

## DETERMINATION

**Case reference:** ADA/002143, ADA/002151

**Objector:** Parents

**Admission Authority:** The Governing Body of New Longton All Saints' Church of England Primary School

**Date of decision:** 15 July 2011

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection by an eligible parent to the admission arrangements determined by the governing body of All Saints' Church of England Primary School. Further, in accordance with section 88I(5) of the School Standards and Framework Act 1998 I have considered the referral of the same admission arrangements by a parent who is not an eligible parent.**

**Accordingly under the powers conferred by section 88J I determine that for September 2012 admissions the oversubscription criteria in the admission arrangements shall be as set out in the annex to this determination.**

### **The referral**

1. An eligible parent has referred an objection to the Office of the Schools Adjudicator (OSA) about the admission arrangements (the arrangements) for All Saints' Church of England Primary School (the School), a voluntary aided, Church of England primary school, situated in New Longton, Lancashire for September 2012. A second parent who is not an eligible parent also made a referral. The objections and referral are to changes in priority for applicants and a lack of clarity.

### **Jurisdiction**

2. These arrangements were determined under section 88C of the School Standards and Framework Act 1998 (the Act) by the governing body which is the admission authority for the School. The referral in a letter dated 10 May 2011 by a parent who does not qualify as an eligible parent under section 88H of the Act who can object was considered under section 88I of the Act. The objections in a letter dated 1 June 2011 by an eligible parent were properly referred and have been considered under section 88H of the Act. I am satisfied that I have jurisdiction to consider the arrangements under the Act.

## **Procedure**

3. In coming to my conclusions, I have had full regard to the relevant legislation and guidance.
4. The documents I have considered in reaching my decision include:
  - a. the letters of referral of 10 May 2011 and objection of 1 June 2011, and letters from other interested parents commenting on the arrangements and variation requested by the School, supporting papers and subsequent correspondence;
  - b. the School's response to the referral and objections, supporting documentation and subsequent correspondence;
  - c. the responses from the Diocese of Blackburn (the Diocese); and
  - d. the responses from Lancashire County Council, the local authority (LA) and its booklet for parents seeking admission to primary schools in the area in September 2011.
5. I have also taken account of information received during a meeting I convened on Wednesday 29 June 2011 at the School with representatives of the School, Diocese, and the LA to investigate the procedures that had been followed in determining the School's admission arrangements and to clarify the variation that the governing body had requested to the determined arrangements. I also held a public meeting the same day to receive submissions in relation to the referral and objections to the determined arrangements and comments, if relevant, to the variation. I have also taken into account information received subsequently.

## **The Referral and Objections**

6. The referral and objections are to: the priority given to attending All Saints' Church; the level of attendance at All Saints' or other church to gain priority for admission; the failure to determine and publish admission arrangements in accordance with the timescale set out in the Code; the qualification by date of priority for siblings; the use of "normally" for the number of attendances at church; and the lack of clarity about "full formal membership" of a church and "active involvement in church activities".
7. After receiving the referral and prior to receipt of the objection to the determined policy by the OSA the governors informed parents through a letter from the School dated 9 May 2011 of their intention to request a variation to their determined policy. Therefore comments on and objections to the proposed variation were also included in letters to the OSA. As the request for a variation has been withdrawn as described below, this determination deals with objections to the arrangements determined by the governors.

## **Background and Consideration of Factors**

8. The School is a voluntary aided Church of England primary school that has very close links with the local parish church, All Saints'. It is widely

regarded as the village school and those attending the School are very clear about the Christian ethos and values of the School. In recent years the School has been able to offer a place to all or almost all children for whom it was their parents' highest preference. The governors were particularly concerned that children whose parents or guardians regularly attend All Saints' Church and are committed members of the congregation should have priority for a place at the School. Thus they consulted on different admission arrangements for admission in September 2012 than are in place for 2011.

