



DETERMINATION

Case reference: ADA 2750

Objector: A parent

Admission Authority: Twyford Church of England Academies Trust

Date of decision: 19 September 2014

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the directors of Twyford Academies Trust for Twyford Church of England High School, Ealing.

I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements for admission to year 7 and year 12 in September 2015 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 School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator on 30 June 2014 by a parent, the objector, about the admission arrangements (the arrangements) for Twyford Church of England High School (the school), an academy school for 11 to 18 year olds for September 2015.
2. The objector suggests that the arrangements are unreasonable and contravene paragraph 1.8 of the School Admissions Code (the Code) which states that "*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair and comply with all relevant legislation.*" The objector suggests that it is "*unreasonable to assume evidence of Anglican Church attendance can be relied on to confirm a genuine commitment to the Christian faith*".

Jurisdiction

3. The terms of the academy agreement between the directors of the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the board of directors of the academy trust, which is the admission authority for the school, on that basis.
4. The objector submitted his objection to these determined arrangements on 30 June 2014. A previous referral concerning the school's arrangements for admission in September 2014 was determined and published on 29 November 2013 in accordance with section 88I(5) of the Act. The referral concerned the evidence required by the school to demonstrate adherence to the faith.
5. I am satisfied that the restriction placed on making an objection as set out in paragraph 3.3e of the Code does not apply, this states that "*The following types of objection cannot be brought: objections to arrangements which raise the same or substantially the same matters as the adjudicator has decided on for that school in the last 2 years*" This section of the Code refers to regulation 22 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012. The previous determination was a response to a consideration of the arrangements not an objection and was determined under section 88I of the Act; paragraph 3.3e does not therefore apply. The current objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.
6. I have also used my power under section 88I of the Act to review the arrangements as a whole.

Procedure

7. In considering this matter I have had regard to all relevant legislation and the Code.
8. The documents I have considered in reaching my decision include:
 - a) the objector's email of objection dated 30 June 2014 and subsequent correspondence dated 16 July, 18 July (two pieces of correspondence) and 29 July 2014;
 - b) the school's response to the objection and supporting documents dated 14 July 2014 and subsequent correspondence dated 17, 25 and 28 July 2014;
 - c) Ealing Council's, the local authority (the LA) response to the objection and supporting documents dated 11 July 2014 and further correspondence dated 29 July 2014;

- d) the London Diocesan Board for Schools's (LDBS) representing the faith body response to the objection dated 14 July 2014 and the diocesan guidance;
- e) the LA's composite prospectus for parents seeking admission to schools in the area in September 2014;
- f) the academy funding agreement dated 12 November 2012 and the deed of variation to the agreement dated 25 October 2013.
- g) confirmation of when consultation on the arrangements last took place;
- h) a copy of the minutes of the meeting dated 19 March 2014 at which the directors of the school determined the arrangements;
- i) a copy of the determined arrangements; and
- j) the Office of School Adjudicator (OSA) determination dated 29 November 2013.

The Objection

- 9. The objector says that the arrangements are unreasonable because the oversubscription criteria which require regular church attendance "*excludes families who have a preference for a school of religious character as set down in Twyford's prospectus but who have not done all the things required to get the maximum points*". He indicates that this is contrary to paragraph 1.8 of the Code.

Other Matters

- 10. I wish to draw the attention of the directors to other matters which do not conform with the Code in relation to the year 7 (Y7) and sixth form arrangements for September 2015.

Background

- 11. The school is a heavily over-subscribed academy school for 11 to 18 year olds. It became an academy on 1 October 2011. It is designated as a school with a religious character, the character being Church of England. The school is one of two schools in the Twyford Church of England Academies Trust. The other is William Perkin Church of England High School also in the same LA. That school opened in September 2013 and was oversubscribed for its first year of admission to Y7.
- 12. Following a determination by the OSA which was published on 29 November 2013 the arrangements were revised. In addition, a consultation on the arrangements was held between 16 December 2013 and 28 February 2014. The arrangements were determined at a directors' meeting on the 19 March 2014. Arrangements for Y7 were then published on the school's website.

