

DETERMINATION

Case reference:	ADA2795
Objector:	The Fair Admissions Campaign
Admission Authority:	The board of directors of the John Paul II Multi-Academy for Bishop Walsh Catholic School, Sutton Coldfield
Date of decision:	13 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 for Bishop Walsh Catholic School for admissions in 2015 determined by the directors of the John Paul II Multi-Academy.

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 School Standards and Framework Act 1998 (the Act) an objection has been referred to the adjudicator by the Fair Admissions Campaign (the objector), in an email dated 30 June 2014 concerning the admission arrangements for September 2015 (the arrangements) for Bishop Walsh Catholic School (the school), Sutton Coldfield, for which the local authority (the LA) is Birmingham City Council. The objection is to the absence of determined arrangements for September 2015 on the school's website, to a lack of clarity in worship requirements, to the measurement points used in applying a distance criterion, and to the request that all parents respect the Catholic ethos of the school.

Jurisdiction

2. The terms of the academy agreement between the directors of the multi-academy company and the Secretary of State for Education require that the admissions policy and the arrangements for the school are in accordance with admissions law and the Code as they

apply to maintained schools. The objector submitted the objection to these determined arrangements on 30 June 2014. At the time, the objector was unable to locate the determined arrangements for 2015/16 and so referred to the arrangements for 2014/15. The arrangements for 2015 are the same as for 2014 with the replacement of the word “school” by “academy” as appropriate. I am satisfied that the objection to the 2015 arrangements 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

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
 - a. the objection, dated 30 June 2014;
 - b. the school’s response to the objection, dated 18 August 2014 and subsequent correspondence;
 - c. the school’s admission arrangements for 2014/15;
 - d. the school’s admission arrangements for 2015/16, determined at a meeting of the governing body of the school on 24 September 2013;
 - e. the Archdiocese of Birmingham (the diocese) diocesan education service’s response to the objection, dated 18 August 2014;
 - f. the diocesan education service’s 2015/16 model admission arrangements for Catholic secondary schools in the Diocese of Birmingham;
 - g. “Catholic Schools and the Definition of a ‘Practising Catholic’”, issued by the Archdiocese of Birmingham Diocesan Schools Commission in 2009;
 - h. the LA’s response to the objection, dated 21 August 2014; and
 - i. the school’s website.

The Objection

5. The objection is first to the unavailability of the school’s arrangements for 2015/16 on its website, which does not comply with either paragraph 1.46 of the Code, if the arrangements had not yet been determined, or paragraph 1.47 of the Code if the arrangements had been determined but not yet published, and secondly the same point about the supplementary information form (SIF). A third aspect of the objection is to a request for parents to

respect the Catholic ethos of the school, which the objector contends is non-compliant with paragraph 1.9a) of the Code. The objector further contends that, within criteria 2 to 5 of the arrangements, references to applications requiring endorsement by a parish priest do not specify what frequency or duration of worship by applicants is required and that this omission therefore fails to meet requirements in paragraphs 14, 1.8 and 1.37 of the Code for clarity and objectivity. Finally, the objector notes that, where the oversubscription criteria refer to the use of a distance measure from an applicant's home address, the other fixed point used is not the school but is a parish church, which may confuse or disadvantage some applicants in contravention of paragraphs 14 and 1.8 of the Code.

Other matters

6. In the course of considering the objection I reviewed the arrangements as a whole and noted that references in the oversubscription criteria to feeder schools lack precision and consistency. The sixth form arrangements provide no details of a final tie-breaker. The sixth form application form requires applicants to submit some information that the school is not permitted to seek, and requires both the applicant and a parent to sign.

Background

7. The school is a mixed Catholic academy for pupils aged 11 to 18 in the Archdiocese of Birmingham. There are almost 1000 pupils on roll, including more than 200 in the sixth form. An Ofsted inspection in September 2011 judged the school, overall, to be good; the previous year, a section 48 inspection by the diocese judged the school to be outstanding. Together with its three named Catholic feeder primary schools, the school is a member of the John Paul II Multi-Academy; it became an academy on 1 January 2014.
8. The arrangements for 2014/15, to which the objector referred, were determined by the governing body of the school which, at that time, was a voluntary aided school maintained by the LA. The arrangements for 2015/16 were determined under section 88C of the Act by the governing body of the school as delegated by the board of directors of the multi-academy, which is the admission authority for the school under the articles of the academy funding agreement. The arrangements were unchanged from 2014/15 to 2015/16 except for replacing the word "school" with "academy" in some places.
9. The school has a planned admission number (PAN) of 150. The arrangements provide, as required, that children with a statement of special educational needs in which the school is named will be given priority when places are allocated. Oversubscription criteria are then, in summary:

