



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA2816

Referrer: The Fair Admissions Campaign

Admission Authority: The Governing Body of St Michael's Catholic School, High Wycombe, Buckinghamshire

Date of decision: 6 January 2015

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 the governing body of St Michael's Catholic Secondary School, High Wycombe.

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. The admission arrangements (the arrangements) for St Michael's Catholic School, High Wycombe (the school), a co-educational voluntary aided Catholic faith school for children aged three to 18 for September 2013, September 2014 and September 2015 have been brought to the attention of the adjudicator by the Fair Admissions Campaign.
2. The matters raised concern the non-determination or non-publication of the arrangements for September 2015, to the absence from the school's website of the arrangements for September 2014 and in the apparent absence of either set of arrangements, to various aspects of the school's admission arrangements for September 2013 that were displayed on the school's website. I shall set out in full below all the aspects of the arrangements that are said not to comply with the School Admissions Code (the Code).

3. I have established that the arrangements for admissions in 2014 were determined on 2 December 2012 and those for admissions in September 2015 were determined on 3 December 2013 under section 88H(2) of the School Standards and Framework Act 1998 (the Act). I therefore take the Fair Admissions Campaign to be the objector in relation to the arrangements for admissions in September 2015.

Jurisdiction

4. These arrangements were determined under section 88C of the Act by the school's governing body, which is the admission authority for the school. The objector submitted its objection to these determined arrangements on 30 June 2014. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and that it is within my jurisdiction.

5. The objector submitted its objection on 30 June 2014, which is after the date on which objections can be made concerning admission arrangements for September 2013 or September 2014 and the last day on which they can be made concerning admission arrangements for September 2015. On 30 June 2014, admission arrangements which a school had determined for admissions in September 2013 had no further formal value unless in the unlikely event of any late admission to the school in the last weeks of the 2013/2014 school year. Those for September 2014 continued to be relevant concerning late applications for places and the operation of any waiting lists in the 2014/2015 school year.

6. When I looked at the admission arrangements, both those for September 2014 and 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 power under section 88I(5) of the Act to consider 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;
 - b. the responses of the school, Buckinghamshire County Council (the local authority, the LA) and the Roman Catholic Diocese of Northampton (the diocese) to the objection and subsequent correspondence;
 - c. the LA's composite prospectus for parents seeking admission to schools in the area in September 2014 and that for September 2015;
 - d. confirmation of when consultation on the arrangements last took place;

e. copies of the minutes of the meeting of the governing body at which the arrangements were determined; and

f. a copy of the determined arrangements.

I have also taken account of information received during a meeting I convened on 5 November 2014 at the school.

The Objection

9. The objector set out its complaint about the school's admission arrangements in the following terms:

"Details of objection:

- *either 1.46 (admissions policy for 2015 not decided yet) or 1.47 (admissions policy for 2015 not published yet)*
- *1.47/2.14 (admissions policy for 2014 not on website). The rest of the complaint is therefore about the 2013 policy*
- *1.8/1.37/14 (no clear criteria as to what is required to get a priest's written support)*
- *1.6/1.36/2.8 (does not allow children of no faith to gain admittance even if undersubscribed)*
- *1.8 (there is no effective tie-breaker to separate two applicants living equidistant from the school)*
- *2.4 (SIF must be returned even if not applying for a religious place)*
- *2.14 (no waiting list criteria)*
- *2.4 (the SIF asks the priest to indicate whether 'The parents are known to me' and 'The child is from a family that practice in the parish' but there is no indication in the oversubscription criteria that these points will be considered). "*

Other Matters

10. Having been provided with a copy of the school's arrangements, both those for September 2014 and those for September 2015, and having looked at them, I was concerned that each contained, in addition to those matters raised by the objector, further matters which may have constituted breaches of what the Code requires. I therefore wrote to the school seeking its comments on these further matters concerning admissions to Year R and Year 7, which were that:

(i) it was not clear to which children "children in local authority care", a phrase used in the arrangements, applied;

(ii) it was not clear what the terms "Christian denominations" and "other faiths" meant, since neither was defined in the arrangements;

(iii) the use of the phrase "are prepared to accept the Catholic ethos of the school" may constitute a condition of the sort not permitted by paragraph 1.9a of the Code, and

(iv) the phrase "who are appropriately qualified" to describe children who would be included in a waiting list appeared to fail to recognise the

position of schools with a religious character set out in paragraph 1.36 of the Code.

