

## DETERMINATION

**Case reference:           ADA/002570**

**Admission Authority: The governing body of Our Lady of Peace Infant School**

**Date of decision:        29 January 2014**

### **Determination**

**In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Our Lady of Peace Infant School for admissions in September 2014. I determine that the arrangements do not conform to the requirements relating to admissions in the ways set out in this determination.**

**By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible but no later than 15 April.**

### **Jurisdiction**

1.     The admission arrangements (the arrangements) of Our Lady of Peace Infant and Nursery School (the school), a Catholic voluntary aided primary school in Slough, for pupils aged 3 - 7, for September 2014, have come to the attention of the Office of the Schools Adjudicator (OSA).
2.     These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the school's governing body, which is the admission authority for the school. The arrangements came to the attention of the OSA when the arrangements of Our Lady of Peace Junior School were referred to the adjudicator (see Determination ADA2565). I am satisfied that it is within my jurisdiction to consider the arrangements using my powers under Section 88I of the Act.

### **Procedure**

3.     In considering the arrangements for admissions in September 2014, I have had regard to all relevant legislation and to the School Admissions Code (the Code).
4.     The documents I have considered in reaching my decision include:
  - a copy of the determined arrangements for 2014 approved by the governing body on 6 December 2012;

- material in the school's prospectus relating to admissions;
  - the composite prospectus for admission to Slough schools in 2014 produced by Slough Borough Council which is the local authority (the LA) for the area; and
  - a copy of the arrangements as varied by the governing body in December 2013.
5. I have also taken account of information received during and subsequent to the meeting I convened at Our Lady of Peace Junior School on 13 December 2013. This meeting was a joint meeting also involving representatives of Our Lady of Peace Junior School, representatives of the LA and a representative of the Diocese of Northampton. Our Lady of Peace Infant School was represented by members of the school staff and a representative of the school's governing body.

### **Matters considered**

6. In reviewing the school's arrangements, I identified a number of respects in which the arrangements did not appear to conform to the Code or the legislation relating to admissions or both. I also raised these with the school the meeting. These matters were that the arrangements:

- a. for 2013 and 2014 had not been published on the school's website;
- b. did not accurately reflect the procedure for the admission to the school of children with statements of special educational needs that name the school (SEN);
- c. in relation to looked after and previously looked after children did not comply with the School Admissions (Admission Arrangements and co-ordination of Admission Arrangements) (England) Regulations 2012 (the regulations) and did not conform to the Code;
- d. were not clear as required by the Code and the wording of the arrangements suggested an element of discretion in determining who should be admitted other than by the application of the oversubscription criteria as required by the Code;
- e. did not include a definition of sibling required by the Code;
- f. included the use of an application form which is not necessary for the school to apply its oversubscription criteria;
- g. did not include any means of separating two or more applicants

within any one oversubscription criterion or a final tie-breaker to separate two applicants equally entitled to the final place; and

- h. did not conform to the requirements of the Code in relation to the admission of children below compulsory school age.

## **Background**

7. The school's arrangements came to the attention of the OSA through a referral of the arrangements of Our Lady of Peace Junior School which is the subject of Determination ADA2565. The two schools share a site and have close links with many infant school pupils progressing to the junior school. They have separate governing bodies but with some overlap in membership. The school's published admission number (PAN) is 90. The school was fully subscribed in 2012 and 2013.

8. The school's admission arrangements as published in the LA's composite prospectus for 2014 include the following material:

"Following the directive from the Department for Education and Skills, the School Admission Code of Practice issued 02/2003, priority will be given to:

- Children with a statement of special educational needs where Our Lady of Peace Catholic Infant and Nursery School has been named on the statement
- Looked after Catholic children in the parish of Our Lady of Peace
- Looked after children in within the parish of Our Lady of Peace

The governors hope to offer places to every child baptised into the Roman Catholic faith, who applies. There are 90 places available in each year group. In the event of oversubscription, priority will be given to applicants in the following order:

1. Catholic siblings (brothers and sisters) at the time of application in either Our Lady of Peace Infant and Junior Schools
2. Catholic children from the Parish of Our Lady of Peace
3. Other Catholic children living outside the parish of Our Lady of Peace

In the event of there being vacancies after all the above applicants have been admitted, the Governors will give consideration to the admission of children of other faith traditions whose parents wish their children to be educated in a Catholic atmosphere.

Priority will be given to applicants in the following order:

4. Children of other denominations who have brothers and/or sisters in either Our Lady of Peace Infant or Junior Schools.
5. Children of other Christian denominations living within the Parish of Our Lady of Peace.
6. Children of other faiths living within the Parish of Our Lady of Peace.
7. Children with no faith.
8. Children who have applied to Our Lady of Peace Catholic School who do not meet any of the above criteria.”

