation but the responsibility for the content of the consultation and the decision to hold a consultation, examine its outcomes and make decisions about the admission arrangements rests with the governing board. This consultation needs to happen

before the governing board determines the admission arrangements for the following year. Any information about applications, numbers, or oversubscription criteria in the autumn term will be a result of the local authority administering the arrangements determined by the governing board the previous year. To be clear - the determination of arrangements for 2023 entry should have been consulted on and determined by the governing board by 28 February 2022 and published on the school's website by 15 March 2022. Arrangements for admission in 2024 should have been consulted on and determined by 28 February 2023 and published on the school's website by 15 March 2023. It is clear that there remains some confusion about the relative roles of the local authority and the governing board as the school's admission authority.

15. The key issues to be addressed are;

- 1) The admission arrangements in full must be determined by the admission authority (in this case the St Bernard's Catholic High School governing board) annually. Paragraph 15b of the Code states that 'Admission authorities **must** set ('determine') admission arrangements annually. Where changes are proposed to admission arrangements, the admission authority **must** first publicly consult on those arrangements. If no changes are made to admission arrangements, they **must** be consulted on at least once every 7 years. Consultation **must** be for a minimum of 6 weeks and **must** take place between 1 October and 31 January of the school year before those arrangements are to apply (the determination year).' Paragraph 1.49 of the Code states that 'All admission authorities must determine their admission arrangements, including their PAN, every year, even if they have not changed from previous years and a consultation has not been required by 28 February in the determination year.' Reading the minutes of the governing board meeting of the 23 November 2022 I am of the view that the governing board as the admission authority for the school did not fully understand their responsibilities in this respect even though they did 'approve the changes to the policy'.
- 2) Children in receipt of an Education Health Care Plan must be admitted to the school if the school is named in the EHCP (Paragraph 1.6 of the Code). The arrangements do not state that the school must be named in the EHCP. Attached to the admission arrangements which I have been sent is an extract from the academy's funding agreement which sets out the requirements for admission including the requirement for the academy to admit all pupils with an EHCP which names the academy. I do not consider this document to be part of the admission arrangements and – as it is seven pages later than the oversubscription criteria I consider that this could be unclear to parents and therefore does not conform with 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 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.' The reference to the requirement of the academy to admit pupils with an ECHP

which names the school will normally be before the stated over-subscription criteria. This requires amendment.

- 3) Paragraph 1.2 of the Code states that; ‘as part of determining their admission arrangements, all admission authorities **must** set an admission number for each ‘relevant age group’. This relevant age group is then defined as ‘this is 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 (Section 142 of the SSFA 1998).’ On the school’s website under the admission section, published admission numbers are used in years 8,9,10 and 11. As the PAN is only applied to the relevant years of entry this requires amendment. In the school’s response it suggests amendment to this section which I welcome.
- 4) Paragraph 1.50 of the Code explains that the admission arrangements for the specific year must be published the school’s website. In the case of the school’s website, when the referral was made there were no published arrangements for admission in 2024.

## Summary of Findings

16. I have detailed above the elements of the admission arrangements which are non-compliant with the Code and the law governing admissions. These require significant amendment.

## Determination

17. I have considered the admission arrangements for September 2024 for St Bernard’s Catholic High School in accordance with section 88I(5) of the School Standards and Framework Act 1998 and find that elements of the admission arrangements as outlined in the determination do not conform with the requirements.

18. 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.

Dated: 4 July 2023

Signed:

Schools Adjudicator: Ann Talboys