11. At the meeting which I held with the parties, I also raised with the school the following concerns:

(i) the arrangements refer to the “written support” of a priest, and it is not clear in what form written support should be obtained to meet this condition, in possible contravention of paragraph 14 of the Code. It also seemed to me that since for the first “category” of Catholic children within the arrangements a baptismal certificate was required, but that for the second “category” of Catholic children it could be dispensed with, the school was applying the definition of membership of the faith contained in advice from the diocese inconsistently;

(ii) the school’s arrangements for admission to Year R do not contain a statement concerning deferred entry to school, appearing to contravene paragraph 2.16 of the Code;

(iii) the arrangements for admission to the school’s sixth form state that this is not a normal point of entry to the school, but nevertheless go on to say how external candidates are admitted and what oversubscription criteria would be used if there were too many applicants. The arrangements do not however say how oversubscription would arise as no PAN is stated, and I was concerned that it was not possible for a parent or student to look at the arrangements and be clear whether the school would be likely to offer a place if an application for one were made, and that this therefore appeared to contravene the requirements of paragraph 14 of the Code.

Background

12. St Michael’s Catholic School is a non-selective “all-through” school within Buckinghamshire’s selective system of secondary education. It was formed by the merger of the former St Bernard’s Catholic Secondary School and St Augustine’s Catholic Primary School in September 2011, and continued to be named after them until September 2012.

13. The school’s admission arrangements for both for September 2014 and September 2015 give a planned admission number for Year R of 60 and for Year 7 say that the governing body has “set its planned admission number at up to 60 pupils from the primary phase plus an additional 56 pupils up to a maximum of 116 in Year 7”.

14. The arrangements for both points of entry, for both years go on to say that:

(i) if there are more applications than places, after the admission of children whose statement of special educational need names the school and of looked after and previously looked after children of the Catholic faith, admissions will be “in the following category order”:

- a. Roman Catholic children (as defined) who have the written support of a priest and a baptismal certificate;
- b. Roman Catholic children who have either the written support of a priest or a baptismal certificate;
- c. children in local authority care or those who have previously been in care;
- d. children of other Christian denominations who have the written support of their minister;
- e. other faith children whose application is supported by their minister of religion provided their parents are prepared to accept the Catholic ethos of the school.

(ii) if there is an excess of applications over places then in whichever category the oversubscription occurs, priority will be given in the order:

- a. children who currently have siblings (as defined) at the school;
- b. children of staff of the school (as defined), and
- c. children living closest to the school (as defined).

(iii) parents (as defined) wishing to apply for a place must complete the school's supplementary application form (SIF); and

(iv) "appropriately qualified" children who have not been allocated a place at the school will be placed on the waiting list for the school, ranked in accordance with the oversubscription criteria.

15. The admission arrangements for the school's sixth form for both years say that Year 12 does not constitute a normal point of entry and that external applicants "*will be dealt with on an ad hoc basis in line with the admission criteria for admission to Year 7*". They go on to say that external applicants "must fulfil the same course requirements as internal applicants", and that if applications exceed places, priority will be given on the same basis as that used in the arrangements for Year R and Year 7 at the point of oversubscription. No PAN is stated.

16. A SIF is provided which says that the information which it provides will be used to "assess the strength of an application in relation to the religious criteria set down in the admissions policy".

Consideration of Factors

17. The objector complained that the school's admission arrangements for September 2015 were either not published or they had not been determined on 30 June 2014. I looked at the school's website on 6 August 2014 and found there a "general admissions policy" which was for admissions "commencing September 2010", but which did not refer to any subsequent years. I looked again at the website on 17 August 2014 and was able to locate

a document entitled “admission criteria for Year 7 from 2013” which also set out arrangements for the school’s sixth form. A separate document gave admission arrangements for Year R for September 2013. I found no admission arrangements for either September 2014 or September 2015. When the school responded to the objection and to my written concerns on 22 September 2014, it accepted that the general admissions policy should not have been posted on the website and that the Year 7 policy had not been updated to refer to either 2014 or 2015 admissions. I have seen evidence that the school did determine its admission policy for these years, on 3 December 2012 and 2 December 2013 respectively. However, it did not publish the admission arrangements for September 2015, once determined, on its website and did not display the arrangements for September 2014 for the whole offer year, as required by paragraph 1.47 of the Code. I therefore uphold the part of the objection referring to the publication of the arrangements and do not uphold the part relating to their determination.

