



Office of
the Schools
Adjudicator

Determination

Case reference: ADA4316

Objector: A Parent

Admission authority: Twyford Church of England Academies Trust for Twyford Church of England High School

Date of decision: 18 November 2024

Determination

I have considered the objection to the admission arrangements for September 2025 for Twyford Church of England High School, in accordance with section 88H of the School Standards and Framework Act 1998. I do not uphold the objection.

The referral

1. The admission arrangements for 2025 (the arrangements) for Twyford Church of England High School (the School), an academy school governed by the Twyford Church of England Academies Trust (the Trust) in the London Borough of Ealing were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the Trust which is the admission authority for the School.
2. The School is an academy school with a Church of England religious character. The local authority (LA) for the area in which the School is located is Ealing Council. The LA is a party to this objection. Other parties to the objection are the Objector, the School, and the faith body, the Diocese of London (the Diocese).

Jurisdiction

3. This matter was referred to me on 30 April 2024. I am satisfied that I have jurisdiction to consider the admission arrangements for 2025.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. I have considered all the documents before me, including:
 - a) the Objector's form of objection and objection paper received 29 April 2024;
 - b) copies of the determined admission arrangements for 2025, including the supplementary information form (SIF);
 - c) correspondence and further submissions from the Objector;
 - d) submissions from the Trust on the matters raised and supporting documents;
 - e) submissions from the Diocese;

The Objection

6. The objection is to the way in which Foundation places at the school are allocated. The School adopts a points system. Up to 20 points can be awarded for regular attendance at a wide range of Christian churches, including the Objector's church. One further point (the Anglican Point) can be awarded if the Church attended is a church which is Church of England or in communion with the Church of England, a group which does not include the Objector's Church. In practice an applicant is unlikely to gain admission without the full 21 points.
7. The objector contends that this aspect of the admission arrangements constitutes unlawful discrimination on the ground of race. This, the Objector says, places applicants whose families' main place of worship is not a Church of England church or a church in communion with the Church of England at a disadvantage that such discrimination cannot be justified.

Other matters not referred by Objector

8. I have also considered provisions in the admission arrangements relating to references to "statemented children" and the definition of weekly attendee under the provisions of section 88I(5) of the Act.

Background

9. The school is a non-selective academy secondary school for 11 to 18 year old pupils located in the London Borough of Ealing. The published admission number (PAN) for admission to year 7 (Y7) in September 2025 is 190. Historically, the school has been heavily oversubscribed. It is likely to continue to be heavily oversubscribed in future years.

10. The relevant parts of the general admission arrangements for the 2025 read as follows:

“Of the 190 places available:

150 are designated as Foundation (Christian) places

21 are designated as World Faith places

19 are designated as Specialist Music Scholar places

Applicants wishing to apply for a place for their child for one of the above categories are asked to refer to the relevant admissions criteria for that category, and complete the appropriate Supplementary Information/Application form. When there are more applicants than the number of places available, the Governors will admit according to their admissions criteria. After the admission of “Statemented” children, all Looked After Children (see definitions below) or children who were Previously Looked After, whether of a particular faith or no faith, have priority over all other applications

[...]

Definitions

“Statemented” Child A child with a Statement of Special Educational Need/Education Health and Care Plan (“EHC Plan”) in whose statement/EHC Plan the school is named as the appropriate educational placement.”

11. The detailed provision for Foundation places is set out below.

“CRITERIA FOR ADMISSION FOR FOUNDATION (CHRISTIAN) PLACES

The Governors have designated 150 places each year as Foundation places for students who themselves AND their parent(s)/carer(s) are regular worshippers. Attendance should be at a public place of worship and be confirmed by a supportive reference from their parish priest or minister.

If the School is oversubscribed, after the admission of “Statemented” Children (see definitions section on page 2 of the Admissions Policy for Academic year 2025/26), in the event of oversubscription (ie more applicants than places available) after deducting the number of places (if any) allocated to Looked After and Previously Looked After Children (see definitions section referred to above) then, when deciding between applicants who ostensibly have equal entitlement, the Governors will use the following criteria when deciding priority:

The total points scored will be the first deciding factor based on the answers given to the questions below and detailed in sections 1 to 4 of the supplementary information form (religious reference) which relate to attendance of families (see points a - c below).

Information relating to the child:

- a) The length and frequency of voluntary attendance of the child at services of the Church of England (or churches in communion therewith), including Sunday School, or, Christian Church affiliated to Churches Together in Britain & Ireland or the Evangelical Alliance. An application with a reference from a church which is not affiliated to either of these bodies will score zero points.

Up to 5 points are awarded for attendance over at least the last 5 years (one point for each year). In addition up to 5 points are awarded on the frequency/regularity of attendance over the last 5 years (Weekly 5 pts, 3 times a month 4 pts, Fortnightly 3pts, Monthly 2pts, Occasional 1pt).

(5 + 5 points)

Information relating to the family:

The length and frequency of voluntary attendance of the parent/carer at services of the Church of England (or churches in communion therewith), or, Christian Church affiliated to Churches Together in Britain & Ireland or the Evangelical Alliance. Up to 5 points are awarded for attendance over at least the last 5 years (one point for each year). In addition up to 5 points are awarded on the frequency/regularity of attendance over the last 5 years (Weekly 5 pts, 3 times a Month 4 pts, Fortnightly 3pts, Monthly 2pts, Occasional 1pt). (5 + 5 points)

- c) The family's main place of worship is at a Church of England church. (1 point)"

12. On the Schools website the section headed "Introduction and PAN" has the following information:

"Additional Information

Church of England/Anglican Point (or Churches in Communion therewith)

One point is awarded to applicants whose family's main place of worship is at a Church of England Church or Churches in Communion with the Church of England. Various pieces of legislation make reference to 'Churches in communion with the Church of England'. This term may be taken to include the following Churches, listed in **Canon C8: Churches in Communion with the Church of England**".

