

DETERMINATION

Case reference: ADA2633

Referrer: Nottingham City Council

Admission Authority: The St. Barnabas Catholic Academy Trust

Date of decision: 25 June 2014

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the academy trust of St Mary's Catholic Primary School, Nottingham.

I have also considered the arrangements in accordance with section 88I(5). I determine that they do not conform with the requirements relating to admission arrangements.

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.

The referral

1. Under section 88H(2) of the Schools Standards and Framework Act 1998 (the Act) an objection has been referred to the adjudicator by Nottingham City Council, the local authority (the LA) for the area, in an email dated 15 May 2014 concerning the admission arrangements for September 2015 (the arrangements) for St Mary's Catholic Primary School, an academy (the school).
2. The objection is to the nature of the information about waiting lists and to the requirement for parents applying for places to include information about siblings on the supplementary information form (SIF).

Jurisdiction

3. The terms of the academy agreement between the academy trust and the Secretary of State require that the admission policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. The arrangements were determined by the academy trust, which is the admission authority for the school on that basis.

4. The objector submitted the objection to these determined arrangements on 15 May 2014. I am satisfied that the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

Procedure

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

6. The documents I have considered in reaching my decision include:

- a. the referral dated 15 May 2014;
- b. the Nottingham Roman Catholic Diocesan Education Service's (the diocese) proposed admission policy and SIF for Catholic primary voluntary academies in Nottingham City, dated August 2013;
- c. the school's admission policy, determined at a meeting of the governing body in March 2014;
- d. letters and emails exchanged by the school admissions team of the LA and the diocese between January and May 2014;
- e. the referrer's further comments dated 22, 28 and 29 May 2014;
- f. the school's response to the objection, dated 4 June 2014; and
- g. the school's website.

The Objection

7. The LA has objected to a lack of clarity in the information provided under the heading 'Waiting Lists' in the school's arrangements for 2015/2016. This states that "*Waiting lists for admission will normally remain open until the end of the Autumn Term in the admission year but may be maintained after this date and for year groups other than the intake year.*" Parents are advised to contact the school if they require further details.

8. The LA contends that this statement is unclear to parents as to whether or not, and for how long, a waiting list will be maintained beyond the end of the autumn term, and as to whether or not it applies to year groups other than the normal admissions year. The LA contends therefore that the statement in the school's arrangements is in breach of the Code which states, in paragraph 2.14, that "*Each admission authority **must** maintain a clear, fair and objective waiting list for at least the first term of the academic year of admission ...*".

9. Furthermore, the LA contends that the school's SIF, used in applying

the arrangements, in requesting details (that is, names and dates of birth) of siblings attending the school at the proposed time of admission goes beyond what is necessary and reasonable, given that such information is already known from the LA's common application form (CAF).

Other matters

10. In the course of considering the objection I reviewed the arrangements as a whole and noted that these appeared not to meet the requirements of the Code in respect of the length of time for which the arrangements remain valid.

11. I also found that the school's website does not meet the requirements of the Code in respect of the information published regarding admission arrangements.

Background

12. The school, an academy for 3 – 11 year old pupils, belongs to the Nottingham Diocesan family of schools and is under the Trusteeship of the diocese. The governing body is the admission authority under the articles of the St Barnabas Catholic academy trust.

13. The arrangements for 2015-16 were determined by the governing body of the school in March 2014 using a common or 'model' policy provided by the diocese to all Catholic voluntary aided schools, Catholic voluntary academies and Catholic sponsored academies in Nottingham City.

Consideration of Factors

14. The LA responded in January 2014 to the proposed admission arrangements for 2015/2016 circulated for consultation by the diocese. Comments were made, among others not relevant to this objection, on two issues concerning waiting lists and the SIF.

