

DETERMINATION

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| Case reference: | ADA2799 |
| Objector: | The Fair Admissions Campaign |
| Admission Authority: | The St Wilfrid's Academy Trust for St Wilfrid's Church of England Academy |
| Date of decision: | 22 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 St Wilfrid's Church of England Academy for September 2015 determined by the governing body as directors of the academy trust.

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 St Wilfrid's Church of England Academy (the school), for which the local authority (the LA) is Blackburn with Darwen. The objection is to oversubscription criteria which are unclear about the nature and scope of active church membership required of some applicants; the lack of a tie-breaker; the nature of some details requested; and the requirement for a priest's signature in support of one criterion on the school's supplementary information form (SIF).**

Jurisdiction

- 2. The terms of the academy funding agreement between the St. Wilfrid's Church of England Academy Trust and the Secretary of State for Education 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 governing body which, comprising the directors of the academy trust, is the admission authority for the school.

3. The objector submitted the objection to these determined arrangements on 30 June 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

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. 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 with supporting documentation, dated 8 August 2014, and subsequent correspondence;
 - c. the school's determined admission policy for 2015/16;
 - d. the response to the objection from the Diocese of Blackburn (the diocese) diocesan board of education, dated 20 August 2014, and subsequent correspondence;
 - e. the LA's response to the objection, dated 9 October 2014;
 - f. the LA's composite prospectuses for secondary school admissions for September 2014 and September 2015 and
 - g. the school's website.

The Objection

6. The objection is to ambiguity in oversubscription criteria, which would be non-compliant with paragraphs 14 and 1.8 of the Code; the objector contends that some wording might appear to penalise unfairly families where there is only one parent who worships. Furthermore, what is meant by active membership of a church that is part of the UK Interfaith Network is not clearly defined, which the objector claims is non-compliant with paragraphs 1.8, 14 and 1.37 of the Code. There is no tie-breaker to separate two applicants living equidistant from the school, as required by paragraph 1.8 of the Code. The objector further contends that the SIF does not comply with paragraph 2.4 of the Code in asking for the child's gender and in the way in which a priest or faith leader is required to sign the SIF in support of one category of application.

Other matters

7. In the course of considering the objection I reviewed the arrangements as a whole and found that the version published on the school's website was different from that sent to me by the school, with some variations in wording and inaccuracies in dates and cross references, leading me to consider whether there might have been a contravention of paragraphs 1.46 and 1.47 in the Code. A statement in guidance notes that sets out expectations of parents may contravene paragraph 1.9e) in the Code. There were also references on the school's website to the admission of children into year 3, although references to a 'junior division' in the school were fragmentary and unclear. The distance tie-breaker is applied only to oversubscription criteria 4 to 10 in the arrangements; although it is highly unlikely that the PAN would be reached within criteria 1-3, it would make the arrangements less complex, and thus easier to understand, if this criterion were applied across all categories
8. The school's SIF requires applicants to resubmit various pieces of information that are collected on the LA's common application form (CAF); this contravenes paragraph 2.4 of the Code. In reviewing the arrangements for entry to the sixth form, I noted that applicants are required to attend an interview and to produce other evidence to show an aptitude for study at the school; this contravenes paragraph 1.9m) of the Code. A reference in the sixth form oversubscription criteria to applicants' church membership lacks clarity and is not easily understood. There is no tie-breaker in the sixth form arrangements.

Background

9. The school, which became an academy in August 2011, is a mixed secondary school with about 1500 pupils aged 11-18 on roll, including some 300 in the sixth form. The most recent Ofsted inspection, in November 2013, judged the school to be good overall.
10. The arrangements for entry in September 2015 were changed from those determined for the previous year and I have been provided with ample evidence that appropriate consultation was carried out in accordance with the requirements of paragraphs 15b) and 1.42-1.45 in the Code and regulations 12 to 17 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations). After initial discussions within the governing body and with the diocese, a draft policy was sent to the LA and published for consultation. No comments or objections were received other than a few suggestions made by the LA and the revised policy was determined at a meeting of the governing body on 27 February 2014, following the adoption of some amendments suggested by the LA.
11. The school has a planned admission number (PAN) for year 7 of 246. The arrangements provide, as required, that children with a

statement of special educational needs that names the school will be admitted. Oversubscription criteria are then, in summary:

1. Looked after and previously looked after children

Within the following categories 2-11, first priority is given to siblings, including those in the sixth form. Category 11 (distance) is used as the tie-breaker in categories 4-10 if the PAN is reached in any of these categories.