13. This is followed by a link to a document with a list of churches "in communion with the Church of England". This list includes churches in Africa, Asia and the Americas. These churches are part of the Anglican Communion. They do not include Roman Catholic or Orthodox churches. The Eritrean Orthodox Church is not included.

Legal provisions

14. Paragraph 1.10 of the Code sets out the basic principle that “This Code does not give a definitive list of acceptable oversubscription criteria. It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances.”

15. Paragraph 1.1 of the Code sets out the compliance duty of admission authorities: “Admission authorities are responsible for admissions and **must** act in accordance with this Code, the School Admission Appeals Code, other laws relating to admissions, and relevant human rights and equalities legislation.”

16. Paragraph 14 of the Code sets out the “Overall principles behind setting arrangements” as “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.”

17. Paragraph 1.8 of the Code sets out the requirements for oversubscription criteria: “Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child. Admission arrangements **must** include an effective, clear, and fair tie-breaker to decide between two applications that cannot otherwise be separated.”

18. Paragraph 1.9 of the Code begins with a statement of principle and goes on to list matters which are proscribed in admission arrangements. I will set out here parts relevant to this determination:

“It is for admission authorities to formulate their admission arrangements, but they **must not**:

i) prioritise children on the basis of their own or their parents’ past or current hobbies or activities (schools which have been designated as having a religious character may take account of religious activities, as laid out by the body or person representing the religion or religious denomination)”

19. Paragraphs 1.36 to 1.38 of the Code set out provisions relating to faith based oversubscription criteria:

“Faith based oversubscription criteria in schools designated with a religious character

1.36 As with other publicly funded mainstream schools, these schools are required to offer every child who applies, whether of the faith, another faith or

no faith, a place at the school if there are places available. Schools designated by the Secretary of State as having a religious character (commonly known as faith schools) may use faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed.

1.37 Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied. Admission authorities for schools designated with a religious character may give priority to all looked after children and previously looked after children whether or not of the faith, but they **must** give priority to looked after children and previously looked after children of the faith before other children of the faith.

1.38 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. They **must** also consult with the body or person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated. Church of England schools **must**, as required by the Diocesan Boards of Education Measure 1991³, consult with their diocese about proposed admission arrangements before any public consultation.”

20. I will set out below relevant parts of the Equality Act 2010 (EqA2010).

“4 The protected characteristics

The following characteristics are protected characteristics—

race;
religion or belief;

9 Race

(1) Race includes—

(a) colour;
(b) nationality;
(c) ethnic or national origins.

(2) In relation to the protected characteristic of race—

(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular racial group;
(b) a reference to persons who share a protected characteristic is a reference to persons of the same racial group.

(3) A racial group is a group of persons defined by reference to race; and a reference to a person's racial group is a reference to a racial group into which the person falls.

(4) The fact that a racial group comprises two or more distinct racial groups does not prevent it from constituting a particular racial group.

10 Religion or belief

(1) Religion means any religion and a reference to religion includes a reference to a lack of religion.

(2) Belief means any religious or philosophical belief and a reference to belief includes a reference to a lack of belief.

(3) In relation to the protected characteristic of religion or belief—

(a) a reference to a person who has a particular protected characteristic is a reference to a person of a particular religion or belief;

(b) a reference to persons who share a protected characteristic is a reference to persons who are of the same religion or belief.

19 Indirect discrimination

(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant protected characteristics are—

race;

religion or belief;

85 Pupils: admission and treatment, etc

(1) The responsible body of a school to which this section applies must not discriminate against a person—

(a) in the arrangements it makes for deciding who is offered admission as a pupil;

(b) as to the terms on which it offers to admit the person as a pupil;

(c) by not admitting the person as a pupil.

Schedule 11

PART 2

RELIGIOUS OR BELIEF-RELATED DISCRIMINATION SCHOOLS WITH RELIGIOUS CHARACTER ETC

5 Section 85(1) and (2)(a) to (d), so far as relating to religion or belief, does not apply in relation to—

(a) a school designated under section [68A or] 69(3) of the School Standards and Framework Act 1998 (foundation or voluntary school with religious character)".

21. The Explanatory Note to that paragraph states:

"This paragraph allows schools which have a religious character or ethos (often referred to as faith schools) to discriminate because of religion or belief in relation to admissions and in access to any benefit, facility or service. It means that faith schools may have admissions criteria which give preference to members of their own religion and it allows them to conduct themselves in a way which is compatible with their religious character or ethos".

22. The relevant provisions of the European Convention on Human Rights (ECHR) are:

"THE FIRST PROTOCOL

Article 2 Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Consideration of Case

23. Since discrimination arguments are at the forefront of the Objection, I make some general observations before considering the criterion at issue.

Discrimination under EqA2010

24. If there is unlawful discrimination in this case it is made unlawful by virtue of section 85(1)(a) of the EqA2010, which states:

“(1) The responsible body of a school to which this section applies must not discriminate against a person—

(a) in the arrangements it makes for deciding who is offered admission as a pupil”.

