



DETERMINATION

Case reference: ADA 2817

Objector: The Fair Access Campaign

Admission Authority: The Academy Trust of Waddesdon Church of England School

Date of decision: 2 October 2014

Determination

In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by Waddesdon Church of England School for admissions in 2015.

I have also considered the arrangements for 2014 and 2015 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 School Standards and Framework Act 1998, (the Act), an objection has been referred to the Adjudicator by the Fair Admissions Campaign, the objector, about the admission arrangements (the arrangements) for Waddesdon Church of England School (the school), a mixed academy school for children aged 11 to 18 for September 2014 and September 2015.
2. The objection is to the non-determination or non-publication of the school's arrangements for September 2015, and in their apparent absence, to aspects of the school's arrangements for September 2014. These complaints concern principally the nature and effect of the faith-based oversubscription criteria used by the school and the use it makes of a supplementary information form (SIF). I shall set out in full below all the objections which have been made.

Jurisdiction

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

4. The objector submitted the objections to these determined arrangements on 30 June 2014, and so after the last date on which objections can be made for admission arrangements for September 2014, and on the last day that they can be made for admission arrangements for September 2015. However, the 2014 arrangements are still effective for the purposes of any in-year admissions and for the drawing up of the school's waiting list, until at least the end of the autumn term 2014. I have therefore decided, having looked at them and come to the view that they may not conform with the requirements relating to admission arrangements, to use the powers available to me under section 88I(5) of the Act to consider them. I am satisfied the objection made concerning the arrangements for September 2015 has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction.

5. When I looked at the admission arrangements, both those for September 2014 and those for September 2015, I was concerned that they contained matters which may constitute breaches of the School Admissions Code (the Code) and I decided to use my powers under section 88I(5) of the Act to consider them further.

Procedure

6. In considering this matter I have had regard to all relevant legislation and the Code.

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

- a. the objector's email of objection dated 30 June 2014;
- b. the school's response to the objection and supporting documents;
- c. confirmation of when consultation on the arrangements last took place;
- f. copies of the minutes of the meeting at which the academy trust of the school determined the arrangements,
- g. a copy of the determined arrangements for September 2014 and September 2015;
- h. the comments of Buckinghamshire County Council (the local authority, the LA) and of the Oxford Diocesan Board of Education (the

diocese) concerning the objection, and

i. a copy of the school's academy agreement with the Secretary of State.

The Objection

8. The objector stated that the school's arrangements breach what the Code requires, first because the arrangements for September 2015 could not be found on the school's website and that therefore either the school had failed to determine its admission arrangements for September 2015, in breach of paragraph 1.46 of the Code, or that it had done so but had failed to publish them in its website, in breach of the requirement that it should do so in paragraph 1.47.

9. The objector had therefore raised the following concerns in respect of the admission arrangements which it had seen, those for September 2014. It said that these were deficient in that:

(i) a map of the catchment area used by the school was not to be found on its website, and therefore the requirement to publish the arrangements in paragraph 1.47 of the Code had not been met;

(ii) the wording of three faith-related oversubscription criteria employed in the arrangements was ambiguous and could be interpreted as being satisfied by a child who has two/parents/carers who alternate in attending worship. This therefore put children with two parents/carers at an advantage and was in breach of requirements set out in the Code in paragraphs 1.8, 14 and 1.37;

(iii) the wording of the oversubscription criterion set out in the arrangements under the heading "special cases" was ambiguous because it was not clear whether it applied to those of no religious faith and breached requirements in paragraphs 1.8, 14 and 1.37 of the Code;

(iv) the arrangements did not allow for the admission of children of no faith even if the school were undersubscribed, and therefore did not comply with requirements in paragraphs 1.6, 1.36 and 2.8 of the Code;

(v) the arrangements contained a statement that "in the event of a tie in distance both children will be admitted but this will not constitute an increase in the admission number and the first vacancy created will not be filled" which did not cater for a situation in which no vacancy is created and therefore breached the requirements of paragraph 1.8 of the Code, and

(vi) the form which the school requires all parents to complete asks for the pupil's gender, the school which the child currently attends and for details of both parents and therefore breaches the requirements set out in the Code in paragraph 2.4.