9. The consultation version of the arrangements, described as policy A in the 9 May letter, included as the first oversubscription criterion priority, as legally required, for looked after children and also gives equal top priority to children who have special medical or social circumstances where the needs can only be met at the School. This oversubscription criterion was the same as for 2011 and has remained the same in the subsequent versions of the arrangements including those determined by the governors. The second oversubscription criterion consulted on was for "Children with a parent/guardian worshipping at All Saints' New Longton" making the priority for siblings the third priority in contrast with the second in 2011. The fourth criterion gives priority to children living in the ecclesiastical parish of All Saints' New Longton and a) parent/guardian worshipping at a church in membership of Churches Together in England and b) other children; criterion five is for children living outside the ecclesiastical parish of All Saints' New Longton and a) parent/guardian worshipping at a church in membership of Churches Together in England and b) other children. Worship was defined as worshipping normally taken to mean a minimum of monthly attendance at church at public worship for over at least six months. The relevant date to have met this requirement is 1 September 2011.

10. The responses to the consultation included objections to: the lowering of the priority for siblings and thus the expectation of parents that younger children would join their brothers and sisters at the School may not be met; difficulties for families if primary age children attend different schools; the low threshold of attendance at church may lead to people outside the village gaining priority by "playing the system"; potential increase in traffic if more children travel from further away; and reduction in priority for attending a church other than All Saints'.

11. The governors clearly considered these responses and determined arrangements at their meeting on 14 March 2011 that were changed from the consultation version to reflect most of the views parents had expressed. These arrangements were later called policy B. Siblings were reinstated to second priority with the statement that the priority was for siblings of children that began attendance at the School on or before 1 September 2011. The third criterion was amended to give priority to children whose parents/guardians are involved in the worship and life of All Saints' with this to be taken as a minimum of 52 attendances at church at public worship in the two years immediately preceding the application date to the School, with full formal membership; next priority would be given to children living in the parish and a) worshipping at a church other than All Saints' that is a member of Churches together in England and b) other children. A new fifth criterion was introduced giving priority to siblings of children who had joined the School

after September 2011 and then the final criterion gives priority to children living outside the parish and whose parents/guardian a) worship at a church other than All Saints' that is in membership of Churches Together in England and finally b) other children.

12. When these determined arrangements were seen by the LA and Diocese they expressed concerns about some of the changes, but did not make a formal objection to the OSA. There are differing recollections of what was said during these discussions and of the advice given, but the outcome was that the governors then proposed a further set of arrangements, policy C, for which they sought a variation through the OSA. As stated above parents were informed in a letter from the School of the determined arrangements and the proposed variation and were told they should send any comments on the proposed variation to the OSA. The referral and objections to the determined arrangements and comments on the variation were received and are covered in this determination.

13. In order to assist me in understanding the procedures that had been followed and the reasons for the various changes I held meetings as referred to above. I established the sequence of events and have seen the minutes of meetings of governors and have concluded that the arrangements for 2012 had been properly determined by the governing body on 14 March 2011. I do not accept the view that the arrangements were not properly determined, but do accept that they were not published as required by 1 May. This is a serious error, but does not invalidate the determined arrangements. In mitigation I accept that the School was acting in good faith in response to advice it received about changes post-consultation it could or could not make, and in not publishing its arrangements prior to seeking the variation. However, the Code is clear about the dates by which arrangements must be determined and be published. Failure to comply places parents and others who may wish to object or refer the arrangements in a difficult position not knowing exactly how they should proceed. The School consulted on its arrangements, considered the responses and then determined its arrangements changing the arrangements as it deemed it should to answer at least some of the responses to consultation. The determined arrangements should have been published and if a relevant body or parent believed the determined arrangements to be in breach of the Code the correct way to proceed is through an objection.