25. For the purposes of considering whether there is indirect discrimination under section 19 EqA2010 “A” is the Trust, which is the admission authority and so is “the responsible body” of the school.

26. I am concerned with the provision in section 85(1) (a). For present purposes, “B” is a prospective pupil.

27. In general, under the EqA2010, treating somebody less favourably because of their religion will be unlawful direct discrimination. However, the school here is a faith school. It is designated by the Secretary of State as having a religious character. Paragraph 1.36 of the Code states:

“Schools designated by the Secretary of State as having a religious character (commonly known as faith schools) may use faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed”

28. Paragraph 5 of Part 2 of Schedule 11 of the EqA2010 provides that the relevant parts of Section 85, so far as relating to religion or belief, do not apply to a school designated as a faith school. The priority given to Christian and to Church of England children is not unlawful discrimination on the ground of religion or belief under the EqA2010 and is permitted under paragraph 1.36 of the Code.

Discrimination under the allocation of Foundation Places

Discrimination on grounds of race

29. The Objector’s argument in relation to the Anglican point is one of race discrimination. In order to consider an argument of race discrimination, it is necessary to identify the race, or races, said to be discriminated against.

30. The Objector is from Eritrea. Eritrean is a race. The Objector worships in the Eritrean Orthodox Church, a Christian Church that is not within the Church of England or Churches in Communion with the Church of England. Not all Eritreans are Christians worshipping in the Eritrean Orthodox Church. Estimates of the proportion of Eritreans who are Christian vary, according to Wikipedia, from between 49 and 62 per cent. For the purposes of this determination I accept that there is a significant group of Eritreans who are Christian but who do not regularly attend a Church of England Church or Churches in Communion with the Church of England. As the Objector points out there are many Christian churches that

are not within the Church of England and so there are many Christians who are regular church attendees who cannot qualify for the Anglican point. The attendees at some of those churches will be predominantly members of a particular race, for example of Polish or Italian ethnicity, the majority of whom will not regularly attend a Church of England Church or Churches in Communion with the Church of England.

31. In essence the Objector wishes me to consider any racial group which, by reason of that group's heritage, tend to worship in places of worship which are not within the Church of England Church or Churches in Communion with the Church of England. Those groups collectively do not form a single racial group. Since the Objector refers principally to Eritreans and does not suggest that the discrimination arguments would be any stronger if a different racial group were considered in lieu of Eritreans, I will, to avoid repetition, treat Eritreans as the racial group I am considering.

32. The issue for me to decide is whether there is one or more identifiable racial groups that are at a disadvantage of the sort the Objector alleges. For that reason I will continue to consider those who are Eritrean although my conclusions would apply equally to any racial group with a significant number of Christians the majority of whom do not regularly attend a Church of England Church or Churches in Communion with the Church of England.

33. For the avoidance of doubt, I have considered whether my ultimate conclusions below would be any different if a race or races referred to by the Objector other than Eritrean were to be regarded as the race at issue, and do not consider that they would.

Indirect Discrimination

34. As set out above, Section 19 (1) of the EqA2010 reads:

“A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.”

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.”

35. In relation to the stages of the analysis required by s.19(2)(a)-(c), the Objector does or has to say that (a) the Anglican point is applied by the admissions authority both to

Eritrean and non-Eritrean applicants; (b) that it would put the Eritrean applicants at a particular disadvantage when compared with the non-Eritrean applicants, because the Eritreans are less likely to qualify for the Anglican point; and (c) the Anglican point would put an Eritrean child at that disadvantage.

36. The Eritrean Orthodox Church is a Christian Church affiliated to Churches Together in Britain and Ireland. Consequently, those, including the Objector, who regularly attend at that Church are able to meet the criteria for the initial 20 points.

37. The churches which are a Christian Church affiliated to Churches Together in Britain and Ireland are a wide group, which includes, as well as Orthodox Churches, for example Pentecostal Churches and the Roman Catholic Church.

38. Many schools with a religious character indirectly but lawfully discriminate on grounds of race. For example, a school with a Muslim religious character may have regular attendance at a Mosque or Mosques as an oversubscription criterion. If the school is oversubscribed and that criterion is applied it is likely that few people of, for example, white British race will meet that criterion. In this example it is likely that such an oversubscription criterion will give rise to the disadvantage required as part of the analysis mandated by section 19(2)(a)-(c). However, when section 19(2)(d) is considered in this hypothetical example, it is possible that the criterion would be found to be a proportionate means of achieving a legitimate aim. In this context I note that the Trust has accepted that general premise, stating “we accept that a faith based criteria may in practice result in a greater number of places being allocated to a particular ethnic grouping or race”.

39. The initial 20 points given in the oversubscription criteria for the School are available to those who regularly attend a wide range of Christian Churches. I find, for the purposes of this determination, that this indirectly but lawfully discriminates against any racial group that is predominantly non-Christian but that that is a proportionate means of achieving a legitimate aim.

40. The question I consider here is narrower. It is whether an Eritrean who is able to score 20 points under the criteria relating to attendance “at services of the Church of England... or a Christian Church affiliated to Churches Together in Britain and Ireland” is less likely to meet the criteria for the Anglican point than a white British Christian.

41. The school has been oversubscribed in previous years and so the Anglican point has been engaged. It is likely to be oversubscribed in future years, including 2025. Data provided by the Diocese confirms that in 2020, 2021, 2023 and 2024 all foundation places were filled by pupils who scored 21 points. In 2022 three pupils with 20 points were admitted and in 2023 12 pupils with 20 points were admitted. Although in some years pupils with 20 points have been admitted this data clearly demonstrates that the Anglican point confers, on those who achieve it, a significant advantage over those who cannot.