Other Matters

10. Having found the arrangements for both September 2014 and September 2015 on the school's website, I was concerned that these contained matters which may breach aspects of what the Code requires, and therefore wrote to the school on 18 August 2014 and again on 2 September 2014 seeking its comments on these matters, which were that:

(i) the arrangements made provision for unsuccessful applicants to meet representatives of the governors and to provide at this meeting further information "which may impact on the position on the waiting list". Paragraph 2.14 of the Code states that waiting lists must be maintained in line with the school's oversubscription criteria. Paragraph 1.9m of the Code forbids the use of interviews as part of a school's admission arrangements, and this practice appeared to be in breach of this requirement;

(ii) the school's arrangements for admission to the sixth form may be unclear in respect of the evidence of "exceptional talent" sought for students, both internal and external applicants, with between 80 and 90 points on the school's own scale based on performance at GCSE. Since this term is not defined it is not clear how students would be able to demonstrate it; and

(iii) that the consultation carried out by the school prior to the determination of its arrangements for September 2015 may not have met the requirement that this should include parents of children between the ages of two and 18.

Background

11. Waddesdon Church of England School is a non-selective school, referred to as an upper school by the LA, within Buckinghamshire's selective secondary school system and is located outside Aylesbury. It is a school with the religious character of the Church of England, in the Diocese of Oxford. It converted to academy status on 1 September 2011. It is popular and oversubscribed. Information available on the LA's website shows that in September 2013, the most recent year for which this information has been published, the school filled the final available Year 7 places from applicants prioritised on the grounds of their parents' strong commitment to the Church of England, which is the third oversubscription criterion within its arrangements after the priority given to looked after and previously looked after children and to those children living in its defined catchment area.

12. The school is characterised by Ofsted as outstanding, and in July 2010 its predecessor school had further inspection deferred on those grounds. The school data dashboard published by Ofsted shows that the school's GCSE results in 2013 placed its performance in the top 20 per cent of schools nationally.

13. The school's admission arrangements for admissions to Year 7 in

September 2014:

- (i) set a published admission number (PAN) of 140;
- (ii) give the highest priority for admission, after that afforded to looked after and previously looked after children, to children who live in its designated catchment area, which they describe and which they state can be viewed in map form at the school; and
- (iii) give further priority for places in the following order:
 - a. children where one or both parents have a strong commitment to the Church of England (measured by the attendance of at least one parent);
 - b. siblings (as defined);
 - c. children where one or both parents have a strong commitment to other churches which are affiliated to or represented at Churches Together in Britain and Ireland or the Evangelical Alliance (measured by the attendance of at least one parent);
 - d. children where one or both of the parents have a commitment to other churches which are affiliated to or represented at Churches Together in Britain and Ireland or the Evangelical Alliance but who attend less frequently (measured by the attendance of at least one parent);
 - e. special cases: where there is a special educational (other than where a child's statement of special educational need names the school), social or medical need which means that the school is the most suitable for the child, OR where at least one parent has attended a place of worship of another religion for a specified minimum period with a specified minimum frequency;
 - f. others.

The arrangements include an appropriate statement concerning the admission of children whose statement of special educational needs names the school, provide a tie breaker using the distance of the pupil's home to the school, followed by the admission of both pupils in the event of a continuing tie for a final place and provide explanatory notes concerning the determination of a child's place of residence, the determination of church commitment, the admission of children of multiple births and the waiting list.

14. For admission to the school's sixth form in September 2014, its arrangements:

- (i) set a PAN for external admissions of 40;
- (ii) set out academic entry requirements in the form of a points score derived from performance at GCSE in mathematics, English and the candidate's four next best results in other subjects; and

(iii) state that if a student's points score on the school's scale falls between 80 and 90 points (80 being the minimum points score for entry into the sixth form and 90 being the minimum requirement for automatic entry to study three AS subjects or equivalent) then only those who "can demonstrate exceptional talent in the area they wish to study" can be considered for advanced study.