13. The school has a published admission number (PAN) for admission into Y7 in September 2015 of 190. This PAN has remained the same for the last three years. There were 734 applications for admission into Y7 in 2012 and 1110 applications for places in September 2013. In 2012, 69 admission appeals were heard of which 11 were upheld. The school's capacity is calculated at 1291 and its current number on roll is 1453.
14. After the admission of children with a statement of special educational need which names the school, the oversubscription criteria designate 150 places for "*Foundation (Christian) places*", 21 places for "*World faith places*" and 19 places for "*Specialist Music*". For each of these categories there is a separate list of oversubscription criteria and a supplementary information form (SIF).
15. For the foundation and world faith places, looked after and previously looked after children are given priority and then points are allocated to families who attend a place of worship. Places are allocated on the number of points. Regularity of attendance (up to 10 points for weekly attendance by child and parent) and number of years attended (up to 10 points for five years attendance by child and parent) are awarded points on a sliding scale. For foundation places an additional point is allocated to a family whose main place of worship is a Church of England church. This means that the maximum available points for a foundation place is 21 and for the world faith is 20. For each of these application groups the SIF includes a form to be completed by the religious leader to confirm the level of attendance at worship.
16. The points allocation has changed following the OSA determination and therefore definitive figures for places allocated with a specific number of points are not yet available for admission to Y7 in 2014. In previous years faith places have been filled by applicants demonstrating the maximum number of points and it seems likely that this will continue to be the case. Where all applicants within a category demonstrate the maximum number of points, priority is given in the first instance to applicants with siblings in the school and who live nearest to the school. For admission to Y7 in September 2013 this was the only other criterion used when allocating places for the faith groups.
17. Specialist music places are allocated on applicants' natural aptitude for music in line with paragraph 1.24 and 1.32 of the Code which state that; "*Schools that have arrangements to select by aptitude **must not** allow for more than 10 per cent of the total admissions intake to be allocated on the basis of such aptitude,*" and "*Admission authorities **must** ensure that tests for aptitude in a particular subject are designed to test only for aptitude in the subject concerned and not for ability.*"

Consideration of Factors

18. The funding agreement and variation to this agreement indicate that it is a school designated as a having a Church of England religious character and therefore the section of the Code relating to "*Faith-*

based oversubscription criteria in schools with a religious character” apply to its arrangements. These are paragraphs 1.36 to 1.38 of the Code which say:

Paragraph 1.36; “As with other maintained schools, these schools are required to offer every child who applies, whether of the faith, another faith or no faith, a place at the school if there are places available. Schools designated by the Secretary of State as having a religious character (commonly known as faith schools) may use faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed”;

*Paragraph 1.37; “Admission authorities **must** ensure that parents can easily understand how any faith based criteria will be reasonably satisfied. Admission authorities for faith schools may give priority to all looked after children and previously looked after children whether or not of the faith, but they **must** give priority to looked after children and previously looked after children of the faith before other children of the faith. Where any element of priority is given in relation to children not of the faith they **must** give priority to looked after children and previously looked after children not of the faith above other children not of the faith” and*

*Paragraph 1.38; “Admission authorities for schools designated as having a religious character **must** have regard to any guidance from the body of person representing the religion or religious denomination when constructing faith-based oversubscription criteria, to the extent that the guidance complies with the mandatory provisions and guidelines of the Code. They **must** also consult with the body or person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated. Church of England schools **must**, as required by the Diocesan Boards of Education Measure 1991, consult with their diocese about proposed admission arrangements before any public consultation”.*

19. The objector states that the arrangements are unreasonable and contravene paragraph 1.8 of the Code. He suggests that it is *“unreasonable to assume evidence of Anglican Church attendance can be relied on to confirm a genuine commitment to the Christian faith”.*
20. The school says that *“the school was established over 30 years ago on the site of an undersubscribed community school earmarked for closure, to serve the Anglican, Christian community of West and North West London, in particular the many children who attended Church of England primary schools in those areas, that did not have a Church of England high school to progress to. The school continues to serve this faith community, which is socially and ethnically diverse, and it is therefore perfectly reasonable that it uses faith based oversubscription criteria.”* It goes on to suggest that *“the length and frequency of attendance at a place of worship is generally acknowledged by the overwhelming majority of leaders of both Christian and World Faiths as an outward sign of commitment to the faith.”*