42. On that basis, the question is then whether the school can show the Anglican point criterion to be a proportionate means of achieving a legitimate aim. If so, then it is lawful and compliant with the provisions of the Code.

43. I wish to point out here that that there is no suggestion that the school seeks to exclude members of any race or races. Data provided by the Diocese shows that the school has a diverse intake. Over the past seven years “47% - 51% of pupils at the School have been from BAME [black, Asian and minority ethnic] backgrounds”.

Justification

44. The Trust have stated that the aim is “to ensure that the Anglican character and ethos of the school is preserved”.

45. The Objector submits that this is “called into question by the fact that the admissions authority has not explained why the extra point criterion has been adopted in this school but not in other CofE [Church of England] schools with a similarly identified Anglican/CofE ethos”.

46. The Objector cites as context some information on the history of educational provision by the Church of England and the changing demographic of the population:

“As set out in the CofE’s “History of church schools” , the CofE originally became involved in the education of children through the Sunday School Movement of the late 18th Century which was “cross-denominational, with the aim to teach literacy, as well as a knowledge of the Bible and the Christian faith.” Subsequently, in 1811, the “National Society for Promoting Religious Education” was established at a time “when there was no state system of education in place” with a vision to open a church school in every parish. As set out above, the purpose of these church schools, as reflected in their trust deeds, was to serve all the children of the parish. Nevertheless, although such schools were welcome to all, because the country was still substantially white, of English national origin, and religiously (if not denominationally) homogenous, the majority of attendees at such schools would have been worshippers at CofE churches. This remained true by the time of the enactment of the Education Act 1944 (which afforded free access to secondary education for all), at which time CofE schools still comprised a very large part of the education sector. They continue to comprise a large part of it today

However, the demographic position is very different today as diversity of race and national origin has increased. This diversity is particularly marked in London (which is more diverse, both in terms of the skin colour/ethnicity and national origin of its inhabitants, than the almost all of the rest of the country), and for Ealing and the surrounding boroughs. For example, in Ealing, 32.2% of 8-year-olds ((who are now 11 and thus applied to secondary school this year) were identified as “White” and 20.07% as “White: English, Welsh, Scottish, Northern Irish or British” in the 2021 Census.

Furthermore, the religious make-up of the population has changed, and again this is particularly marked in London. According to the London Church Census of 2012, 32% of Sunday churchgoers in London attended Pentecostal churches; 27% Catholic churches; and 12% CofE churches (“Capital Growth: What the 2012 London Church Census Reveals” (Brierley, 2013), Table 3.3, p.57) (“Capital Growth”). Thus the CofE Church is now only the third largest Christian denomination in London by some margin.

As a result of these demographic and religious changes, admissions policies which favour CofE attendees are far less likely to lead to schools which reflect the racial demographic of the area from which they draw their pupils than was once the case. The fact that some CofE schools are sufficiently oversubscribed that they are able to shape their school population using such policies because of the ‘first mover’ advantage that the Church of England has had in England’s education system raises significant issues in the modern diverse multi-cultural society of the present day.”

47. The Objector refers to the Diocesan Guidance:

“It [the aim] is also called into question by the content of the applicable LDBS (London Diocesan Board for Schools) guidance “Admission and Appeals in Church of England Schools: Guidance for Admission Authorities” dated September 2022 (“LDBS Guidance”). This states as follows under the heading “Our Vision for Inclusive Education”: “The Church of England’s vision for education is...for the common good of the whole community.” It goes on to state that, in keeping with this broader vision, the LDBS invites all its schools “to make the needs of the most vulnerable and disadvantaged in their community a priority, and to be inclusive of all faiths and none.”

Reflecting this overarching vision, at s7 of the LDBS Guidance under the heading “Church-Related Oversubscription Criteria”, it notes that “Admission arrangements make an important statement about the school’s local context and distinctive Christian vision. The LDBS requires admission authorities to be mindful that the original purpose of Church schools reflected in trust deeds, was **to serve the children of the parish**” (emphasis added). Since “the parish” is a geographical area, the original purpose of church schools was accordingly to serve all the children in the parish, not merely those who attended the parish church, or attended church at all.”

48. In response to this the Diocese say:

“The solicitors for the objector have also argued that the School has not complied with the Diocesan guidance in relation to the wording about an additional point being awarded if a family worships at a Church of England Church. We do not agree and there are important elements of the guidance which have not been cited including the following:

“The LDBS recognises that school and local circumstances vary widely across the diocese, which will mean that faith-based oversubscription criteria will also vary widely.”

The guidance also includes ‘helpful questions’ for schools to consider when determining their admission arrangements. These questions anticipate that some admissions authorities may wish to give priority based on worship at a Church of England Church, for example:

“If a broader range of churches is adopted, will the definition of church include only Church of England churches, or a broader range of denominations? Will the names of churches be listed, or will a geographical area be defined?”

and

“Consider whether all churches of other denominations within the local area are to be included.”

The approach taken by the School in respect of prioritising Church of England attendance therefore falls within the discretion provided by the Diocesan guidance.”