15. A supplementary information form (SIF) is provided for all those wishing to be admitted.
16. For admissions in September 2015, the following changes were made:
 - (i) the oversubscription criterion listed above as d. was removed;
 - (ii) changes were made to the "special cases" criterion, which had become an "exceptional circumstances cases" criterion with the wording of the arrangements being amended by the removal of a paragraph referring to other religious faiths and to Christian denominations not covered in earlier categories, and
 - (iii) the request in the SIF for details of two parents/carers to be provided had been removed.

Consideration of Factors

17. Paragraph 1.46 of the Code requires admission authorities to determine their admission arrangements by 15 April each year and paragraph 1.47 states that they **must** publish these on their website once they have been determined. The objector states that the arrangements for September 2015 were not displayed on the school's website on 30 June 2014. The school says that the draft arrangements and then the determined arrangements have been displayed there since December 2013. I looked at the website on 6 August 2014 and found the arrangements displayed there and was able to download a copy. While I have no reason to doubt what the objector says on this matter, neither do I have any evidence that the arrangements were not displayed as they should have been, and so I do not uphold this part of the objection.

18. The school's arrangements for September 2014 and those for September 2015 differ only in the respects described above. Unless otherwise indicated, each of the following matters refers to the arrangements for both years.

19. Paragraph 1.14 of the Code says that catchment areas, if they are used, "**must be reasonable and clearly defined**". The arrangements set out a description of the catchment area, saying that it is "defined by postcode" and that a map is available from the school. The Code does not require that a map is provided in order that catchment areas are clearly defined. Maps are potentially more imprecise, certainly with respect to where exactly a boundary might fall, than a clear written description. As the school says the catchment area is defined by postcodes, these need to be included as part of the arrangements themselves rather than referring there to them being listed in its

admissions booklet which is to be found on the school's website. While I do not uphold this part of the objection I think that the school's current practice falls short of what is required in paragraph 14 of the Code, which says that *"Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated"*.

20. The oversubscription criteria which give priority based on a "church commitment" on the part of parents say that this is "where one or both parents have a commitment" and also that "this is measured on the basis of at least one of the parents' attendance". The levels of attendance required to fulfil the requirements of the different oversubscription criteria are clearly defined in the arrangements. The objector invites me to agree that this wording is ambiguous because it might be read to mean that the attendance of two parents could be aggregated, giving a higher overall figure and disadvantaging children who live with one parent. The school has told me that it is willing to amend the wording that is used, but that it does not believe that the current format is ambiguous. My own view is that the reading which the objector has found is an unusual one in the absence of any indication that attendances might in some way be combined, which in itself would not necessarily be a straightforward exercise. However, it is possible to read what is written in the same way as the objector. For arrangements to be clear, they should not be able to be misunderstood. I therefore uphold this part of the objection.

21. The objector complains that the criterion which permits "special cases" to be considered for places at the school is ambiguous as to whether those of no religious faith are included, and therefore that the arrangements as a whole fail to allow children of no faith to be admitted, even if the school is undersubscribed. The objector cites a number of paragraphs of the Code in support of its view but has not explained all of these references in detail, either in the original objection or subsequently having seen the school's response to it. Nevertheless, the key aspects of the Code which are relevant to this part of the objection are, firstly, that it is clear from paragraph 2.8 that if a school has places all those who apply must be admitted *"without condition or the use of oversubscription criteria"*. Secondly, paragraph 1.36 also makes it plain that for schools with a religious character *"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."*