15. In respect of waiting lists, the LA commented that it *"would advise that the admission arrangements specify whether or not waiting lists will be maintained after the end of the Autumn Term in the admission year, and whether or not the schools intend to hold waiting lists for year groups other than the intake year."* The LA suggested that not to include this information *"would make the arrangements unclear to parents and therefore would be in breach of paragraph 1.8 of the School Admissions Code."*

16. With reference to the SIF, the LA commented that it *"would recommend that you remove the section ... which requests details of any siblings attending the preferred academy at the proposed time of admission."* The LA's view was that this requirement would be in breach of paragraph 2.4 of the Code, giving as its reason that *"this information is already requested on the CAF."*

17. I will consider each of these objections in turn, taking first the issue concerning waiting lists.

18. The LA refers only to paragraph 1.8 of the Code in relation to waiting lists, which is a general, in effect introductory, statement about oversubscription criteria. It does indeed refer to the need for clarity in arrangements, but this is in the context of oversubscription criteria generally rather than waiting lists *per se*. Explicit reference to waiting lists is, however, made in paragraph 2.14 of the Code, which states *“Each admission authority must maintain a clear, fair and objective waiting list for at least the first term of the academic year of admission ...”*

19. The wording of paragraph 2.14 in the Code thus makes explicit the requirement to maintain a waiting list for one term, but leaves open the possibility that admission authorities might wish to designate a longer period of time. The Code does not address the issue of waiting lists for year groups other than for the normal intake year.

20. The wording in the school’s admission arrangements is as follows: *“Waiting lists for admission will normally remain open until the end of the Autumn Term in the admission year but may be maintained after this date and for year groups other than the intake year.”* This is both ambiguous and vague. The use of *“normally”* might lead to the statement being taken to mean that waiting lists would not necessarily remain open even for this length of time, which would contravene paragraph 2.14 of the Code, or that they might be held open for a longer, but unspecified, period. I would presume the school intends the latter interpretation, but it is not clear. *“Waiting lists”* in the plural might be taken to imply that there is more than one list, and the presumption might be that there are different waiting lists for different year groups, but this is not explained. Use of the word *“may”* in the second part of the school’s statement means that parents would have to contact the school to obtain more specific information, which is what the document advises. In my view, this lack of clarity does not conform with paragraph 14 of the Code, which states that *“Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”*

21. The diocese, in emails exchanged with the LA, stated its wish to avoid having to specify precise arrangements regarding waiting lists, as individual schools might wish to vary them and that this would therefore be *“problematic for a general policy”*. In response, the LA raised the question as to whether it would be *“appropriate for a parent to have to contact each individual school”* to which they might have applied in order to gain specific information about the operation of waiting lists.

22. Regarding the general policy, I have noted that the arrangements for Catholic primary schools in the City of Nottingham, while using the general policy supplied by the diocese, do sometimes vary, albeit

slightly, in wording. Furthermore, the diocese's concern implies a recognition that individual schools might wish to make different arrangements. I do not therefore believe there is any reason why a 'model' policy could not, in the matter of waiting lists, make clear to individual schools the requirement of paragraph 2.14 of the Code, that is, to keep waiting lists open for the first term of the academic year of admission, and then require them to add a statement explaining whether waiting lists are kept open for any longer, and for which year groups, in a particular school. If this were done, parents would know from the arrangements of each school to which they were applying for a place how waiting lists would operate. Given that the diocese's general policy is not simply adopted as it stands by all the schools to which it is offered would seem to indicate some scope for local variations, provided they meet the requirements of admissions law and the Code.

23. Other correspondence between the diocese and the LA shows that in the previous year's common admissions policy, the word "*normally*", discussed above, was not included. It was apparently inserted in an attempt to reflect proposed moves by Nottingham City Council to maintain all year round waiting lists for its maintained schools, even though precise details of that change were not known to the diocese at the time. In its response to this objection the diocese has written "*It is regretful that Nottingham City Council resolved to change their admission arrangements on the management of waiting lists and then seek to impose those changed arrangements on other Admission Authorities*". The school's response affirms its support for the diocese's view. However, I have seen no evidence that the LA was seeking to impose its own changes, or the rationale behind them, on other admission authorities. The LA had merely suggested a clarification in the diocesan arrangements in order to meet the requirements of the Code and to assist parents in understanding how waiting lists are maintained and operated in its schools.