21. Initially the LA provided copies of the arrangements but made no comment on the content of the objection. In later correspondence the LA says that *“ a number of VA (voluntary aided) schools do have regular church attendance as an oversubscription criteria and our view is that this is permitted under the code”*.
22. In correspondence dated 17 July 2014 from the LDBS, who represent the faith body, the view was expressed that *“it is usual practice and recommended by the Board, for church attendance being used as an objective criteria”*. It goes on to say that *“the LDBS did not object to the different criteria because they were in agreement with it”*. The letter states that the Chief Executive of the LDBS is also a director of the Academy Trust and as such has been party to the discussions and is in agreement with the arrangements.
23. The issue of demonstrating genuine commitment to a faith can be a complex one. For schools who choose to use faith-based oversubscription criteria to prioritise applications for a place at the school and who are permitted to do so by the Code it is for the school to devise their faith –based criteria having regard to the faith body’s guidance. The school is very heavily oversubscribed and therefore needs to set criteria which are easily understood by parents in terms of how likely it is that their child will be allocated a place. As indicated by the school and the diocese the most objective evidence is likely to be attendance at worship and therefore in the absence of other objective, definitive criteria attendance at public worship is an acceptable commonly used criterion.
24. The objector suggests that Anglican church attendance cannot be relied on to confirm genuine commitment to the Christian Faith. In further correspondence he suggests that church attendance is *“just as likely to be motivated by a commitment to get into an outstanding school”*.
25. The most recent inspection of the school (Ofsted May 2012) judges the school to be outstanding across all the inspected criteria. The report states; *“This is an outstanding school. The sixth form is also outstanding. The governing body’s vision of a very caring school, where all strive for academic excellence, is promoted exceptionally well by the headteacher and staff, and it is achieved. Resilience and enjoyment are key characteristics of this highly successful school.”* The school is justifiably proud of the inspection findings as indicated on its website and oversubscription numbers are a testament to the fact that families are keen for their children to be admitted to the school.
26. The objector’s view is that families may attend church weekly for five years in order to secure a place at the school and not because of their faith commitment. I can neither agree nor disagree with this statement as the motivation for anyone to attend a place of worship is a personal and private decision. I respect the objector’s view but it does not affect the compliance of the arrangements with reference to the Code.

27. The objector also suggests that the arrangements are contrary to the guidance published by the LDBS.
28. In its guidance to schools the LDBS considers that attendance at worship once or twice a month for two years is an appropriate threshold for general admission to faith schools. In its email of the 17 July 2014 the LDBS states that it is in agreement with the current arrangements for the school.
29. The oversubscription criteria measure weekly attendance of up to five years duration in the arrangements and this is contrary to the published guidance from the LDBS. The Code requires the school to have regard to any guidance published by the faith body and to consult them when deciding on how membership or practice of the faith is to be demonstrated. The school has done this and the LDBS has agreed the arrangements. I consider that this process has conformed with the Code in this respect.
30. The objector says that the arrangements *“seem to breach the Equality Act 2010 in respect to discriminating against people with no faith who possess low levels of natural aptitude for music.”*
31. I have considered this part of the objection in light of the Equality Act 2010. Religion or belief is one of the protected characteristics identified in the act but musical aptitude is not.
32. The Equality Act states under section 85 that
- “ (1). The responsible body of a school to which this section applies must not discriminate against a person—*
- (a) in the arrangements it makes for deciding who is offered admission as a pupil;*
- (b) as to the terms on which it offers to admit the person as a pupil;*
- (c) by not admitting the person as a pupil.*
- (2)The responsible body of such a school must not discriminate against a pupil—*
- (d) in the way it provides education for the pupil;*
- (e) in the way it affords the pupil access to a benefit, facility or service;*
- (f) by not providing education for the pupil;*
- (g) by not affording the pupil access to a benefit, facility or service;”*

There is an exemption for faith schools under schedule 11 paragraph 5 of the Equality Act 2010 which states that *“section 85 (1) and (2)(a) to (d) so far as relating to religion or belief does not apply in relation to a school designated as a school with religious character.”*

33. I am of the view that the arrangements do not contravene this section of the Equality Act 2010 as they fall within the clause of exemption on religious grounds. Musical aptitude is not covered as a protected characteristic within the Equality Act 2010.
34. The objector compares the arrangements with those of the sister school which is part of the same academy trust and which does not include faith based oversubscription criteria in its admission arrangements and he suggests that the school should adopt the same arrangements.
35. The school reports that *"In establishing William Perkin CE High School, the Trust was seeking to meet the pressing demand for school places in the Greenford area. It was therefore looking to create a school that has a Christian ethos which served its local community without there being any intention that applicants of a certain faith would be given any priority when applying to the school."*
36. The Code is clear that admission authorities must determine arrangements annually for each school. Each school is considered a separate entity in the Code and the law. Academy trusts, which are the admission authorities, may be made up of a number of different schools and each one requires arrangements to comply with the law and the Code and to be determined annually. There is no requirement for arrangements for different schools in an academy trust to have the same arrangements.
37. The trust in this case has chosen to determine arrangements for its two schools which are different from each other; one using faith based oversubscription criteria and the other not. This is within the requirements of the Code at paragraph 1.36 which says that schools *"may use faith-based oversubscription criteria"* I do not therefore uphold this element of the objection.
38. In his later correspondence the objector suggests that the arrangements do not contain a category for children of no faith which would be contrary to paragraph 1.6 of the Code which states that *"If the school is not oversubscribed, all applicants **must** be offered a place"*. . The school reports that the arrangements make it clear that applicants can apply to the school by nominating it on the common application form (CAF) and do not have to provide a religious reference.
39. Two sections of the introduction to the arrangements state that *"All applicants will be admitted if 190 or fewer apply,"* and *"We ask all parents applying for a place here to respect this ethos and its importance to the school community. All applicants should be supportive of the aims, attitudes and values, expectations and commitment of this Church of England Academy. This does not affect the right of parents who are not of the faith of this school to apply for and be considered for a place here."*