18. When I met representatives of the school on 5 November 2014, I referred to the minutes of the meetings of the school’s governing body at which the arrangements for September 2014 and September 2015 had been determined. Each stated that the governors had resolved to determine arrangements “without change” from those for the previous year, and it was accepted by the school that this meant that those which had been determined for September 2013, and which I and the objector had seen on the school’s website, were also the school’s determined admission arrangements for September 2014 and September 2015.

19. Paragraph 1.8 of the Code states that “*oversubscription criteria must be reasonable, clear, objective, procedurally fair and comply with all relevant legislation...*”. Paragraph 1.37 states that “*admission authorities must ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied*”, and paragraph 14 that:

“In drawing up their admission arrangements, admission authorities must ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”

20. The objector says that it is not clear in the arrangements what would be necessary to gain the support of a priest for a parent’s application for a place at the school.

21. The first two “categories” within the arrangements refer to the written support of a priest, and other categories to the support of ministers for children of other Christian denominations. The arrangements do not state what is needed to secure the support of a priest or minister for the application, that is, to what they are attesting in giving their support, and my view is that this means that the arrangements are unclear concerning the way in which faith-based oversubscription criteria are to be satisfied and that they do not conform with what the Code requires in paragraphs 1.8, 1.37 and 14. I therefore uphold this part of the objection.

22. Paragraph 1.36 of the Code says that schools with a religious character *“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”*. Paragraph 2.8 emphasises this by saying that *“faith schools, that have enough places available **must** offer a place to every child who has applied for one, without condition or the use of any oversubscription criteria”*. So faith schools are not permitted to limit admissions to those who are of the faith for which the school is designated, or to admit children only on the basis of membership of this or other faiths.

23. For any school with a religious character, there may always be available places after those to whom priority has been given on the grounds of faith have been admitted. Oversubscription criteria for faith schools must therefore provide for the admission of children whose parents have not asked for their application to be given priority on the grounds of their faith. The most common means by which other schools of a religious character fulfil this requirement is to include, often but not necessarily as a final oversubscription criterion, the admission of “other children”. Since such places are for those not seeking priority on the grounds of faith, they should be such, and applications should be considered without reference to faith as paragraph 2.8 says. This can be a relevant consideration if priority is given for a limited number of places on faith grounds, and those eligible for such places but not admitted are still seeking a place. The school’s admission arrangements do not envisage the admission of children other than those to whom priority is given on the grounds of faith and so fail to comply with what the Code requires in paragraphs 1.36 and 2.8. I uphold this part of the objection.

24. Paragraph 1.8 of the Code says 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 arrangements provide for priority to be given to those who live nearest to the school after any siblings or children of members of staff at the school have been admitted, when there are not enough places to satisfy all applicants within one of its priority “categories”. This is not sufficient to separate otherwise equally qualified children whose homes are at the same distance from the school, for example if they live in the same block of flats. A further, final, tie-breaker is therefore required. The school’s arrangements do not comply with the requirement set out in paragraph 1.8 of the Code, and I uphold this part of the objection.

25. Since, as set out above, paragraph 2.4 of the Code requires that SIFs may only request information which is needed to apply a school’s oversubscription criteria, and since the arrangements must provide for the admission of children without reference to faith, all the information required to consider some applications will already have been provided by parents when completing their local authority common application form. The school has told me that it does not require all applicants to complete its SIF. However, the school’s arrangements say that “parents wishing to apply for a place at this school for their child must complete both the Common Application Form and the Supplementary Form” and so breach the requirement of paragraph 2.4 of the Code. I uphold this part of the objection.

26. Paragraph 2.14 of the Code has the following to say about waiting lists:

*“Each admission authority **must** maintain a clear, fair and objective waiting list for at least the first term of the academic year of admission, stating in their arrangements that each added child will require the list to be ranked again in line with the published oversubscription criteria.”*

The school’s arrangements contain no such statement and so fail to meet this requirement, as the school has helpfully acknowledged. Nevertheless, the school’s determined arrangements do not comply with what the Code requires, and so I uphold this part of the objection.

27. The objector complained that the school’s SIF requested affirmation by a priest or minister of religion concerning matters to which the school’s oversubscription criteria made no reference. When I met the representatives of the school they accepted the need for there to be an explicit link between the contents of oversubscription criteria and questions contained in the SIF. However, as determined, the requirement set out above in paragraph 2.4 of the Code is not met by the school’s admission arrangements, and so I uphold this part of the objection.