1. Baptised Catholic looked after or previously looked after children

2. Baptised Catholic children who live in one of the four feeder parishes attending a feeder school
3. Baptised Catholic children who live in one of the four feeder parishes but not in the feeder schools
4. Baptised Catholic children who attend a Catholic feeder school but do not live in one of the four feeder parishes
5. Other baptised Catholic children
6. Non-Catholic looked after or previously looked after children
7. Non-Catholic children who currently attend a Catholic feeder school
8. Other non-Catholic children

There are three named feeder Catholic primary schools and four named feeder parishes.

In each of categories 2-5, applicants are ranked according to the following four criteria:

- (i) is a sibling, and is endorsed by the parish priest
- (ii) is not a sibling but is endorsed by the parish priest
- (iii) is a sibling, but is not endorsed by the parish priest
- (iv) is not a sibling and is not endorsed by the parish priest

A distance tie-breaker is used, the measurement points being the applicant's home and the front door of Holy Trinity Catholic Church, Sutton Coldfield, with computerised random selection operated by the LA if necessary to allocate a final place.

10. The school is oversubscribed. It has admitted up to its PAN in the last three years, during which time there has been an increasing number of first preferences, not all of which resulted in the offer of a place. In each of those years, two or three children with statements of special educational needs that named the school have been admitted and in September 2014, four looked after or previously looked after children were allocated places.

Consideration of Factors

11. The first and second part of the objection concerns the unavailability of the school's arrangements including the SIF for 2015/16 on its website at the time the objection was made. I confirm that I was able to find only the arrangements for September 2014 when I logged onto the school's website at that time although, as noted above, the determined arrangements for September 2015 were available on the LA's website in its composite prospectus. The arrangements for 2015 are unchanged from those for 2014. My consideration of the issues raised by the objection, and my determination, applies to the set of arrangements for September 2015.
12. In considering the first two parts of the objection I sought clarification from the school, the diocese and the LA concerning the process and timescale of determination and publication of the arrangements for

September 2015. The school supplied minutes of a governing body meeting on 24 September 2013 at which, following a proposal by the head teacher, the arrangements for September 2014 were “*ratified*” unchanged for use in September 2015. Paragraph 1.42 of the Code states that if no changes are proposed, no consultation is required within a seven year period; the date on which this decision was taken is well within the deadline, set by paragraph 1.46 of the Code, of 15 April in the year preceding admissions. The school commented that the failure to publish the 2015 arrangements on its website was “*an oversight. The 2015 admissions criteria and SIF had been sent to the local authority ... and the Birmingham Archdiocese Education Service ...*”. The LA confirmed in its response to the objection that the proposed arrangements had been submitted in November 2013 so as to allow for a period of consultation if necessary; no consultation was required and so “*Bishop Walsh Catholic School submitted their determined admission arrangements to the local authority on 16 April 2014 and were [sic] subsequently published on Birmingham City Council’s website.*” The diocese stated that it “*received an email at 9.52 am on 16th April 2014 advising us that the policy had been determined. We responded to the school contact on 20th May reminding them to put the policy and appeals timetable on the school website.*” From this correspondence it is clear to me that the arrangements were properly determined in accordance with paragraphs 1.42 and 1.46 of the Code and that, as required by paragraph 1.47, the appropriate bodies were notified. However, the school did not meet the requirement in paragraph 1.47 to publish a copy of the arrangements on its own website as soon as possible after determination. Following this objection, the complete arrangements for September 2015 were put onto the school’s website on 19 August 2014. I therefore uphold the objection in relation to paragraph 1.47 of the Code, but note that the non-compliance has been corrected by the school.