In categories 2-8, parents must show evidence of being “*active members of the Church of England, or any church in membership of Churches Together in England, the Free Churches Group or the Evangelical Alliance*” by a worship attendance of

2. Not less than weekly over a period of two years leading up to 1 September in the year of application
3. Not less than fortnightly over a period of two years leading up to 1 September in the year of application
4. Not less than monthly over a period of two years leading up to 1 September in the year of application
5. Not less than weekly over a period of one year leading up to 1 September in the year of application
6. Not less than fortnightly over a period of one year leading up to 1 September in the year of application
7. Not less than monthly over a period of one year leading up to 1 September in the year of application
8. Children with a parent who is an occasional worshipper at a church in the above list, “occasional” defined as a minimum of six times for a period of at least one year leading up to 1 September in the year of application
9. Children who have attended one of ten named primary feeder schools for the whole of year 5 in the school year before the closing date for applications
10. Parents who show evidence of being active members of the major world faiths in membership of the UK Interfaith Network
11. Other children on the basis of distance from the front door of their home to the school, giving priority to those living nearest

12. The school is oversubscribed. In the admissions round of September 2012, places were allocated across all oversubscription criteria, which were significantly different from those determined for subsequent years. For September 2013 admissions, when the criteria were broadly similar to those determined for subsequent years, no children were allocated places within the equivalent of the final criterion in the list above. In September 2014, once again no places were allocated within the final oversubscription criterion, the distance tie-breaker coming into effect before that category was reached.

Consideration of Factors

13. I will consider first the objection raised to the wording in oversubscription criteria 2 to 8 that the objector considers ambiguous; an introductory sentence in the arrangements states that *"In categories 2 to 8, parents or legal guardian(s) (see note c) must show evidence of being active members of the **Church of England**, or any church in membership (see note d) of **Churches Together in England**, the **Free Churches Group** or the **Evangelical Alliance** ..."*. At first reading, the parentheses around the "s" following the word "guardian", and the fact that the word "parents" is a straightforward plural, might suggest that both parents would have to meet the worship requirement and that this might unfairly penalise families where there is only one parent who worships. This is seen by the objector as being non-compliant with paragraphs 14 and 1.8 of the Code, which between them refer to the need for criteria to be *"fair", "clear", "objective" and "reasonable"*. However, note c, to which the statement quoted above clearly refers, reads thus: *"A parent is any person who has parental responsibility for, or care of the child. Where admissions arrangements refer to parents [sic] worship attendance, it is sufficient for just one parent to attend."* In their responses to the objection, each of the school, the diocese and the LA refer to this note which, in my view, is clear and therefore I do not uphold this aspect of the objection as there is no contravention of paragraphs 14 and 1.8.
14. The objector next contends that the phrase *"active members"* is not defined in detail in relation to criterion 10, which refers to *"major world faiths who are in membership of the UK Interfaith Network"*, and that this, as well as failing to meet the requirements already quoted for fairness, clearness, objectivity and reasonableness, therefore contravenes paragraph 1.37 of the Code, which states that *"Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied."* The LA's response, supporting the school's argument, is that the phrasing *"allows for the different requirements of the variety of faiths"*, to which the response from the diocese added, *"Given the different requirements of the variety of faiths, it is quite clear what this means, and is much simpler for parents to understand."* I note the final sentences of this criterion, which state: *"The parent must meet the normal religious obligations of the faith. The governors will request confirmation of this from the relevant member of the clergy or worship leader."* That, to me, is clear and straightforward in allowing different faiths to confirm that their specific requirements have been met and in alerting applicants to the need for them to be aware of what the requirement may be in their own case. I do not uphold this aspect of the objection.
15. The arrangements provide no tie-breaker for when two applicants for a final place cannot be separated by the home-school distance criterion alone. This contravenes paragraph 1.8 of the Code, which states that *"Admission arrangements **must** include an effective, clear*

and fair tie-breaker to decide between two applications that cannot otherwise be separated.” The school’s response was that *“The distance tie-breaker is used to allocate places if oversubscribed. This is done by the local authority on a random allocation.”* However, a distance measurement cannot be at the same time a “random allocation”. Random allocation, provided that arrangements make clear how it is operated and by whom, is an acceptable tie-breaker but is a separate process from any criterion involving a measurement of distance. I uphold this aspect of the objection but note that, in its response to the objection, the LA states it has discussed this issue with the school and that governors have agreed to insert an appropriate statement regarding random allocation as a final tie-breaker in the arrangements for 2015 and future arrangements.