22. The school's view is that it has met these requirements by including a final "admission criterion" which requires no faith commitment and it also points to the fact that it gives first priority to those living within its defined catchment area without any reference to faith. However, as set out, the arrangements do refer to "admission criteria" and not to oversubscription criteria, and say that if oversubscription occurs within any of its admission criteria, distance to the child's home followed by admission above the PAN in the event of a tie will be used to allocate the available places. This is an approach which is not uncommon among habitually oversubscribed schools, but it fails in my view to reflect fully the context provided by the Code and legislation for all admission arrangements, and tends to give the impression that schools select children when a principle underpinning the Code is that

parents select schools for their children. What the arrangements do, as they are set out, is to assume that the school is oversubscribed overall and then to provide categories of children in the order in which places will be allocated until there are no more places available. However, paragraph 1.36 makes it clear that oversubscription criteria may not be employed at all unless there are more applications than available places since if there are fewer applications than places, all applicants must be admitted. The school's arrangements make no statement that if it is not oversubscribed, all applicants will be admitted and such a statement would have left no room for the concerns which the objector has expressed.

23. As it is, the objector complains that it is unclear whether those of no religious faith can "apply under" the criterion for "special cases" in the 2014 arrangements. In using this terminology, the objector reflects the school's own description of the process of applying for a place at the school. However, the mechanisms set out in section 2 of the Code do not envisage parents applying "under a criterion" when they seek admission to a school since these make it clear that the means for doing so is by completion of a local authority common application form (CAF). Those who would need to supply additional information would be those wishing to have their application given priority on the basis of any oversubscription criteria, such as faith-based oversubscription criteria, which called for additional information to be provided. A person who applied for a place at a school but not seeking priority in relation to such a criterion should not need to specify anything other than that they wished their child to be admitted. I shall return to this point below when discussing the school's SIF. In the case of Waddesdon Church of England School, a person of no faith who applied for a place at the school would be aware from the admission arrangements that their application would not receive priority under any of the school's faith-based criteria.

24. Although the 2014 arrangements provide no description of the "category" of "other applicants", those for 2015 say that it is for "any application not falling into one of the previous admission criteria". My view is therefore that the arrangements, albeit in their own language, do provide for the admission of any person of no faith who applies for a place. Applicants living within the catchment area have their application considered without reference to faith, and if they do not live there, a person of no faith could see their child admitted under the school's final criterion if enough places remained after those given a higher priority had been admitted. I do not agree therefore with the objector that the arrangements do not allow children of no faith to be admitted to the school, or that such an applicant would not understand that they could apply for a place there and I do not uphold this part of the objection on these grounds. However, I do agree with the objector that by failing to state in clear terms that if it is not oversubscribed all applicants will be admitted, and by characterising what are oversubscription criteria as admission criteria, the school has rendered the arrangements less clear than they could be and that it has therefore not met the requirement regarding the clarity of arrangements in paragraph 1.8 of the Code.

25. The objector further complains that the final tie breaker in the arrangements, which is described above, also offends against the requirements of paragraph 1.8 of the Code, but again does not say exactly

why. The objection asks the question “what if no vacancy is created?” implying that there is a lack of clarity as to the operation of the criterion. However as the school has stated to me, the wording in the arrangements means no more than that by admitting beyond its PAN to accommodate the last of equally qualified candidates for a place, the school does not intend to create an extra place permanently. So, if the year group in question were to lose a pupil, this would not constitute an available place to be filled, for example from the school’s waiting list for places. I do not find anything in this statement contrary to the requirements which are set out in paragraph 1.8 of the Code, or elsewhere within it, and so I do not uphold this part of the objection.

26. The school has responded to the final part of the objection, which concerns the details asked for in the SIF which it employs, and which it requires all applicants to complete, by saying that the SIF is not compulsory, and that parents are not told that this is the case.