13. The third part of the objection is to the school’s request for parents to respect the Catholic ethos of the school. The introductory paragraph to the arrangements says that the school “*seeks at all times to be a witness to Jesus Christ. We ask all parents applying for a place here to respect this ethos and its importance to the Academy community.*” The objector contends that this statement contravenes paragraph 1.9a) of the Code, which states that admission authorities “**must not ... place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements**”. Tellingly, the objector does not quote the final sentence of the ethos paragraph in the arrangements, which reads “*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.*” The paragraph as a whole follows closely the wording of the diocesan model secondary admissions policy. The diocese points out that while the ethos statement “*make[s] it very clear that the school is Catholic and ensures that parents can make a full [sic] informed choice about the school when deciding which schools they*

wish to apply to”, it nevertheless “actively encourage[s] applications from people not of the faith.” The school supports this response, as does the LA while adding that although the Code, in paragraph 2.4d) prohibits parents being asked “to agree to support the ethos of the school in a practical way”, there is no suggestion of such a requirement here and that the school “remains at liberty to include such a statement.” My reading of the arrangements, and of relevant sections of the Code, leads me to concur that the ethos statement does not contravene the Code in any way and so I do not uphold this part of the objection.

14. The objector then contends that, within criteria 2 to 5 of the arrangements, references to applications needing endorsement by a parish priest do not specify what frequency or duration of worship by applicants is expected and that this omission therefore fails to meet the requirements in paragraphs 14 and 1.8 of the Code for clarity and objectivity, and for ease of understanding as set out in paragraph 1.37, which states, “Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.” It is true that there is no information in the arrangements themselves concerning patterns of church attendance other than the reference in each of criteria 2 to 5 to the need for an application to be supported, on the SIF, by “a signature of endorsement from the Parish Priest of the Parish in which you reside/attend on a regular basis ...”. The SIF does not, in fact, require anything other than a signature by the priest and a parish stamp: there is no request for a statement from the priest regarding either the frequency of worship or the period of time over which worship has been made and so I interpret this as meaning there is no minimum requirement and that all appropriately signed and stamped SIFs are treated equally. The diocese’s comment on this, supported by the school, is that “The omission of what frequency or duration of worship is required to gain the priest’s approval ensures that there is no discrimination to [sic] families who have recently moved into the area or those who worship at a parish other than their home parish.” If that is so, I believe there should be a clear and open statement to that effect in the arrangements, as it is conceivable that – as the arrangements currently stand – some families might be dissuaded from applying for a place at the school because they are new to the area, or have suffered interrupted patterns of worship for one reason or another. For its part, the LA states that it “would agree that this should be clarified by the school ...”. I uphold this part of the objection.
15. Finally, the objector notes that, where the oversubscription criteria refer to the use of a distance measure from an applicant’s home address, the other fixed point is not the school but is the front door of a Catholic church, at almost two miles from the school, which may disadvantage some applicants in contravention of paragraphs 14 and 1.8 of the Code. Paragraph 14 says that “the criteria used to decide the allocation of school places [**must be**] fair, clear and objective” while paragraph 1.8 says that oversubscription criteria “**must be**

*reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group ...”.*

16. It is unusual for the distance measurement criterion not to nominate somewhere on the school site as the fixed point from which a measurement is taken to the applicant’s home. The diocese and school defend the use of the church as a measurement point, however, as *“[it] is the central point for the four parishes that the school serves.”* The LA’s response is that *“whilst the [Code] does not expressly prohibit a ‘distance’ criterion and/or tie-breaker being applied in this manner, it would appear to be implicit (both from the header to paragraph 1.13 of the Code and from the paragraph itself) that a ‘distance’ criterion will involve a measurement of the distance between the child’s home address and the school in question.”* This response from the LA then goes on to say that *“measuring the distance between a child’s home address and a building / site other than the school itself for the purposes of applying a ‘distance’ criterion might reasonably be considered to constitute, at the very least, a breach of the spirit of the Code.”*