### **Consideration of Factors**

#### Giving of priority for YR to children who attend the school’s nursery

9. This was the issue in relation to admissions to Our Lady of Peace Junior School which first drew the school’s arrangements – albeit indirectly – to my attention. As can be seen from the admission arrangements quoted above, the school does not give any priority for YR to children who have attended its nursery. Moreover, the admission arrangements for the nursery include the following statement: “Children attending the Nursery will not be given priority when applying for school admission. The Our Lady of Peace Catholic Infant School governors’ admission policy will apply at this stage.”

10. There is accordingly no need for me to consider further the issue of any priority for attending the school’s nursery and, for the avoidance of doubt, there is no breach of the Code in this regard.

#### Publication of admission arrangements

11. Paragraph 1.47 of the Code requires admission authorities once they have determined arrangements by 15 April each year to notify a number of bodies and to publish the arrangements on their websites. The Code states that arrangements must remain on the website for the whole of the offer year (the academic year in which offers for places are made). Paragraph 2.14 of the Code then requires admission authorities to maintain a waiting list for at least the first term of the academic year of admission and that, in deciding who is to be admitted from the waiting list, the list will be ranked again in line with the published oversubscription criteria. The combined effect of paragraphs 1.47 and 2.14 is that in the autumn term, each admission authority’s website needs to include the arrangements for the school year which has started and for the next school year. Thus in November 2013, Our Lady of Peace Infant and Nursery school’s website needed to set out the arrangements for the academic years beginning September 2013 and

September 2014.

12. When I first looked at the school's website in late November 2013, I could not find a section headed admissions or the arrangements for September 2013 or 2014. The school's prospectus was on the website and this did contain a section setting out the admission arrangements for the school and for the nursery. However, it did not specify which year it related to and thus did not fully meet the requirements of the Code. In addition, it would require some tenacity on the part of a visitor to the website to find the admission arrangements if they were available only as part of the prospectus.

13. I raised this issue with the school at our meeting. The school explained that its website had only been up and running for a few months. The school undertook to publish the arrangements for 2013 and 2014 and did so by the end of the autumn term. The school has since my meeting also published varied arrangements for September 2014 on its website. It is open to admission authorities to vary their determined arrangements in certain circumstances as provided for in regulation 19 of the regulations and paragraph 3.6 of the Code, including in order to comply with a mandatory provision of the Code. I shall refer below to some aspects of the varied arrangements for 2014.

#### Children with statements of SEN

14. The arrangements and procedures for the admission to schools of children with a statement of SEN to the school named on the statement are different from those relating to the admission of other children. Children with statements must be admitted to the school named on the statement and are not considered under the school's oversubscription criteria. Instead, the admission arrangements for all schools ought, in order to aid clarity for parents, to include a statement outside the list of oversubscription criteria to the effect that all children with a statement of SEN that names the school will be admitted.

15. The initially determined arrangements for the school brigade looked after and previously looked after children and children with statements of SEN together in – as noted above – a section which states that priority will be given to these groups. The school assured me that it fully accepts its responsibility to admit children with a statement of SEN.

16. As noted above, the school has now published varied arrangements. Unfortunately the wording it has chosen continues to refer to the giving of priority to children with statements of SEN that name the school rather than stating unambiguously that such children will be admitted. The Code requires the school to amend its arrangements accordingly.

## Looked after and previously looked after children

17. Paragraph 1.7 of the Code requires that all admission authorities give highest priority to looked after and previously looked after children unless one of a specific number of exceptions applies. Our Lady of Peace Infant and Nursery School is a school with a Catholic religious character and this means that it can in line with the provisions of paragraph 1.37 of the Code give highest priority in its oversubscription criteria only to Catholic looked after and previously looked after children.

18. The arrangements initially determined arrangements for 2014 as outlined above give first priority to Catholic looked after children from the parish served by the school and second priority to all other looked after children from the parish. This does not conform to the requirements of the regulations or the Code in a number of respects.

19. First, the arrangements do not include previously looked after children. The school was clear at our meeting that they would always give equal highest priority to previously looked after children. The varied arrangements do now refer to previously looked after children in the sense that immediately following the reference to looked after children there is a new section which provides an accurate and comprehensive definition of looked after children and previously looked after children. However, the arrangements as varied still fail to state clearly that first priority in the event of oversubscription will be given to looked after and previously looked after children and label this as oversubscription criterion 1. I am conscious that this might be considered a technical breach of the Code and I am confident in the school's intentions. Nonetheless, the Code requires the school to amend its arrangements as quickly as possible to bring them into line with the requirements of the Code.