40. I am of the view that these statements and the explanation of how to complete the CAF do comply with paragraph 1.6 of the Code in respect of the objection although not in respect of other matters explained below.

Other matters

41. As a school designated as having a Church of England religious character it can give priority to looked after and previously looked after Church of England children then all other Church of England children, followed by all other looked after and previously looked after children then other oversubscription criterion based on other Christian denominations or other faiths. Alternatively, it can give priority to all looked after and previously looked after children and then use various faith-based criteria. However, the allocation of a specific number of places as foundation/Christian, other world faiths and for music aptitude does not enable the school to comply with either of the options set out above. The wording in the arrangements for foundation and world faith places is *“all looked after children or children who were previously looked after **have priority over all other applications.**”* It is unclear how these children would apply for a place if they did not apply under the foundation or world faith categories. I understand that the school is keen to comply with the Code and prioritise these children in line with paragraph 1.7 of the Code which states that *“highest priority must be given, ... to looked after and previously looked after children.”* The arrangements do not currently comply with paragraphs 1.7 or 1.37 of the Code and the position of the statement in the arrangements concerning looked after and previously looked after children requires amendment.

42. The arrangements do not provide criteria for the admission of children who are neither of the foundation or world faith nor are applying for a music place. The school is keen to point out that the arrangements do not *“affect the right of parents who are not of the faith of this school to apply for and be considered for a place here.”* Arrangements must explain how the other applicants would be prioritised and this is currently not the case. This is contrary to paragraph 1.6 of the Code which states that *“the admission authority for the school must set out in their arrangements the criteria against which places will be allocated at the school when there are more applications than places and the order in which the criteria will be applied”*.

43. I have considered the arrangements for Y7 admission to the school in September 2015 and found that in the SIF for foundation and world faith places the form asks for the gender of the child. This is not compliant with the Code at paragraph 2.4 which states that *“admission authorities **must** only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria”*. As gender does not form any part of the oversubscription criteria this request is not compliant and requires amendment.

44. I have considered the arrangements for the sixth form as published on the school's website. These arrangements are for admission in September 2014. The minutes of the meeting of the directors on 19 March 2014 indicate that the 2015 arrangements were determined but they are not published and this is contrary to paragraph 1.47 of the Code which states that "*admission authorities must publish a copy of the determined arrangements on their website*". The arrangements for admission to the sixth form in September 2015 need to be published.

Conclusion

45. I have considered the views of the objector in terms of paragraph 1.8 of the Code and compliance of the arrangements with the Code. I consider that the arrangements comply with the Code in terms of the faith-based oversubscription criteria and are reasonable in this respect. These criteria provide an objective measure of church attendance which is procedurally fair and can be used to distinguish between applicants.

46. I am of the view that it does not contravene the Code to use attendance at worship as measures within the oversubscription criteria. Faith-based criteria may not be able to test the strength of commitment to a faith but there is no requirement that they should do so. They can, however, use objective measures which differentiate between applicants and the use of church attendance is a reasonable way to achieve this.

47. I conclude that the arrangements do not contravene the Equality Act 2010 and that the school has complied with the Code in respect of its communications with the faith body.

48. I also conclude that as school admission arrangements are specific to the individual school there is no requirement for the academy trust to utilise the same oversubscription criteria in each of its sister schools. Elements of the arrangements which do not comply with the Code and which require amendment as soon as possible are;

- The priority for admission for looked after and previously looked after children requires amendment so that it is clear that it applies in the same way to all applicants to the school.
- The request for gender requires omission from the SIF.
- The arrangements for admission to the sixth form in September 2015 need to be published.

Determination

49. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the directors of Twyford Academies Trust for Twyford Church of England High School, Ealing.

50. I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements for admission to year 7 and year 12 in September 2015 do not conform with the requirements relating to admission arrangements.

51. 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: 19 September 2014

Signed:

Schools Adjudicator: Mrs Ann Talboys