27. However, the arrangements for both 2014 and 2015 contain the statement: “They (applicants) are also asked to complete a supplementary form for Waddesdon School in order that Governors can determine which criterion they fulfil”. The 2015 arrangement make this statement in bold type. Paragraph 2.4 of the Code says “(Admission authorities) **must only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria.....**”

28. As I have explained, since in the absence of oversubscription all applicants must be admitted, a school only needs to know, if it is oversubscribed, and if it uses, for example, faith-based criteria to prioritise applications, whether an applicant is seeking to have their application given priority on the basis of such an oversubscription criterion, and to be given the necessary additional information that this might require. In all other cases, the parent will have already provided all the school needs to know in order to determine the outcome of their application by completing their local authority CAF, and there is no need for them to complete the school’s SIF. Although the school tells me that many applicants for places do not complete the school’s SIF, the wording in the arrangements does not say that they need not do so, and the arrangements ask them to. Most would read the wording of the arrangements to mean that this was a requirement, and the school will not be aware of parents who do not apply to it for a place because of their belief that a completed SIF is necessary. The Code is quite clear, and my view is that the school’s arrangements are in breach of paragraph 2.4 as set out above. I therefore uphold this part of the objection.

29. The school accepts that the SIF used for admissions in 2014 asks for details of both parents. Paragraph 2.4e of the Code prohibits requests for both parents to sign any SIF, and asking for both names has the same effect in my view and is therefore contrary to this requirement. I therefore uphold this part of the objection. The school has removed this detail from the SIF to be used in connection with admissions in September 2015.

30. The school has sought to justify its request for the child’s gender and the name of their current school on the SIF in terms of its clarity of

communication with parents. However, neither piece of information is material to the consideration of an application for a place, and so paragraph 2.4 of the Code makes it clear that they may not be requested. I therefore uphold this part of the objection.

31. I turn now to the further matters which I have raised with the school and which are set out above. The school has asked me to accept that the surgeries which it offers to parents following the offer of places are also justified on the grounds of the need for clarity of communication between itself and parents. It has cited as evidence for this need cases in which children had been incorrectly assigned to one of its admission criteria by the school's admission committee until information, such as a child's status as a previously looked after child, came to light in such a setting. Firstly, while it is clear that the school offers surgeries only following the allocation process and not during it, I need to consider whether this is nevertheless still part of the admission process of the school. Paragraph 1.9m of the Code forbids admission authorities from interviewing children or parents as part of their admission arrangements. Admission arrangements are defined in the Code in a footnote to paragraph 5 in the following terms:

“Admission arrangements means the overall procedures, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered.”

32. Waiting lists are clearly such a device and so any part of the process involved in their compilation is part of a school's admission arrangements in my view. So I also take the view that the prohibition on interviews applies to the surgeries which the school offers to parents. The school has told me that it does not interview parents, and says that parents find the surgeries helpful. The Code does not define the term “interview” in paragraph 1.9m, but the Oxford English Dictionary gives the following definition: “an oral examination of an applicant for a job or college place” and “a session of formal questioning of a person by the police”. I think it unlikely that the school formally questions parents at its surgeries. However the explanation which it gives in its admission arrangements is that the purpose of surgeries, as well as allowing feedback on unsuccessful applications and explaining waiting lists and the appeals process to parents *“...is to receive any further information the parent wishes to submit and which may impact on the position on the waiting list...”*. For parents keen to improve their child's chances of securing a place at the school, such a process during this meeting might very well seem much the same as an oral examination in my view. So I believe that as a result of the presence of this wording in the arrangements they stray into territory prohibited by the Code, since the this aspect of the surgeries they describe constitutes a prohibited interview.

33. The school has agreed that the references to the exceptional talent that the arrangements say students applying for a sixth form place will have to demonstrate if they have scored between 80 and 90 points through their GCSE performance “can be confusing”. They have offered helpful alternative wording for this part of the arrangements but, as determined, the arrangements are in my view unclear, and therefore do not conform to the

requirement concerning clarity in paragraph 1.8 of the Code.

34. The school last consulted on its admission arrangements between December 2013 and March 2014, as it was obliged to do, since it had the intention of making changes to the previously determined arrangements when it determined those that would apply for September 2015. It determined these arrangements on 12 March 2014. While the changes it was proposing were not controversial and might therefore have been expected to elicit only a limited response, I have nevertheless noted that the only response which the school received as a result of its consultation was from the diocese.