49. The Objector points out that two other schools in the Trust are designated as having a Church of England character but do not have faith based oversubscription criteria:

“Twyford CofE’s admissions policy states that

“The ethos of Twyford Church of England High School is one which respects all faiths. We believe that all our lives are given and governed by God. We are inspired by the words of St Athanasius ‘The Glory of God is a life lived to the full’. We expect our students to fulfil their potential academically, personally and spiritually. We ask all applicants applying for a place here to respect this ethos and its importance to the school community. All applicants should be supportive of the aims, attitudes and values, expectations and commitment of this Church of England Academy. This does not affect the right of parents who are not of the Christian faith to apply for and be considered for a place here.”

The Core values that inform all Trust schools are the same – they are set out below.

“All individuals have God-given gifts which they can develop for the good of others ·

All individuals do bad things sometimes but that it is not acceptable to believe that anyone has to stay in a ‘bad place’ ·

All individuals can find their valued place within community”.

The admissions policy for Ada Lovelace (another Trust school) states

“The Church of England character underpins all that happens in the school. However, this does not mean that all our pupils come from a Christian background, and children from all faiths and those with none are warmly welcome to apply.”

That for William Perkins contains the following wording

“It is assumed that those applying for a place at the Academy understand and have a preference for a school of religious character as set down in the academy’s aims and ethos described in the prospectus. We ask all parents and students applying for a place here to respect the school’s ethos and its importance to the school community. This does not affect the right of parents who are not of the faith of this school to apply for and be considered for a place here as no faith criteria are used in deciding admissions”.

50. The Trust have responded to these submissions, as follows:

“Legitimate aim

The second part of the submission deals with the question of whether, if there is such indirect discrimination, that discrimination is lawful (if it is a proportionate means of achieving a legitimate aim) or unlawful. Notwithstanding the fact that we do not consider that the relevant admissions criteria in issue do put a racial group within which the Objector’s child falls at a particular disadvantage, should the Adjudicator disagree, we consider that it would be rendered lawful because the Anglican Point is a proportionate means of achieving a legitimate aim (s.19(2)(d)).

Twyford CofE is designated as a Church of England School and therefore its aim is to ensure that the Anglican character and ethos of the school is preserved (“the Aim”). As a designated faith school, Twyford CofE is permitted to give priority to applicants who worship at a Church of England church (Schedule 11 Paragraph 5 of the EqAct). The Aim is part of the governance framework of the school – please see paragraphs 6 and 7 of the LDBS response.

There are three other schools within the Trust; Ada Lovelace, Ealing Fields and William Perkin. Ada Lovelace and William Perkin were opened as a result of community demand for school places, largely due to Twyford CofE being so heavily oversubscribed. Whilst these schools are designated Church of England Schools, given the local demand for places, the Trust made the decision to have open admission policies for these schools.

The Trust is of course aware that there may be children who want to have an education underpinned by Christian values but who do not meet the admissions criteria of Twyford CofE. In response to that demand, the Trust set up three other schools with an open admissions policy. The fact that the Trust chose to set up schools with an open admissions policy does not negate the Aim or mean that the Aim is not legitimate. It is for the Trust to decide how the Aim should be reflected by the schools in the Trust. This also goes to the issue of proportionality - see below.

Ealing Fields is not a designated religious school (it joined the Trust in 2017, one year after the school opened). Any comparisons to the Ealing Fields admissions policy are therefore irrelevant.”

51. Paragraphs 6 and 7 of the Diocese’s response (referred to above) state:

“6. The Academy Trust is the admissions authority for the School. The Academy Trust is a charitable company limited by guarantee and the directors are therefore obliged to operate in accordance with the Trust’s charitable object as set out in Article 4 of its Articles of Association¹:

“The Company’s object (“the Object”) is specifically restricted to the following: to advance for the public benefit education in the United Kingdom, in particular but without prejudice to the generality of the foregoing by establishing, maintaining, carrying on, managing and developing **Church of England schools** designated as such (“the Academies”) which shall offer a broad and balanced curriculum and shall be conducted **in accordance with the principles, practices and tenets of the Church of England** including any trust deed governing the use of land used by any Academy both generally and in particular in relation to arranging for religious education and daily acts of worship and **having regard to any advice and following directives issued by the London Diocesan Board for Schools.**”
[emphasis added].

7. The Trust’s Scheme of Delegation 2 on its website also states the following:

“1.3 The Directors are accountable to:

...

...

1.3.4 the London Diocesan Board for Schools (the “LDBS”) to ensure that a School designated as a Church of England school is conducted as a Church of England school.”

and

“3.2 Duties and responsibilities retained by the Board of Directors include:-

3.2.1 establishing and running schools and in particular, running each [faith designated] School as a Church of England school;”

52. Regarding proportionality the Diocese say:

“The policy of providing an additional point for those who attend a Church of England Church is proportionate for a number of reasons.

It is important for the School to have a clear way of prioritising applications and allowing parents to easily understand how places are allocated at the school if it is oversubscribed (as required by the Admissions Code). Given the School’s religious designation as a Church of England School and the fact that it has been heavily oversubscribed for a number of years, it is both fair and proportionate for the Academy Trust to decide that an additional point should be allocated to those who worship at a Church of England Church. This, it is submitted, is a proportionate means of achieving the legitimate aim of fulfilling the objectives referred to above.

As a matter of public policy, there is an expectation that parents should have a choice of schools, which is why there are various categories and designations of schools available for parents to choose from. It is proportionate for the School to provide a choice for Church of England families. It is also lawful and established practice in faith schools across the country for priority to be given to one denomination over another within the same overall faith.