17. That may appear a compelling argument if consideration is given only to paragraph 1.13 of the Code. However, I am minded to consider other factors. Paragraph 1.10 states, *“This Code does not give a definitive list of acceptable oversubscription criteria. It is for admission authorities to decide which criteria would be most suitable to the school according to local circumstances.”* From this statement, I would argue that, while paragraph 1.13 is headed *“Distance from the school”* and is written with that measurement point explicitly mentioned throughout, the Code does not preclude, under the terms of paragraph 1.10 just quoted, an admission authority deciding to use a different distance criterion with appropriate local circumstances in mind. Although not expressed in those terms, that would appear to be the substance of the argument used by the diocese and the school as quoted above, that is, the significance of the central location of the church within the four feeder parishes named in the arrangements. The four parishes thus become a “catchment area” and as such to use a distance measurement from a central point within that area is acceptable in my view. I have looked at maps of the area and it is clear that the school itself is very much on the southern edge of the area covered by the four named parishes. I am therefore persuaded by the argument that to measure distance from applicants’ homes to a more central point in the defined area, in this instance a church, is reasonable and transparent. I cannot see that the measurement criterion lacks fairness or objectivity or that it could be seen to discriminate against any particular social or racial group, although in the interests of clarity I would suggest that the arrangements should explain why it is the church, rather than the

school itself, that is used as the measurement point. I do not uphold this part of the objection.

18. I turn now to the other matters mentioned above. I noted that references in the oversubscription criteria to feeder schools lack some consistency and precision. Although note 4 in the arrangements lists the “*designated feeder schools*”, and is cross referenced in criterion 2(a), the word “*designated*” is not used at this point in the criterion, which might lead applicants to believe there is a range of unspecified feeder schools if they do not refer to and read note 4 carefully. References to feeder schools in criteria 3 and 4 do not cross refer to note 4 at all and again omit the word “*designated*”, so that confusion concerning the feeder schools is again possible. While the wording of the arrangements in these details does not contravene any specific requirement of the Code, some rewording might make it comply better with the requirement of paragraph 14 that “*Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*” Use of the word “*designated*” wherever appropriate would signal clearly that there is a limited, named group of feeder schools to which certain criteria refer. As the arrangements stand, without this specific cross-referencing, it might appear that an additional category of feeder, that is, “*a Catholic feeder school*”, has been introduced to the criteria. This would be in contravention of paragraph 1.15 of the Code, which states that feeder schools must be named and that the selection of such schools “*must be transparent and made on reasonable grounds*”; simply indicating a type of school is not permitted.
19. The sixth form arrangements provide no details of a final tie-breaker to be used in the event of applicants for the final available place not being separable by the distance measure. Paragraph 1.8 of the Code requires “*an effective, clear and fair tie-breaker to decide between two applications that cannot otherwise be separated*”; the arrangements for admission to year 7 include an appropriate tie-breaker and the admission authority might consider incorporating this into the sixth form arrangements.
20. The sixth form application form requires applicants to submit some information that the school is not permitted to seek, in asking applicants to explain why they wish to join the school and to outline future career plans. Paragraph 2.4 of the Code makes clear that additional information from applicants may be sought only “*when it has a direct bearing on decisions about oversubscription criteria ...*”. The application form also requires both the applicant and a parent to sign, which is not permitted; paragraph 2.6 of the Code permits sixth form applicants to sign on their own behalf, without the need for parental support or consent.

Conclusion

21. The objection is first to a possible delay in determining the school's arrangements for admissions in September 2015, including the SIF, and its failure to publish them on its website. I find that the admission authority determined its arrangements in full in accordance with the timescale set out in the Code but that they were not then published on its website. I therefore uphold this part of the objection, while noting that the arrangements are now available on the school's website. The second part of the objection is to the school's ethos statement which, it is suggested, imposes conditions on applicants over and above those within the oversubscription criteria. I do not agree, and so do not uphold this part of the objection. I agree, however, that the lack of definition in the arrangements concerning the frequency and duration of church worship necessary to gain a priest's endorsement on the SIF might cause concern to applicants and so I uphold that part of the objection. Finally, I do not uphold the objection to the use of a parish church, rather than the school, in the distance measurement criterion although I suggest, in the interests of clarity and transparency, that the admission authority might wish to state the reason for this in its arrangements.
22. In considering the arrangements as a whole, I find that references in the oversubscription criteria to named feeder schools are potentially confusing and that they might be clarified so as to avoid possible misunderstanding by applicants. The sixth form arrangements do not include an effective final tie-breaker; the application form asks for some information that is not germane to applying oversubscription criteria, and requires a parent's signature as well as that of the applicant, which is not permitted by the Code.
23. 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

24. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for Bishop Walsh Catholic School for admissions in 2015 as determined by the board of directors of the John Paul II Multi-Academy.
25. 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.

26. 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: 13 October 2014

Signed:

Schools Adjudicator: Andrew Bennett