14. Variations to determined arrangements can only be made in very limited circumstances. As the changes proposed by the governors did not fall within those that can be made by an admissions authority itself to comply with a mandatory requirement of the Code, the changes were referred to the OSA under the provision that exists for a change to be made if there is a major change in circumstances. I explored with the School, Diocese and LA what they considered constituted a major change in circumstances such that the different circumstances necessitated a change in the arrangements. I invited the governors to offer me further evidence to assist me in considering their request for a variation and the reasons for the proposed changes to the determined arrangements. If they concluded they had not met the terms set out in the Code for a variation they could consider withdrawing variation. I have been informed that the governors convened a special meeting on 4 July

2011 and they decided to withdraw the request for a variation to their determined arrangements. I am therefore not commenting further on the arrangements described by the School as policy C.

15. My determination relates to policy B, the School's determined arrangements. The governors noted the views expressed during the consultation about the lowered priority for siblings from second to third oversubscription criterion and reinstated siblings as oversubscription criterion 2. They qualified this, however, for siblings in 2012 who will have an older sibling at the School before 1 September 2011 and will be at the School at the time of application and admission. The arrangements then place at oversubscription criterion 5 priority for children who have an older sibling who first attended the School after September 2011. Given that the arrangements are for September 2012 the School has not offered a good reason for defining two groups of siblings. It may be indicating to parents in future years that it does not wish to give the priority to siblings enjoyed to date, but this is not clear. There are circumstances when it is reasonable to discuss and plan ahead, but arrangements are determined annually and the Governors will need to consider very carefully any change they think about making and how it meets the Code in force at the time. The arrangements over recent years have given parents the expectation that younger siblings will have priority to join their older siblings and the reinstatement of siblings at oversubscription criterion 2 meets the wishes of parents. It is also, importantly, in line with what the Code says about siblings at primary schools. Since the meetings I convened the governors have offered a further set of admission arrangements for me to consider that take account of the views expressed by parents by retaining siblings as oversubscription criterion 2 and the views of the LA and Diocese, with which I agree, that there should not be any subdivision of siblings. I accept the sibling oversubscription criterion as now amended and as shown in the annex.

16. The governors amended the consultation version of their arrangements by increasing the level of attendance at church, All Saints' or any other church, in response to a view expressed during the consultation for the potential for "playing the system". However, previous priority has been on the basis shown in the consultation of normally a minimum of monthly for six months prior to 1 September in the school year in which an application is made. To introduce an attendance rate of 52 attendances over a two year period without giving parents due warning or making clear arrangements for records to be kept by the churches that would be asked to confirm the level of attendance has resulted in a negative response. It was not appropriate in my judgement to introduce such a change without due notification to parents and all relevant churches to ensure that the requirement could be demonstrated to have been met. Without agreed record keeping in place in the two years leading up to 1 September 2011 the School cannot be certain whether an applicant has met the specified level of attendance and thus been given the correct priority if the School is oversubscribed. I am not persuaded that there is a fair, clear and objective procedure in place for an applicant to be properly assessed against this criterion.

17. The determined arrangements also introduced the additional requirement for parents/guardians to be "involved in the life of the church"

which is given as having “full formal membership (e.g. on the church electoral roll or membership list) and an active involvement in church activities”. This additional requirement is not clearly described as there is no indication of whether an applicant has to have been in membership for a minimum length of time, or prior to a specified date, and there is no explanation of what constitutes active involvement in church activities. This additional requirement also exceeds the measure of worship admission authorities should use as given in the Diocesan guidance. While an admission authority may vary from the guidance of its faith body, it needs to give clear and compelling reasons for doing so and to make it very clear how the criteria can be met. Furthermore, there is no indication of how an applicant meeting or exceeding, for example, the number of attendances at church, but not fulfilling whatever is meant by membership and/or involvement in activities would be assessed as having priority against the faith criterion. I agree that the arrangements in respect of these aspects are not clear, and there is no indication how they meet the Code in being fair or objective.