It is also relevant that the definition of “Church of England” in the School’s admissions arrangements includes Churches in Communion with the Church of England which encompasses 61 Churches from across the world. This, again, demonstrates that the approach taken in the admission arrangements is proportionate as it reflects the global community of churches and the diverse communities that we serve; it is not limited to Church of England attendance in England.

The solicitors for the objector also seek to draw comparisons between the School and other schools in the Trust as well as other Church of England schools that have differing admissions arrangements.

The comparisons with other schools are not relevant to this objection. It is a matter for the Academy Trust to determine how the Church of England religious designation should be reflected across the School in its management, organisation, curriculum and structure. It is also for the Academy Trust to determine the admission arrangements and decide how to implement a faith-based oversubscription criteria.

However, I would note that it is the responsibility of the Academy Trust to set admissions arrangements for each of the schools in the organisation and it is entirely appropriate for each School within the Trust to have distinct admissions arrangements which reflect the local circumstances and the unique and distinctive character of each school. The fact that the School is consistently oversubscribed means that giving higher priority to those who attend the Church of England is proportionate and demonstrates that local circumstances have been taken into account. Further, the fact that the 150 foundation places are normally filled up with applicants who have 21 points shows that there is demand from Anglican families for

a School with a Church of England designation. Indeed, as the table shows, in most years the '21 points' category is oversubscribed which means that there are usually some pupils with 21 points who are not admitted. The admissions arrangements are a proportionate way of prioritising demand in that context:

Foundation places (highest preference)	2020	2021	2022	2023	2024
On time applicants (21 points)	188	163	133	131	170
Waiting list applicants (21 points)	43	23	0	0	33
On time applicants (20 points)	110	69	67	70	103
Waiting list applicants (20 points)	110	69	64	58	100

As you will note from the table above, the foundation places in 2022 and 2023 were not filled up by children with 21 points so places were offered to children with 20 points, specifically 3 pupils with 20 points were admitted in 2022 and 12 were admitted in 2023¹. Therefore, it is not necessarily the case that “21 points are in reality needed to obtain a Christian foundation place” as suggested in the submissions on behalf of the objector; it will depend on the applications the School receives each year.

53. The Trust say on proportionality:

“The Anglican Point criteria is only used at Twyford CofE, i.e. only one of the four Trust Schools. Twyford CofE is heavily oversubscribed. Given that there are 33 applicants with 21 points on the waiting list, there is clearly a demand from Church of England applicants in the local community. Therefore, the Anglican Point is a proportionate (and lawful) way for the Trust to prioritise applications in light of this demand. The majority of the schools in the Trust have an open admissions policy. Those students who do not meet the Anglican point criterion are free to apply to the other Trust Schools who do not have that criterion and still have the opportunity to participate in an education underpinned by Christian values by attending one of the other schools in the Trust. This demonstrates that the Anglican point criterion has been applied proportionately by the Trust.

It is alleged that the Trust has not complied with the LDBS Guidance. This is denied. The approach taken by the Trust falls squarely within the guidance which permits it to have oversubscription criteria that gives priority to applicants who attend a Church of England church. In any event, the LDBS has stated in their submissions “The approach taken by the School in respect of prioritising Church of England attendance therefore falls within the discretion provided by the Diocesan guidance”. Given that LDBS wrote the guidance, and they consider that the Trust has complied with it, we do not consider it necessary to comment further.

To the extent that it is alleged that the Trust has not investigated and assessed these matters in adopting the PCP [provision, criterion or practice] (paragraph 58 of the submission only refers to the admissions authority), this is denied. The PCP is an objective criterion that is based on faith, not race. It is clear from the data that the alleged “severity” of the PCP is unfounded; nearly 50% of those students who were offered Places were non-white. We would repeat all of our comments above.

Legitimate Aim

54. I find that the aim is, as the Trust state, “is to ensure that the Anglican character and ethos of the school is preserved”. The School is designated as a Church of England school. As set out above that status is reflected in the Trust’s charitable objects and in the scheme of delegation of the LDBS which is the arm of the Diocese of London, the school’s faith body, with responsibility for schools. The principle that a school may discriminate in its oversubscription criteria on grounds of faith is set out in the EqA2010.

55. For those reasons I find that the aim is legitimate.

Proportionality

56. I will adopt the four limb test of proportionality referred to by the Objector, as set out in the following paragraphs.

Whether the objective of the measure (that is the Anglican point) is sufficiently important to justify the limitation of a protected right

57. The points I have made above relating to the legitimacy of the aim apply equally to this point. Many state funded schools are designated as faith schools. Faith based oversubscription criteria are exempted from the prohibition on discrimination on the ground of faith., This provides a legal basis which confirms the importance of educational provision reflecting the character and ethos of particular faiths and denominations within the state funded education system in England.

58. As the Objector points out, there is a close connection between faith and race and consequently all or almost all faith based oversubscription criteria will tend to limit a protected right.

59. I do not accept that the elements of the history of Church of England schools referred to by the Objector preclude the adoption of faith based admission criteria or the adoption of the Anglican Point. A priority afforded to Christians in general will exclude those who are not Christians. A priority afforded to those attending Church of England churches or those in communion with the Church of England will exclude Christians who do not worship at such churches.

60. I accept that “the original purpose of Church schools reflected in trust deeds, was to serve the children of the parish”. The school is situated in a densely populated urban area served by a number of secondary schools. It has not been put to me that there is an overall shortage of secondary school places. This school is oversubscribed. It is not possible for all

the “children of the parish” whose parents wish them to go there to gain a place. Consequently, the oversubscription criteria will be applied to decide who does or does not gain a place. All oversubscription criteria discriminate, that is their purpose.