35. When it provided evidence of this consultation, the school said that it had placed its proposed arrangements on the school's website during this period and also sent copies to all schools within a five mile radius of the school. The school also consulted the local authority and the diocese, and has helpfully provided me with evidence of this. It also used the facility provided by the LA to place its proposed arrangements on the LA's own website, which the LA had advised it would meet the requirement to consult with the admission authorities for all other schools in the relevant area. The school's academy agreement states that the relevant area for the purposes of consultation on its admission arrangements is that determined by the LA for maintained schools in the area. I take this to be the area of the LA, since it says it consults with these schools itself concerning the admission arrangements for community and voluntary controlled schools. The LA also informs neighbouring local authorities that consultations are on its website.

36. The list of those who must be consulted by admission authorities is provided in paragraph 1.44 of the Code. Having reviewed the information which the school had provided to me, I was concerned that I had seen no evidence that the school had consulted the parents of children aged between the ages of two and eighteen, a category of consultee listed in paragraph 1.44. I therefore sought further evidence on this point from the school, referring to the contents of the letter which had accompanied its own circulation of its proposed arrangements to schools within a five mile radius as a possible source of this.

37. The school replied saying that this circulation had in fact been wider, but did not respond concerning the accompanying letter. It also informed me that the school's newsletter of December 2013 contained information that the school was consulting on its arrangements and that this was circulated to some local primary and secondary schools with a link to the proposals which would enable parents to comment. However, it has not been able to show me that parents have been specifically referred to the proposed arrangements and invited to comment on them. This which might have been accomplished by asking any schools circulated to bring this to the attention of their own parent body. In particular, I have seen no evidence that the parents of pre-school children have been approached, which is possible for example by placing advertisements in local publications and in locations such as doctors' surgeries. My view is that although the school has clearly been aware of the general nature of its responsibilities during its most recent consultation and has made efforts to meet them, it has nevertheless not complied with all the requirements. I have seen no evidence of it having made any meaningful

attempt to consult parents of children between the ages of 2 and eighteen and so it is my view that the school is in breach of paragraph 1.44a of the Code where this requirement is set out.

Conclusion

38. I have set out above the view that I have formed concerning the objections which have been made about the school's arrangements for September 2014, and also therefore my view concerning the same matters within the school's arrangements for September 2015. I have also set out my view concerning the further matters that I have raised with the school about the arrangements for both years.

39. For the reasons given, I have agreed with the objector that aspects of the school's admission arrangements for both years fail to meet the requirement of clarity in paragraph 1.8, paragraph 14 and paragraph 1.37 of the Code.

40. I have also explained my reasons for coming to the view that the arrangements for both years also fail to comply with what the Code requires:

(i) in paragraph 2.4 by asking all applicants to complete its SIF, and in seeking information through this form which is not permitted;

(ii) in paragraph 1.9m by providing the opportunity for parents who have failed to secure a place to affect through a meeting the position of their child on the school's waiting list in what therefore amounts to an interview; and

(iii) in paragraph 1.8 by containing an unclear description of the admission process that applies to some candidates for places in the school's sixth form.

41. For the reasons given in the determination, I have also concluded that the consultation which the school carried out prior to its determination of the arrangements for September 2015 did not comply with the requirement that parents of children aged between two and 18 be among those consulted.

42. The arrangements for both September 2014 and September 2015 are not compliant with the requirements concerning admission arrangements in the ways described above. Those for September 2014 are still relevant to in-year admissions and the drawing up of the school's waiting list and the school should revise these arrangements as quickly as possible.

Determination

43. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements determined by Waddesdon Church of England School for admissions in 2015.

44. I have also considered the arrangements for 2014 and 2015 in accordance with section 88I(5). I determine that they do not conform with the

requirements relating to admission arrangements.

45. 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: 2 October 2014

Signed:

Schools Adjudicator: Dr Bryan Slater