16. The objector then draws attention to the SIF, which asks applicants to indicate the child’s gender, contending that this request is non-compliant with paragraph 2.4 in the Code 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 ...”*. This information about the child is collected on the LA’s CAF, which every applicant must complete, and in any case a child’s gender has nothing to do with applying the oversubscription criteria, thus rendering irrelevant the school’s response which says that *“This helps to identify pupils later on as some of the names are very ambiguous and cannot be distinguished between genders”*. The diocese and the LA each responded by suggesting that the purpose of seeking this information is *“simply for matching purposes”* and that *“This helps to avoid mistakes if a child is given a unisex name”*, but it is the responsibility of the admission authority and the LA to ensure that their information is accurate and they should not require unnecessary information from applicants to help them in that task. Information about a child’s gender should not be required on the SIF and so I uphold this aspect of the objection.
17. The final part of the objection queries the section in part 2 of the SIF which invites a faith leader to sign in support of an application made under criterion 11, which is the final oversubscription criterion for *“other children”*, that is, those not applying on the basis of faith, and is applied purely according to the distance between the school and the applicant’s home. The objector cites paragraph 2.4 in the Code, on the basis that a faith leader’s signature would have nothing at all to do with applying this criterion. The requirement on the SIF is clearly a nonsense, and I uphold the objection. However, it became clear to me that situation arose because an incorrect version of the arrangements had been published on the school’s website at the time of the objection, as I discuss below. The correct version of the arrangements, which is now on the school’s website, asks for the faith leader to sign the SIF if an application is made under criterion 10, which is correct and acceptable.

Other matters

18. In the course of considering the objection I reviewed the arrangements as a whole and found at first that the version published on the school's website was different from that sent to me by the school, with variations in wording and inaccuracies in dates and cross references. The school commented, "*the wrong policy and policy guidance notes have been posted on the website, which does not take into account the necessary changes.*" Although I was given ample evidence that the processes and timescales of consulting on and determining new arrangements for September 2015 were fully compliant with the requirements of the Regulations and thus with paragraphs 15b) and 1.42-1.44 and 1.46 of the Code, the requirements of paragraph 1.47 of the Code regarding publication of the arrangements by the admission authority on the school's website had not been met. At that time, I also found references on the website to the admission in September 2014 of children into year 3, including arrangements, variously indicated as "draft" or "determined", as part of a project to support the choristers of Blackburn Cathedral, although references to a "junior division" in the school were fragmentary and unclear. I was subsequently informed that this development had not been implemented as planned because the newly appointed head teacher advised governors that the school was not ready to expand its provision in this way. The school commented, "*the website should have been modified appropriately, removing all reference to this provision.*" I can confirm that all such references were removed from the school's website during the course of this determination, and also that an accurate version of the determined arrangements for September 2015 was published there, but these earlier oversights may have puzzled or misled potential applicants and certainly would not have enabled them "*to look at a set of arrangements and understand easily how places for that school will be allocated*" as set out in paragraph 14 of the Code.
19. The statement in the 'policy guidance notes' that children are admitted "*on condition that parents ... positively uphold [...] the Christian traditions of the Academy*" might be interpreted as non-compliant with paragraph 1.9e) of the Code, which prohibits admission authorities from giving priority to children "*on the basis of any practical or financial support parents may give to the school or any associated organisation, including any religious authority*". Some clarification of the wording of the statement would make clear that the admission authority does not prioritise applications on the basis of "*practical or financial support*". Although the admission authority claims that "*These guidance notes do not form part of the Academy's admissions policy*", I would argue that they do, since they are published with the arrangements and include information and advice on significant aspects of the application process such as late applications, waiting lists and appeals.
20. I note that the distance tie-breaker is applied only to oversubscription

criteria 4 to 10 in the arrangements; although it is highly unlikely that the PAN would be reached within criteria 1-3, it would make the arrangements less complex, and thus easier to understand, if this criterion were applied across all categories