61. The fact that some Church of England schools have broader faith based criteria does not mean that criteria more specific to the Church of England are not permissible or important to some Church of England schools. Church of England schools may have no faith based oversubscription criteria or may have such criteria based on Christianity without being specific to a particular denomination. Or, as here, there may be criteria which relate specifically to a particular denomination within the Christian faith. I do not find that one Trust adopting a variety of approaches renders the aim of this particular school any less important. Giving priority to children who regularly attend (and whose parents regularly attend) Church of England churches or those in communion with the Church of England is important to the school and its ethos. The Code allows for variety, paragraph 1.10 states: “It is for admission authorities to decide which criteria would be most suitable to the school according to the local circumstances”. As the Trust say, this school is the original school in the Trust, there is a high demand for places and, as the data shows, there is a high demand from families who regularly attend a relevant church and so may meet the additional criterion for the Anglican point. The Trust, as the admission authority, has chosen to maintain at this school a close relationship between the oversubscription criteria and the designated Church of England character of the school.

62. The Diocesan Guidance, quoted above, also allows for a wide variety in faith criteria. That variety includes criteria which are specific to the school’s designated character. The Anglican Point is a criterion which is allowed by Diocesan guidance. The Diocese have stated that it supports the school’s oversubscription criteria. I do not accept the Objector’s argument that “the Anglican character and ethos of the school” will be the same for every school designated as having a Church of England character, whether within the same Trust or not. The Trust, in determining the oversubscription criteria for this particular school have chosen to include a priority specific to the Church of England and Churches in communion with the Church of England. Save for the Anglican Point there is no provision in the oversubscription criteria which is specific to the School’s designated character as a Church of England school. The aim is important to the admission authority to maintain the Church of England character and ethos of this particular school.

63. Consequently, I find that the objective of the measure is sufficiently important to justify the limitation of a protected right.

Whether the measure is rationally connected to the objective

64. The school is designated as having a Church of England religious character. That designation is specifically denominational. Twenty points may be awarded for attendance at

a wide range of Christian churches, one of which is the Objector's chosen church. The Anglican point is awarded for attendance at a narrower range of churches, all of which reflect the Anglican character and ethos of the aim. The fact that other Trust schools, or Church of England schools more generally, have admission arrangements which are different to those of the school does not negate a rational connection between the measure and the objective. Consequently, I find that the measure is rationally connected to the objective.

Whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective

65. The Anglican point is the only provision within the oversubscription criteria which specifically reflects the designation of the school as Church of England. It is expressed in the broadest terms, "attendance at services of the Church of England (or churches in communion therewith)", which still maintain a direct connection with the school's designation.

66. The Objector suggests a number of alternative measures to achieve the same objective. I have found that the aim, specifically to preserve the Anglican ethos and character of the school is a legitimate aim. Having no faith based criteria would not achieve that aim for this school, nor would having the existing faith based criteria without the additional Anglican Point.

67. The Objector refers to the Diocesan guidance. The Trust is required by the Code to have regard to that guidance when formulating its admission arrangements. The guidance "strongly recommends" that admission authorities should "Maintain an equal 50/50 split between foundation and open places, to facilitate inclusion and serving the common good of their local community" and notes that for new academies with a religious character "at least 50% of places are to be allocated without reference to faith". The proportion of foundation places at the school exceeds 50 per cent. However, I am satisfied that the circumstances of the school, as a long established school with a Church of England character, are in keeping with a higher percentage of foundation places. I also note that a reduction in the percentage of foundation places would not decrease the effect of the Anglican Point on faith based places and would not necessarily benefit any applicant who is afforded priority as a regular attendee at a church such as the Eritrean Orthodox Church.

68. I do not find that there is a less intrusive measure could have been used without unacceptably compromising the achievement of the objective.

Whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, the former outweighs the latter

69. The severity of the measure's effect, that is the disadvantage to those who can gain 20 points for attendance at Christian Church affiliated to Churches Together in Britain &

Ireland or the Evangelical Alliance, but cannot meet the criteria for the Anglican point is substantial. The data referred to above shows that in recent years either none or very few foundation places have gone to such an applicant. Parents in this group seeking an education for their child at the school have not had that preference met.

70. The objective is one that is shared by a great many schools designated as having a religious character, whether they be Church of England, Roman Catholic, Muslim or Seikh. Faith schools are an integral part of the system of state funded education in England, which is recognised in the drafting of the EqA2010. There will be parents who wish to have their children educated at many of these schools but where those schools are oversubscribed they may not gain a place because applicants who attend other, specified, places of worship have a higher priority.

71. In this particular school, a school designated as having a Church of England character, it is the only criterion which relates specifically to the Church of England. It is, as set out above, of importance to the Trust to preserve the Anglican character and ethos of the school.

72. Parents do not have a right to a state funded place in a school of the religious character they prefer. The school is situated in a densely populated urban area. As would be expected there are a number of other secondary schools within three miles of the school, including two of the Trust's schools, one of which is designated as having a Church of England character (Ada Lovelace Church of England High School) but with no faith based oversubscription criteria and the other (Ealing Fields Church of England High School) which has no religious designation, although I note that both of these schools are oversubscribed. Two other nearby secondary schools, Ark Soane Academy and Ark Acton Academy were both undersubscribed for entry in 2024. If the oversubscription criteria for the School were changed in some way that allowed an applicant such as the objector to gain a place then another applicant would necessarily be displaced and would have to attend another school. I note that the Objector has now obtained a place for their child at a different Trust school with a faith designation.