20. The school had chosen to extend its first criterion to include non-Catholic as well as Catholic looked after children. However, by limiting this priority to those who lived in the parish of Our Lady of Peace the school breached paragraph 1.37 of the Code and Regulation 7 of the regulations. Schools with a religious character **must** give first priority to all looked after and previously looked after children of the faith regardless of where they live. Schools with a religious character which give priority to looked after and previously looked after children not of the faith, **must** give priority to all such children ahead of any other children not of the faith and cannot therefore limit this to looked after and previously looked after children living in a particular area. The school's varied arrangements now give priority to all looked after (and subject to the technical point mentioned above) previously looked after children whether Catholic or not and whether resident in the parish or not.

21. The school has not, however, included this priority within the numbered oversubscription criteria, but has placed it in a separate section. Paragraphs 14 and 1.8 of the Code emphasise the requirement that admission arrangements including oversubscription criteria **must** be clear. Paragraph 14 also states that parents should be able to look at a set of arrangements and

understand easily how places for that school will be allocated. In the case of Our Lady of Peace, I think that a parent or carer wanting to check the oversubscription criteria might well look first at the numbered section of the arrangements. They would see that looked after and previously looked after children do not feature in this list and could conclude – erroneously – that these children do not have priority. There is, by contrast, no possibility of such a mistake in arrangements where looked after and previously looked after children are given priority one in a numbered list.

22. The varied arrangements continue to include looked after and previously looked after children within a separate section and hence the arrangements are in this regard not clear and do not conform to the Code as they must be included as oversubscription criterion 1. The Code requires the school to amend its arrangements as quickly as possible.

#### Clarity of the arrangements and the requirement to allocate places on the basis of determined arrangements

23. Paragraphs 14 and 1.8 of the Code set out the requirements that admission arrangements are clear, fair and objective. Paragraph 14 sets out the key test that parents should be able to look at a set of arrangements and understand easily how places will be allocated. The arrangements for the school both as initially determined and as subsequently varied are not as clear as they need to be. This is because they do not contain a single ordered list of oversubscription criteria. Rather, as noted above, children with statements and looked after and previously looked after children are first described as having priority. The numbered list of criteria then begins with Catholic children with siblings attending the school.

24. The numbered oversubscription criteria are divided into two groups. The first group includes Catholic children and the second children of other or no faith. The second group is preceded by a statement that the “governors will give consideration to the admission of children of other faith traditions, whose parents wish their children to be educated in a Catholic tradition.”

25. I consider that this statement suggests an element of discretion for the governors to consider whether or not to admit such children on a case by case basis and to keep places empty if they choose to do so. This is not in accordance with paragraph 1.36 of the Code which states that schools with a religious character 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. Paragraph 2.8 underlines this requirement by stating that all maintained schools, including faith schools, that have enough places available **must** offer a place to every child who has applied for one, without condition or the use of any oversubscription criteria.

26. The varied arrangements retain this form of words. The words breach the requirements of the Code and the school is required by the Code to amend its arrangements as quickly as possible.

27. I consider also that criteria 4,5, 6, 7 and 8 taken together are unclear and unfair. Criterion 4 refers to children of other denominations who have siblings at the school. Criterion 5 is concerned with children of other Christian denominations who live in the parish; criterion 6 with children of other faiths living in the parish and criterion 7 with children of no faith but not limited to those living in the parish. Criterion 8 then deals in effect with all other children. Given that criterion 7 covers all children of no faith wherever they live, criterion 8 must mean non-Catholic children of any faith background who live outside the parish of Our Lady of Peace and who do not have siblings attending the school or Our Lady of Peace Junior School

28. There are two problems with the school's approach. In the first place, there is no definition of "no faith". A priority based on a family's having no faith is different from one which does not take faith into account. I consider that it is not possible to assess or define criterion 7 and that it is accordingly not clear. Even if a family could demonstrate that they possessed no faith, the proper application of these criteria would have the result that children with no faith wherever they lived would have priority for a place over any child of any non-Catholic child of any faith who lived outside the parish unless that child already had a sibling attending the school or the junior school. I am certain from my discussion with the school that this is not what it intends. My understanding is that the school wishes to give priority to all children who live in the parish ahead of non-Catholic children and those who do not have siblings at the school or at Our Lady of Peace Junior School who live outside the parish. However, as noted above this is not what the arrangements currently achieve. It can be reasonable and fair to give priority to children on the basis that they live in the area served by a school with an element of greater priority in the case of a school with a religious character to those of faith. However, it is not reasonable or fair as required by paragraphs 14 and 1.8 of the Code to give priority to children with no faith (especially as this has not been meaningfully defined) wherever they live over and above those with faith who may live just outside the parish served by a school.