18. Since the meetings I convened the governors have suggested that they should revert to the previous criterion which for admissions in 2012 would be for parental/guardian worshipping a minimum of monthly attendance at church at public worship for over at least six months leading up to 1 September 2011. Given this is the same requirement for the level of attendance as in previous years and was the level in the consultation no parent who anticipated meeting the requirements will be disadvantaged and records should have been kept. The time left for achieving the level of attendance means that the arrangements cannot suddenly be abused this year as suggested by an objector during the consultation as there is insufficient time to start meeting the attendance level before 1 September. I therefore accept the views of the governors that the faith criterion based on attendance at church only should be as consulted on and as is in accordance with the Diocesan guidance.

19. The use of the word “normally” has been questioned as being confusing and parents must know whether they can meet the criterion or not. The School has included “normally” as shown in the guidance from the Diocese. I agree that attendance can be measured as having happened, or not. However, I am not persuaded that the inclusion of the word “normally” is confusing, but a better explanation of what it means ought to be included to make clear what the governors mean by the word. I take it to mean that barring some serious unforeseen circumstance the attendance rate must be as stated, but if there were to be some circumstance that meant the minimum number of attendances had not been met then the governors could be presented with evidence of the extenuating circumstances which they may take into account. The wording has been used and not been the subject of an objection prior to this year and I do not think I should require it to be removed from the arrangements for 2012.

20. The new, high priority to be given to attendance to All Saints’ Church without any further consideration such as residence in the ecclesiastical parish was introduced and objected to during the consultation and as part of the objection lodged with the OSA. Previously priority was given to children resident in the parish first to those with the requisite level of attendance at a church in membership of Churches Together in England and then other

children. The final level of priority was to children living outside the parish with again first places to those with the required level of church attendance and then other children.

21. The governors have said that historically there was greater priority for a place for children whose parents worshipped at All Saints' and that with the close links between the School and the Church they wish to give higher priority to families with strong connections with the Church. Those who live in the village look to the School as the village school and are concerned that if attending All Saints' Church gives higher priority for a place at the School there is the risk that children in the village whose parents attend a different church or no church will not be able to attend their local school. Some of the information provided for me with the objection very astutely refers to the arrangements of schools in other villages and points out that failure to gain a place at the village school would not only create problems for families with young children at different schools, but the arrangements for schools in other villages that give priority to residents in those villages mean finding a place elsewhere might be very difficult indeed.

22. I sought information about the level of oversubscription at the School, if any, and the allocation of places against the criteria. The School has not been regularly oversubscribed with applicants for whom it is their highest preference. The view that the School is the village school and that it is a church school is well founded. The latest data I have shows that for 2011 there were 50 applications for the School in the three preferences co-ordinated scheme for admission for 30 places with 28 children being offered a place of which 26 were first preference. This is said to be similar to previous years. For admissions in September 2010 the information I have seen indicates that 13 children living in the parish were admitted against the faith criterion (which did not distinguish between All Saints' and other churches); 14 other children living in the parish; 1 child outside the parish against the faith criterion and 2 others. In response to further questioning, it seems to me that relatively few children are admitted whose parents attend All Saints' Church. In trying to understand the change in the oversubscription criteria to favour specifically children of parents who attend All Saints' Church irrespective of where they live the desire to honour long established connections with this church was cited. Looking at the various papers provided by the School and taking note of comments at the public meeting, I am left with the view that the change was stimulated as least as much by one child in recent years not gaining a place as an overall view about links with the Church. In proposing the change the governors have opened up many other considerations and there could potentially be various unintended consequences. I did not detect any desire on the part of the governing body to have a school that is not regarded as and in fact is the village school, but in raising the priority for anyone wherever they live who can meet the attendance criterion at All Saints' Church they risk disadvantaging local children as they would have low priority for the School and low priority for other schools. I am not persuaded that the governing body has taken sufficient account of full implications of their arrangements.