73. The Objector has raised the issue of the public sector equality duty. The Code (paragraph 7 of Appendix 1) states:

“Admission authorities are also subject to the Public Sector Equality Duty and therefore **must** have due regard to the need to eliminate discrimination, harassment and victimisation, advance equality of opportunity, and foster good relations in relation to persons who share a relevant protected characteristic and persons who do not share it.”

74. The Trust did not consider when formulating the admission arrangements whether race discrimination might arise. That is understandable. As far as I am aware the potential discriminatory effect of faith oversubscription criteria on grounds of race is not an issue which has thus far generated any significant level of public debate or previously been considered by the Schools Adjudicator or by the courts. It is not an issue which is

mentioned in the Diocesan guidance on admission arrangements. It is not an issue which is directly referred to anywhere in the Code.

75. Consequently, in considering justification I do not have the benefit of the considered decision of the Trust as admission authority. Nevertheless, I find it very likely that had this discriminatory effect been considered the Trust would have concluded, for the reasons set out above, that it was justified. The arguments in favour of justification are not such that have been contrived after the event. They are based on sound principles which have formed a significant part of the publicly funded education system since at least 1944 when the role of schools with a religious character was laid down in statute.

76. Consequently, I find that balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, the latter outweighs the former.

77. I therefore find that the Anglican Point is a proportionate means of achieving a legitimate aim. I do not find that the criterion for the Anglican point is indirectly race discriminatory.

Article 14 ECHR read with article 2 protocol 1 ECHR – discrimination on basis of race

78. I remind myself that there are four questions which I need to address in relation to this element of the Objector's case:

(1) Do the circumstances fall within the ambit of one or more of the Convention rights?

(2) Has there been a difference of treatment between two persons who are in an analogous situation?

(3) Is that difference of treatment on the ground of one of the characteristics listed or other status?

(4) Is there an objective justification for that difference in treatment?

79. Article 2 of the First Protocol (A2P1) to the ECHR concerns the right to education and I have set it out above. The Objector does not argue that the Anglican Point is in breach of A2P1 read alone.

80. Instead, the argument is one of discrimination, based on Article 14 read together with A2P1. Article 14 reads:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

81. For Article 14 to come into play, it is sufficient that the measure complained of, namely the Anglican Point, is linked to the exercise of a right guaranteed by the convention, which in this case is said to be the right to education.

82. Every admission authority is under a duty to have oversubscription criteria for each school for which it is responsible. This is an aspect of the State's delivery of the right to education. A particular oversubscription criterion, which determines priority in accessing education at a particular school, is linked to the general right to education in A2P1. I find that Article 14 taken with A2P1 is applicable.

83. For discrimination to occur under Article 14, it must be on the ground of some 'status'. Race is given in Article 14 as an example of the sorts of status protected. I have discussed race in relation to domestic law above.

84. The Objector contends that while neutral on their face, these arrangements indirectly discriminate against applicants such as the objector and their children on grounds of race by virtue of the disproportionate prejudicial effects as compared to Christian applicants who worship at a CofE church and this cannot be justified as proportionate to a legitimate aim. For the purposes of this Determination, I am prepared to proceed on the basis (without deciding) that the status relied on by the Objector is protected under Article 14 and that the criterion entails differential treatment in the required sense.

85. Nevertheless, under Article 14, discrimination may be justified, if there is an objective and reasonable justification for the provision. That is, that there is a legitimate aim and a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

86. For the same reasons that I have set out in my discussion of indirect discrimination under EqA2010 above, I consider that there is justification for the purposes of Article 14. Consequently, there is no breach of Article 14 taken with A2P1.

Other matters

87. Having considered the arrangements as a whole it would appear that the following matters do not conform with requirements. I have accordingly decided to exercise my powers under section 88I of the Act to consider the arrangements as a whole and whether they conform with the requirements relating to admissions. The relevant provisions of the Code are set out above.

Statemented children

88. In a number of places the admission arrangements refer to "Statemented" children. This is defined as "A child with a Statement of Special Educational Need/Education Health

and Care Plan (“EHC Plan”) in whose statement/EHC Plan the school is named as the appropriate educational placement”.

89. Statements of Special Educational Needs were replaced with Education Health and Care Plans some years ago and there is now no child currently attending school in England who would still have a Statement of Special Educational Needs. Consequently, despite the definition, the use of the phrase “Statemented children” is unclear.

90. The Trust have agreed to “remove the word “Statemented” from the school website and admissions policies. In addition we will change the wording to ‘Children with an Education Health and Care Plan’ and update the definition accordingly”. Consequently, I make no further finding on this point.

Weekly attendee

91. A definition, as follows, of “Weekly attendee” is set out in the admission policy but does not appear in the Supplementary Information Form, “A parent or child should be defined as a “weekly” attendee if they are normally in church at least on the Sundays in school term time and at least 50% of other Sundays”. It seems likely that this definition would not always come to the attention of the parish priest, minister or religious leader completing the form. I find that this lacks clarity and note that the Trust has agreed to “add more information to each of our supplementary information forms to make this clearer”. Consequently, I make no further finding on this point.

Determination

92. I have considered the objection to the admission arrangements for September 2025 for Twyford Church of England High School, in accordance with section 88H of the School Standards and Framework Act 1998. I do not uphold the objection.

Dated: 18 November 2024

Signed:

Schools Adjudicator: Tom Brooke