

DETERMINATION

Case reference: ADA/002256

Objector: A member of the public

Admission Authority: The Governing Body of St Swithun's Catholic Primary School, Portsmouth

Date of decision: 30 July 2012

Determination

In accordance with section 88H (4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admissions arrangements determined by the governing body of St Swithun's Catholic Primary School for admissions in September 2013.

The arrangements do not make clear whether the levels of religious practice apply to the child or an adult and this will discriminate against some families in contravention of the Code. Without providing sufficient reason, the School has chosen not to follow the guidance of the Diocese and is in breach of the Code.

I have also considered the arrangements in accordance with section 88I (5) of the School Standards and Framework Act 1998. I determine that the admissions arrangements do not fully conform to the requirements as set out in paragraphs 21 to 27 of this determination.

By virtue of section 88K (2), the adjudicator's decision is binding on the admissions authority. The School Admissions Code requires the admissions authority to revise its admissions arrangements as quickly as possible.

The referral

1. Under section 88H (2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by a member of the public (the objector). The objection concerns the admissions arrangements (the arrangements) for St Swithun's Catholic Primary School (the School), a voluntary aided, mixed primary school as part of a group of Catholic schools in Portsmouth which share admissions arrangements. Of particular concern to the objector was the introduction of a liturgy and Mass attendance record card (the card).

Jurisdiction

2. These arrangements were determined under section 88C of the Act by the School's governing body, which is the admissions authority for the School. The objector submitted her objection to these determined arrangements on 9 May 2012. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I am also using my powers under section 88I of the Act to consider the arrangements as a whole.

Procedure

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code). The documents I have considered in reaching my decision include:
 - a. the objector's form of objection dated 9 May 2012 , her response of 29 May 2012 to my request for clarification and subsequent comments on the School's responses;
 - b. the School's response to the objection and supporting documents in emails dated 29 May and 29 June 2012;
 - c. the School's request in email of 29 May 2012 that responses from St John's Cathedral and Corpus Christi Catholic primary schools should also be considered as part of their response;
 - d. The Portsmouth Catholic Schools Partnership minutes January 2012;
 - e. the response of the Diocese of Portsmouth (the Diocese) to the objections in emails dated 28 May 2012 and 18 June 2012;
 - f. the response of Portsmouth City Council (the Council) to the objections in emails dated 28 May 2012 and 19 June 2012;
 - g. the Council's composite prospectus for parents seeking admissions to schools in the area in September 2012;
 - h. a map of the area identifying Catholic primary schools;
 - i. minutes of the Governing Body meeting 3 February 2011; and,
 - j. a copy of the determined arrangements.

The Objection

4. The objector has raised the following five objections to the admissions arrangements of a group of four voluntary aided, Catholic primary schools in Portsmouth which share common admissions arrangements of which the School is a member :
 - i. Introduction of the card: without consultation, the School has introduced a requirement of parents that they complete a liturgy and

Mass attendance card for the attendance of their child at Mass. This requires a photograph of the child, and is stamped when the child has attended Mass.

- ii. Children or families: the School states that the admissions arrangements and over subscription criteria refer to children's attendance at Mass but the supplementary information form (the SIF) refers to family attendance and it is therefore not clear to whom attendance applies.
- iii. Young children at Mass: the requirement for young children's attendance at Mass is not the norm in Catholic communities and therefore will be discriminatory towards families who are not sufficiently well informed of the School's requirements. This is especially the case for the recent immigrant Catholic community of Portsmouth.
- iv. The other Catholic Primary Schools: three other Catholic primary schools in the area, Corpus Christi, St Paul's and St John's Cathedral, are involved because of the linked nature of the admissions arrangements, in particular, that children who are unsuccessful in gaining entry to the School are given priority in these schools.
- v. The parish priest: the parish priest is a member of the School's admissions committee.

Background

5. The School is a voluntary aided, Catholic, mixed, primary school. It admits 45 children per year into its Reception Year and in March 2009, Ofsted deemed it to be outstanding. It operates a "generic admissions policy" with three other local Catholic primary schools, Corpus Christi, St Paul's and St John's Cathedral school.