24. Paragraph 2.14 of the Code imposes a minimum requirement on admission authorities to maintain a waiting list for the first term of the academic year of admission. The operation of waiting lists over and beyond that minimum requirement is not prescribed. It is my view, therefore, that the word "*normally*" should be removed from the school's statement quoted above in order to comply fully and transparently with the requirements of paragraph 2.14 of the Code. I am also of the view that, in order to provide clear and accessible information to parents, it would be helpful if the school were to state in its arrangements whether it intends to maintain waiting lists for longer than the minimum required period, and if so for how long, and for which year groups waiting lists will be maintained.

25. I determine, therefore, that the school's statement concerning waiting lists does not comply with the requirements of the Code and that the arrangements need to be amended in order to conform with paragraph 2.14 of the Code.

26. I turn now to the issue of the information required by the school's SIF. It is the LA's contention that by requiring parents to give the names and dates of birth of siblings on the SIF, the school is contravening paragraph 2.4 of the Code which states that admissions authorities *"must only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria ..."*. This information is already collected on the LA's CAF, which all parents seeking places for a child at the school must complete. The LA says that, especially where parents may be completing more than one SIF, this repeated provision of information is an unnecessary burden and one prohibited by the Code.

27. The view of the diocese is that, given the significance of siblings in the application of oversubscription criteria in the arrangements, this information has a *"direct bearing"* on decisions made about the allocation of places; that it ensures procedures are *"more robust and fairer for parents"*; and that *"the SIF specifically asks for verification that the child will have a brother or sister at the specific school at the proposed time of admission."* The diocese further argues that information gathered by the CAF is sometimes inaccurate or unclear and that the SIF is thus *"a very effective cross check for admission committees and ensures that applications will be ranked correctly."* The school's response endorses the diocese's views on this issue.

28. In reply, the LA accepts the importance of obtaining information about siblings in applying oversubscription criteria for the school. It further accepts that parents may make errors or omissions in completing the CAF, but suggests that the requirement to re-enter sibling information on the SIF does not preclude repetition of, or further, error. The LA provides weekly reports to own admission authority schools to enable them to cross reference information with completed SIFs; these reports include details of siblings. Although the letter from the diocese quoted above suggests otherwise, the CAF asks clearly for parents to indicate if there are siblings on the roll of a specific school to which a parent is applying for a place.

29. In many respects the diocese, with the support of the school, makes a reasonable case for requiring information about siblings to be entered on the school's SIF as well as on the LA's CAF. The SIF does provide a checking mechanism and it may be that, especially in cases where parents have, for whatever reason, misunderstood the CAF or have failed to complete it fully or accurately, this second opportunity to enter details of siblings might eliminate some errors and oversights. However, I believe the CAF to be clearly worded and presented and that the likelihood of a parent not providing this information on the CAF but then doing so on the school's SIF is minimal. The LA's weekly reports to the school, although not complete copies of the CAF, contain sufficient detail to allow for the identification of possible anomalies.

30. The crux of this issue appears to be differing interpretations of paragraph 2.4 in the Code. The school believes it is not requesting

additional information, rather a confirmation of information already given on the CAF, and moreover that, as information about siblings does have “*a direct bearing on decisions about oversubscription*”, then to ask for it is reasonable and allowable under the Code. For its part, the LA sees the school’s request as unnecessary and potentially burdensome for parents. There has been considerable discussion between the LA and the diocese on this matter over a period of time, and the school supports the diocesan view. There is no suggestion in the school’s arrangements that the SIF is used to seek any additional information specifically prohibited by paragraph 1.9 of the Code.

31. I have considered these points of view carefully against my reading of paragraph 2.4 of the Code. The paragraph states clearly that any supplementary information may be sought by an admissions authority only if “*it has a direct bearing on decisions about oversubscription*”. In this case, the information requested by the school certainly has that direct bearing, and it might be argued that it is not ‘additional’ information, since it has already been provided. Therefore, in that sense, there is implicit agreement between the parties that the school does not need any additional information through the mechanism of the SIF in order to apply its oversubscription criteria.