29. In addition, the word "denomination" used in criterion 4 is not qualified so it is not possible to be clear as to whether it is or is not intended to refer only to children from Christian denominations other than Catholic or to children of all faiths which have denominations. It is not clear therefore how siblings of children of non-Christian faiths are to be treated. The arrangements do not accordingly meet the tests for clarity set out in paragraphs 14 and 1.8 of the Code.

30. The varied arrangements continue to use these formulations. The arrangements do not comply with the Code and need to be amended as quickly as possible.

### Definition of siblings

31. The school's oversubscription criteria refer in several places to siblings. Paragraph 1.11 of the Code states that where priority is given to siblings, the arrangements must state clearly what is meant, for example, whether step siblings, foster siblings and some other groups are included. In the arrangements first seen by me, there was no definition of the term. The varied arrangements do now contain a comprehensive definition of siblings in the oversubscription criterion relating to Catholic children with a sibling at the school.

32. However, in the criterion relating to children who are not Catholic but who have siblings at the school, there is no definition. Because the definition is contained within the section dealing only with Catholic children it is not clear that it encompasses all siblings. The arrangements do not conform to the Code and the school is required to amend its arrangements as quickly as possible.

### The use of an unnecessary SIF

33. Paragraph 2.4 of the Code permits the use of a supplementary information form (SIF) where admission authorities need to request information not available from the LA's common application form (CAF) in order to apply their oversubscription criteria. In the case of the school, the CAF does provide all the information – including information about faith – which the school needs. At our meeting, the school explained that it has a School Application Form which it uses for admission to the nursery and for in-year admissions. It needs to use its own form in such circumstances as these admissions are not co-ordinated by the LA and hence not covered by the CAF. The school said that it also uses its own form for applications to YR for its records. It is unclear why the school does this especially as the only information requested on the form which is not on the CAF is whether the child is on the waiting list for another school – which would not be relevant in the case of an application for YR. There is no valid reason for the school to use a form for admissions to YR and therefore it must not do so.

34. The school's arrangements do not conform to paragraph 2.4 of the Code and the Code requires the school to amend its arrangements as quickly as possible.

### Tie-breaker

35. The school's arrangements as initially seen by me did not include any tie-breaker arrangements. This means that were the school to exceed its admission number in any oversubscription criterion its arrangements do not provide any means for deciding which of those children should be offered places. If, for example, after the admission of children with statements of SEN, looked after and previously looked after children and Catholic children from within the diocese of Our Lady of Peace, the school had 15 remaining

places but 20 applicants who satisfied the criterion of being baptised Catholics who lived outside the parish, there would be no way of deciding which 15 of the 20 should be offered a place.

36. Paragraph 1.8 of the Code requires that admission arrangements **must** include an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated. The varied arrangements include a comprehensive tie-breaker based on distance with the way distance is to be measured clearly set out. There is also a final tie-breaker to be used to separate two applicants for the final place in the – albeit rare – case where they both live the same distance from the school.

#### Admission of children below compulsory school age

37. As a school which admits children to YR each year, the school will admit children who have not reached compulsory school age which the law defines as the beginning of the term after the term in which the child reaches the age of five. Paragraph 2.16 of the Code provides that admission authorities **must** make it clear in their arrangements that parents can request that their child's admission is deferred until later in the academic year or until the term in which the child reaches compulsory school age and that parents can request that their child takes up the place part-time until the child reaches compulsory school age.

38. The arrangements as I first saw them in November 2013 did not contain any reference to parents' right to request deferred entry or part-time provision and thus breached paragraph 2.16 of the Code. The varied arrangements similarly do not refer to this right. The arrangements do not conform to the Code and the Code requires the school to amend its arrangements as quickly as possible. In this context, I note that the proposed arrangements for September 2015 do refer to deferred entry and part-time provision. However, the draft proposed arrangements do not make clear that the right applies only until a child reaches compulsory school age. The school may wish to study the wording of the Code before it finalises its arrangements.

#### **Conclusion**

39. This school gives no priority for admission to YR to children who have attended its nursery and there is no breach of the Code in that respect. With regard to the other matters identified, the school has varied its arrangements and the arrangements for a tie-breaker now conform to the Code. With regard to the arrangements for the admission of children with statements of SEN that name the school and looked after and previously looked after children; the clarity of the arrangements; the definition of sibling; the use of an unnecessary SIF and the arrangements for the admission of children below compulsory school age, the arrangements continue not to conform to the Code. The Code requires the school to amend its arrangements as quickly as possible but no later than 15 April.

## **Determination**

40. In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements of Our Lady of Peace Infant School for admissions in September 2014. I determine that the arrangements do not conform to the requirements relating to admissions in the ways set out in this determination.

41. 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 as quickly as possible but no later than 15 April.

Dated: 29 January 2014

Signed:

Schools Adjudicator: Ms Shan Scott