The School's Response

6. In response to the issues raised by the objector, the School has asked that the responses of St John's Cathedral Catholic Primary School and Corpus Christi Catholic Primary School are taken into account:
 - a. The School states that its arrangements for entry in September 2012 were open to public consultation in the period following 23 December 2010 in a process administered by the Council. Since there have been no changes in the arrangements for entry in 2013, apart from changes required by statute, further public consultation is not required.
 - b. The School states that the arrangements and especially the oversubscription criteria apply to the child, whereas the SIF refers to the family.
 - c. The School also states that it does not necessarily require a child to attend Mass "*The SIF is about the family, as the Governors would*

not expect any Primary aged child, let alone a child under five to attend Mass by themselves or complete a form on their own behalf. This also allows for families attendance to still count if they attend Mass without a sick child or they have taken the decision quoted to not take their child to Mass until they are of an age of reason.”

- d. The School declares that the cards are not used in any capacity. This is confirmed by a copy of notes of a meeting at which the cards were discussed by the Parish Pastoral Council and Children’s Liturgy Team of the Cathedral of St John in response to concerns raised in relation to attendance at the cathedral by the parents of St John’s Cathedral School. There was no mention of the School or its parents.
- e. The School accepts that the Diocese recommends that parish priests should not be members of admissions committees and have considered this guidance but have chosen to include the local priest in their admissions committee because of his specialist knowledge of Orthodox religions and churches that are part of the Ordinariate. The minutes of the Portsmouth Catholic Schools Partnership meeting of January 2012 state that the four primary schools in the partnership should give a common response to this question.

The Council’s response

- 7. The Council have confirmed that the four Catholic primary schools St Paul’s, St John’s Cathedral and Corpus Christi Catholic Primary Schools and the School have a generic admissions policy. The Council state that they were not consulted about the use of a liturgy and Mass attendance card and that they did not administer the consultation process for the School, *“The LA is clear that we didn’t administer the process on their behalf”*.

Comments from the other Catholic primary schools

- 8. The other Catholic primary schools, St Paul’s, St John’s Cathedral and Corpus Christi have confirmed that they use the generic admissions policy agreed between the four schools but only St John’s Cathedral school uses the card as part of its admissions arrangements..

The Diocese’s response

- 9. The Diocese have confirmed that the four schools in question consulted them in Spring 2011 for 2012 admissions but that the use of the card has not been consulted on nor has the use of such cards been discussed with the Diocese.
- 10. The Diocese goes on to state that whilst the admissions policy of the four schools in question describes the three levels of religious practice, weekly,

fortnightly or monthly, it does not make clear whether it is the child or family that is being assessed and for how long this level of practice should be sustained before the application for a place is submitted. This is contrary to diocesan expectation in that it expects its primary schools to make clear, when referring to levels of practice, that it is referencing it to parents or families, for example *“children of parents who attend fortnightly.”*

11. The Diocese believes that parish priests, by virtue of their role in the parish and in signing off the SIFs are not independent members of admissions committees. The Diocese is concerned therefore that there may be a danger that judgements within the three levels of practice are inadvertently based on the parish priest's personal knowledge of the family rather than the tie-breakers set out in the arrangements. The Diocese is also concerned that *“one of the reasons being given in support of the parish priest's membership on the admissions committee is so that he can provide advice on membership and/or practice of Orthodox religions. The School Admissions Code is quite clear about where the responsibility lies about determining the membership and/or practice of the faith (refer to para 1.38). In the case of the Diocese of Portsmouth it is the Bishop through his curial office, his official office - the Department for Schools.”*

Consideration of Factors

I shall consider each of the five objections in turn:

12. Introduction of the card: The School and the group of schools confirm that the card is not in use at the School. I therefore do not uphold the objector's concerns in this matter.
13. Children or families: The oversubscription criteria specify three levels of religious practice (attending Mass weekly/monthly/ less than monthly). I agree with the Diocese's response to me that it is not made clear whether it is the attendance of the family or the child that is being assessed or for how long this practice must be sustained before the application for a place is submitted. I judge that this is in contravention of paragraph 1.37 of the Code which states that the admissions authority must ensure that parents can easily understand how any faith based criteria will be reasonably satisfied and paragraph 1.4 of the Code which requires admissions arrangements to be clear.
14. Young children at Mass: The School in its response to me accepts that some families may not wish their child to attend Mass until the age of reason. However, the School's stated view that the admissions arrangements refer to the child, as opposed to the SIF which refers to the family, will in my view, lead some parents to conclude that the levels of attendance criteria in the oversubscription criteria apply to the child's attendance at Sunday Mass
15. It is the objector's view that the requirement of young children's attendance at Mass is not the norm in Catholic communities and therefore such a requirement will be discriminatory towards families who are not sufficiently well informed of the School's requirements. Such families may include the

recent immigrant Catholic community of Portsmouth. I am convinced that this aspect of the arrangements could be interpreted to apply to a child and some parents will consequently be unfairly dissuaded from applying for a place, in which case the admissions arrangements breach paragraph 14 of the Code which requires that these should be fair.

16. The other Catholic Primary Schools: The objector believes that the four Catholic primary schools are involved because of the linked nature of the admissions. However, each of the three other schools, St Paul's, St John's and Corpus Christi Catholic primary schools have confirmed that although they share generic admissions arrangements with the School and these are managed by the Council, there is no evidence that a child is unfairly advantaged by the generic admissions arrangements. I do not, therefore, uphold the objector's concerns in this matter.
17. The parish priest: The objector believes that the parish priest's presence on the admissions committee may lead to bias. The Diocese shares these concerns. Although the Code does not specifically prohibit such an arrangement, paragraph 1.38 states that the School as an admissions authority **must** have regard to any guidance from the Diocese as the "body representing the religion". The School made it clear in its response to the adjudicator that it has considered the guidance of the Diocese and has chosen not to follow this advice because the priest has no more knowledge of families than other governors in such a small school and is able to advise the admissions committee on "*which churches are in communion with the See of Rome*". Both points are strongly contested by the Diocese and on the latter contest that the Code, in paragraph 1.38 states that such advice is the responsibility of the body or person representing the religion which in this case is the Diocese of Portsmouth and the Bishop.
18. It is the role of the admissions committee to consider impartially the information they have on each child that is provided by the application form and the SIF and from no other source. There is no role for personal knowledge of a family or child at this stage in the process and any advice on religious practice must be obtained from the Diocese. It is my view that, parish priests by virtue of their role in the parish and in signing off the SIFs may find it difficult to function as an entirely independent member of the admissions committee.
19. I am of the opinion that the Code's requirement "**must have regard to any guidance**" places a requirement on the School to provide good reason why they are not following this guidance. For the reasons given in the previous two paragraphs, I am of the opinion that the School's reasons are insufficiently robust and the parish priest should therefore not be a member of the admissions committee against the advice of the Diocese. I therefore uphold the objector's concern in this matter.

Other Matters

20. In reviewing the arrangements I have noticed other breaches of the Code and wrote to the school inviting further comments which were received

from the Portsmouth Catholic Schools in Partnership.