32. My understanding of paragraph 2.4 of the Code is that it applies to situations where additional information is necessary to allow the proper application of oversubscription criteria, and that this is not the case for this school. Although paragraph 2.4 of the Code does not explicitly prohibit requests for information on the SIF that is already collected on the CAF, I believe that to be the spirit of the paragraph.

33. I determine, therefore, that the request for information about siblings does not comply with the requirements of the Code and that the arrangements should be amended to remove this request from the school’s SIF in order to conform with paragraph 2.4 of the Code.

34. I turn now to the other matters mentioned above. In the introductory remarks to the school’s arrangements it is stated that the admissions policy “*applies to all applications for the school year 2015-2016 and for applications in subsequent years until further notice.*” This is in implicit contravention of paragraph 1.46 of the Code which states that “*All admission authorities **must** determine admission arrangements by **15 April** every year, even if they have not changed from previous years and a consultation has not been required.*” With regard to consultation, in implying an indefinite period of validity for the arrangements, the admission authority appears also to have overlooked the requirement of paragraph 1.42 of the Code which states that, even when there have been no changes, “*admission authorities **must** consult on their admission arrangements at least once every 7 years.*”

35. I determine, therefore, that the statement about the validity of the arrangements does not comply with the requirements of the Code and

that the arrangements need to be amended to conform with paragraphs 1.42 and 1.46 of the Code.

36. On the issue concerning the school's website, paragraph 15(a) of the Code states that *"All schools **must** have admission arrangements that clearly set out how children will be admitted, including the criteria that will be applied if there are more applications than places at the school."* Paragraph 15(b) goes on to state that *"Admission authorities **must** set ('determine') admission arrangements annually."* Paragraph 1.46 of the Code states that *"All admission authorities **must** determine admission arrangements by **15 April** every year ..."* and paragraph 1.47 states, *"Once admission authorities have determined their admission arrangements, they **must** ... publish a copy of the determined arrangements on their website ..."*

37. I have been unable to find on the school's website any information directly concerning admission arrangements. An online school brochure states on page 18 that *"A copy of St Mary's admission criteria is available from the school office and the local authority on request."* Parents and other interested parties are thus deprived of an opportunity to consult the determined arrangements in order to make an application or to make an objection should they so wish without having to make unreasonable efforts to obtain the necessary information.

38. I determine, therefore, that the school's website does not comply with the requirements of the Code and that it should be updated in order to show that the determination and publication of admission arrangements meet fully the requirements of paragraphs 1.46 and 1.47 of the Code.

Conclusion

39. The objection draws attention to two aspects of the school's arrangements. The first part of the objection relates to waiting lists and the lack of clarity as regards how long they are kept open, and to which year groups they apply. I found that the school's arrangements do not comply with paragraph 2.14 of the Code, nor do they help parents applying for places to understand fully how waiting lists will be maintained and operated. The second part of the objection concerns the school's request for information about siblings on its SIF, duplicating information already gathered by the LA's CAF. I considered this issue against paragraph 2.4 of the Code and, for the reasons explained above, decided that this request by the school, while not prohibited, is contrary to the spirit of paragraph 2.4 of the Code and potentially unreasonable in the demands made on parents.

40. I therefore uphold the objection on both counts as the school's arrangements do not conform with paragraphs 2.14 and 2.4 of the Code.

41. In considering the arrangements as a whole, I also found that they include a statement that implies they have unlimited validity, which contravenes paragraphs 1.42 and 1.46 of the Code.

42. Furthermore, the school's website does not publish the arrangements for 2015/2016 determined in March of this year, or current arrangements. This is unhelpful to prospective applicants for places and other interested parties, and contravenes paragraphs 1.46 and 1.47 of the Code.

43. It is for these reasons that I conclude that the arrangements are not compliant with the Code and must be revised as soon as possible.

Determination

44. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the academy trust of St Mary's Catholic Primary School. Nottingham.

45. I have also considered the arrangements in accordance with section 88I(5). I determine that they do not conform with the requirements relating to admission arrangements.

46. 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.

Dated: 25 June 2014

Signed:

Schools Adjudicator: Andrew Bennett