21. Part 1 of the school's SIF requires applicants to resubmit information that has already been collected on the LA's CAF over and above the item, relating to gender, cited by the objector and discussed above. For example, the SIF asks whether the child is or has been looked after, whether the child has a statement of special educational need or an IPRA, and details of siblings. I have stated above, and repeat, that any requirement for applicants to provide such information for a second time contravenes paragraph 2.4 of the Code, 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 ...**". The SIF needs to be reviewed and amended as quickly as possible.
22. In reviewing the arrangements for entry to the sixth form, I noted that applicants are required to attend an interview and to produce other evidence, including a record of achievement, to show "*an aptitude for study at St Wilfrid's*". This requirement contravenes paragraph 1.9m) of the Code, which states that "*In the case of sixth form applications, a meeting may be held to discuss options and academic entry requirements for particular courses, but this meeting cannot form part of the decision making process on whether to offer a place.*" Paragraph 1.9g) states that admission authorities "**must not ... take account of reports from previous schools about children's past behaviour, attendance, attitude or achievement ...**" and paragraph 1.9a) states that they "**must not ... place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements ...**" The following statement needs to be removed from the arrangements for entry to the sixth form: "*All applicants are invited to attend a short informal interview, and information on the application form and the record of achievement will be considered in order to inform the requirement to show an aptitude for study at St Wilfrid's.*" These matters are unrelated to the oversubscription criteria, which are the only permitted mechanism for allocating sixth form places once course entry requirements have been met.
23. A reference in the sixth form oversubscription criteria to applicants "*being active members*" of a named church or faith group is not "*clear and objective*" as required by paragraph 14 of the Introduction to the Code, nor does it meet the requirement of paragraph 1.37, which states that "*Admission authorities must ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.*" Clarification is required in order that applicants may be aware exactly what is expected of them in this respect, and of what the effect on their application might be according to the information they provide.

24. There is no final tie-breaker in the sixth form arrangements; as discussed above with reference to the year 7 arrangements, the distance measurement criterion does not fulfil the tie-breaker function, and one needs to be added.

Conclusion

25. The objection draws attention to ambiguous wording in several oversubscription criteria which makes it unclear whether both parents are required to be active members of a church; the wording might appear to penalise unfairly families where there is only one parent who worships. Furthermore, what is meant by active membership of different churches is not defined sufficiently, which may make it difficult for applicants to understand how this faith criterion is applied. There is no tie-breaker. The objector further contends that the SIF is non-compliant with the Code in asking for the child's gender and in the way a faith leader is required to sign the SIF in support of one category of application.

26. I find that the wording of the requirement concerning family involvement in worship may lack some clarity in itself but that the accompanying note, to which applicants' attention is clearly drawn, is easily understood and openly states that one parent who worships may qualify an application under criteria 2 to 8. I do not uphold that part of the objection, nor do I uphold that part which claims that active membership of UK Interfaith Network churches is not defined, since the arrangements acknowledge that there are different requirements and ask a faith leader to confirm that an applicant has satisfied the particular requirements of a specific faith. I uphold the objection to the lack of a tie-break, as there is no acknowledgment in the arrangements that the distance measurement criterion could leave two or more applicants tied for the last available place. I also uphold the objection to the request on the SIF for the child's gender, as this is irrelevant to the application of the oversubscription criteria. Finally, I uphold the objection to the request on the SIF for a faith leader to support an application on behalf of a child of no faith, while noting that this is an error on the uncorrected version of the arrangements that was mistakenly published on the school's website at the time the objection was made.

27. I therefore partially uphold the objection.

28. In considering the arrangements as a whole, I find that an inaccurate version was initially published on the school's website, and that arrangements for admitting year 3 students and other details of a "junior division" were also published, concerning a development which has not been implemented by the school. In the arrangements for admissions both to year 7 and to the sixth form, there is no tie-breaker for use when applicants for a final place cannot be separated by distance alone. The school's SIF requires applicants to resubmit information that is already collected by the LA's CAF. A statement in the 'policy guidance notes' implies that the parents of children

admitted to the school might be expected to support the school in ways prohibited by the Code. In reviewing the arrangements for entry to the sixth form, I noted that applicants are required to attend an interview and to produce other evidence of their aptitude for study at the school that is not permitted by the Code. A reference in the oversubscription criteria to sixth form applicants' church membership lacks clarity and is not easily understood.

29. 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

30. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for St. Wilfrid's Church of England Academy as determined by the governing body.

31. 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.

32. 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: 22 October 2014

Signed:

Schools Adjudicator: Andrew Bennett