21. The School states that the admissions arrangements were open to public consultation in a process administered by the Council from 23 December 2010. The Council however state that they were consulted at this time but did not administer the process for the School. Despite a request to confirm that the consultation process was carried out in accordance with the Code, the School has been unable to confirm full adherence and provide satisfactory documentary evidence of this. I am therefore left to conclude that the consultation did not fully meet the requirements of paragraph 1.44 of the Code
22. The arrangement's oversubscription criteria consist of eight criteria with three sets of sub criteria. The first set of sub criteria, levels of religious practice, is applied to two of the main criteria, the second set of one sub criterion applied to three other criteria and a further set of four sub criteria applied to all. I believe this breaches the requirement for the oversubscription criteria to be reasonable, clear, objective and procedurally fair as detailed in paragraph 1.8 of the Code and will not enable parents to easily understand how faith-based criteria will be reasonably satisfied as required in paragraph 1.37 of the Code.
23. The first and third criteria, which refer to looked after children, breach the requirements of paragraph 1.7 of the Code because they are insufficiently clear and comprehensive. The explanatory note defining looked after children should refer to previously looked after children and those who were adopted or subject to residence orders or special guardianship orders.
24. I believe the sub criterion "*frequency of attendance at church services*" is unclear in the description of level of religious practice and is similarly in breach of paragraph 1.37 of the Code.
25. The sub criterion "*Siblings of children at the school at the intended time of entry (categories 1-4)*" is unclear. For example, does it require the sibling to have been accepted into the School under one of the criteria 1-4? Furthermore criterion 5 is itself a sibling criterion and there is a third criterion concerning siblings from multiple births. In my opinion, this is insufficiently clear and likely to be difficult for parents to understand and therefore breaches paragraph 1.37 of the Code and paragraph 1.8 which requires oversubscription criteria to be reasonable, clear and procedurally fair.
26. The admissions arrangements use 'Churches Together in England' as a definition of Christian denomination. However, the phrase is without a definition, nor is information provided as to how a definition can be obtained. This breaches the requirement of paragraph 1.37 of the Code that requires that parents must be able to easily understand how faith – based criteria are satisfied.
27. The admissions arrangements do not contain "*an effective, clear and fair*

tie-breaker to decide between two applicants that cannot otherwise be separated” and are therefore in breach of paragraph 1.8 of the Code. I do not accept the School’s view that a reference to distance in the arrangements constitutes a tie-breaker. It is not clear how and when this distance criterion comes into force and it is possible that two pupils live at an identical distance from the school.

Conclusion

28. For the reasons given above, I conclude that the School does not use a liturgy and Mass attendance card.
29. The School has been unable to demonstrate that in their last consultation they met the requirements of paragraphs 1.42 -1.44 of the Code which describes the requirements of the consultation process. I am therefore of the opinion that the School should consult on its admissions arrangements from November of this year.
30. I have conclude that the School’s statement that the admissions arrangements and hence criteria about levels of religious practice apply to the child will discriminate against some Catholic families for whom the attendance at Mass of young children below the age of reason is not the cultural practice. Thus the arrangements are in contravention of paragraph 14 of the Code which requires the admissions arrangements to be fair.
31. I am of the opinion that the common admissions arrangements of the four schools do not advantage a child unable to find a place in the school of first choice.
32. The Diocese has advised the School that the parish priest should not be a member of the School’s admissions committee. The School has given insufficient reason to negate the requirement of paragraph 1.38 of the Code that the School **must** have regard to guidance from the Diocese. I am therefore of the opinion that the parish priest should not be a member of the admissions committee.
33. The admissions arrangements have eight categories and three sets of sub criteria. One of three sub criteria applying to certain categories, the second of one sub criterion applying to other categories and the third of four sub criteria applying to all criteria. For the reasons given above, I am of the opinion that the admissions arrangements are in breach of paragraphs 1.8 and 1.37 of the Code and should be clearer and easier for parents to understand.
34. The criteria referring to looked after children breach the requirements of paragraph 1.7 of the Code and should be revised.
35. Some of the sub criteria themselves are unclear and difficult to understand and thus in breach of paragraph 1.37 of the Code and are not clear and

fair as required by paragraph 1.8 of the Code. The oversubscription criteria need to be simplified and expressed more clearly as indicated above.

36. A tie- breaker should be introduced into the admissions arrangements so that they comply with paragraph 1.8 of the Code.

Determination

37. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admissions arrangements determined by the governing body of St Swithun's Catholic Primary School for admissions in September 2013.

The arrangements do not make clear whether the levels of religious practice apply to the child or an adult and this will discriminate against some families in contravention of the Code. Without providing sufficient reason, the School has chosen not to follow the guidance of the Diocese and is in breach of the Code.

I have also considered the arrangements in accordance with section 88I (5) of the School Standards and Framework Act 1998. I determine that the admissions arrangements do not fully conform to the requirements as set out in paragraphs 21 to 27 of this determination.

By virtue of section 88K (2), the adjudicator's decision is binding on the admissions authority. The School Admissions Code requires the admissions authority to revise its admissions arrangements as quickly as possible.

Dated: 30 July 2012

Signed:

Schools Adjudicator: Dr M. Kershaw