23. The change to specifying attendance at All Saints' without regard to where an applicant lives is contrary to the Diocesan guidance which does not

distinguish between worship at a specific parish church or other church in membership of Churches Together in England. Furthermore the guidance refers to the expectation that schools will admit a proportion of local children regardless of faith and suggests that for primary schools this should be 25%. The years for which I have data show that the School has met this guidance through its current arrangements. The School has reiterated its wish to give priority to children whose parents worship at All Saints' and in doing so take into account any historic links with the church, even if the family no longer live in the parish. I have been told that such families may not be able to afford to live in the village, but I do not have any firm evidence that illustrates the impact of housing costs on families formerly in the parish and now living elsewhere.

24. While noting the governors' stated strategic aim of giving priority to children of parents worshipping at All Saints' in line with the long history of the All Saints' and the School, I am not persuaded that the implications of the change have been as thoroughly assessed as they ought to have been, nor that the change has been tested against the mandatory requirements of the Code. For example, when the possibility was raised during the consultation that the level of attendance given in the consultation version of the policy might lead to many applicants from outside the village "playing the system" the attendance requirement was hugely increased, but the necessary arrangements to go with the change for checking attendance and so on were not considered carefully enough. Nor have I been persuaded that sufficient thought was given to what might happen to children living in the village who could no longer gain a place at the village school.

25. I have accepted as described above the governors' suggestions concerning the priority for siblings and the level of attendance at All Saints' or other church. I agree that the School does not have to follow the Diocesan guidance about priority for worship at a church in membership of Churches Together in England, but it does have to provide good reasons for not doing so. I am not convinced that a wish to return to a priority for worshipping at All Saints' and maintaining historic links for families no longer living in the parish has been weighed sufficiently carefully against the potential impact on those now living in the village and the reasons for the Diocesan guidance on not distinguishing between different Christian churches. This leaves me with having to decide whether to leave the third priority for children who have a parent/ guardian worshipping at All Saints' as wished by the governors or to put a different criterion in its place. As I have concluded that the reasons for the priority for worshipping at All Saints' have not been made sufficiently strongly; the potential impact for residents of New Longton has not been thoroughly analysed, assessed and checked for unintended consequences; and I am not convinced there are compelling reasons for not following the Diocesan guidance, I do not believe the third priority can remain. I have considered how I can amend the criterion and have come to the conclusion that the criteria giving priority on the grounds of faith as applied for admissions in September 2011 should apply for admissions in September 2012.

### **Protection of Arrangements**

26. I have considered whether, and if so to what extent, I should protect the

changes to the arrangements. I do not think I should protect the arrangements as the School, parents, Diocese and LA will need to assess the School's proposed arrangements for 2013 when consulted on in relation to the expected new School Admissions Code and have scope if necessary to make further changes for future years to ensure complete compliance with the Code and legislation.

### **Conclusion**

27. I have concluded for the reasons given above that I should partially uphold the referral and objection.

### **Determination**

28. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection by an eligible parent to the admission arrangements determined by the governing body of All Saints' Church of England Primary School. Further, in accordance with section 88I(5) of the School Standards and Framework Act 1998 I have considered the referral of the same admission arrangements by a parent who is not an eligible parent.

29. Accordingly under the powers conferred by section 88J I determine that for September 2012 admissions the oversubscription criteria in the admission arrangements shall be as set out in the annex to this determination.

Dated: 15 July 2011

Signed:

Schools adjudicator: Dr E L Passmore

## **ANNEX**

All Saints' Church of England Primary School, New Longton, Lancashire

Oversubscription criteria

1. (a) Children in public care  
(b) Children with special medical or social circumstances affecting the child where these needs can only be met at this school.
2. Children who have a sibling attending the school on the date of application and on the date of admission.
3. Children whose parents live in the ecclesiastical parish of All Saints', New Longton
  - (a) Children with a parent/guardian worshipping in a church in membership of Churches Together in England
  - (b) Other children
4. Children whose parents live outside the ecclesiastical parish of All Saints', New Longton
  - (a) Children with a parent/guardian worshipping in a church in membership of Churches Together in England
  - (b) Other children

Note:

Parental worshipping is normally taken to mean a minimum of monthly attendance at church at public worship for over six months leading up to the 1<sup>st</sup> September 2011.