28. I turn now to the matters which I have raised with the school. It has acknowledged that the phrases “children in local authority care”, “Christian denominations” and “other faiths” which are used in the arrangements are all insufficiently clear. Paragraph 14 of the Code requires that admission authorities ensure that the criteria used to allocate places are clear, and the school has not done so. It is in breach of this requirement.

29. Paragraph 1.9a of the Code states that *“admission authorities....**must not** place any conditions on the consideration of an application other than those in the oversubscription criteria published in their admission arrangements”*. The school’s arrangements say that those of “other faiths” will be considered for a place “provided their parents are prepared to accept the Catholic ethos of the school”. It is a core principle of the Code that parents select schools, and that schools do not select children. Schools may wish to make a statement describing their ethos as part of the information which assists parents in deciding whether or not to seek a place there, but any request or expectation made in relation to it within a school’s admission arrangements constitutes a condition of the sort not permitted under paragraph 1.9a, in my view. The school’s arrangements breach this prohibition.

30. The statement that the arrangements make concerning waiting lists contains the phrase “who are appropriately qualified”, concerning applicants for places at the school. Since, as I have set out above, the school’s arrangements must make provision for the admission of any child who applies for a place there, it is not permissible to exclude children from the school’s waiting list. This is what the phrase “who are appropriately qualified” does, and its use fails to recognise the position of schools which have a religious character, as set out in paragraphs 1.36 and 2.8 of the Code. Again, the school has accepted that its arrangements are deficient in this respect.

31. I raised with the school whether the arrangements make it clear in what form the written support of priests or ministers could be obtained and provided to the school. The school's SIF does allow a priest or minister to tick a box affirming their support, and the arrangements say that all applicants must return the SIF, a point to which I shall return below. Nevertheless if the only written support required is a tick on the SIF, the arrangements should state this in order for them to be clear for parents to understand as required by paragraph 14 of the Code, since "written" may very well imply something more extensively written, it seems to me. I find that the arrangements currently do not comply with the requirement set out in paragraph 14.

32. I also raised the wording of the first two "categories" set out in the arrangements and my concern as to whether a request for a baptismal certificate was or was not a requirement. Paragraph 1.38 of the Code says that "*admission authorities for schools designated as having a religious character **must** have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based oversubscription criteria.....They **must** also consult with the person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated.*"

33. The School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 state in schedule 3 that the representative body or person for a school designated as having a Roman Catholic religious character is "the Diocesan Bishop or the equivalent in canon law for the diocese in which the school is situated". For the school, the diocese is the Roman Catholic Diocese Northampton. The diocese has provided me with a copy of its written guidance to schools which states that "*Catholic means baptised in accordance with the rites of the Catholic Church or enrolled in a baptismal programme.*" This is the definition given by the school in its arrangements. However, the diocese also stated at the meeting which I held that since its guidance was that baptism was necessary to demonstrate membership of the Catholic faith, proof of this should be obtained by schools when giving priority to applicants on the grounds of their Catholic faith.

34. Schools which have a religious character are permitted to give priority to children, when oversubscribed, on the grounds of faith. They may give priority to children of the faith of the school or to children of other faiths. However, unless they give priority to all looked after and previously looked after children; they must give priority to looked after and previously after children of the faith of the school before other children of the faith, as set out in paragraph 1.37 of the Code. The diocese says that baptism is what determines whether somebody is of the faith, but includes in its definition of "catholic" children "enrolled in a baptismal programme". Since the school does not give first priority in its admission arrangements to all looked after and previously looked after children, but to Catholic looked after and previously looked after children it must do so in respect of those children who are of the faith, and the diocese says that this means those baptised as Catholics.

35. Paragraph 1.37 also says that, having given priority to those of the faith of the school, if any priority is given to children not of the faith of the school, looked after and previously looked after children not of the faith must be given priority over other children not of the faith. Again, “of the faith” means in this case baptised Catholics, and so the school may not give priority to any who do not conform to that definition above any looked after or previously looked after children who do not. So my view is that, as a consequence of prioritising Catholic looked after and previously looked after children, who must therefore be baptised Catholics, “category b” within the schools arrangements breaches this requirement by prioritising the admission of some children, those who have no baptismal certificate, over other children who are looked after or previously looked after and also not of the faith of the school. The school is therefore in breach of what paragraph 1.37 requires.

36. The school has acknowledged that its arrangements for admission to Year R do not contain a statement concerning the deferred entry of children to the school. The arrangements therefore contravene paragraph 2.16 of the Code, where this requirement is set out.

37. The school has also agreed that the arrangements for admission to the school’s sixth form fail to make it possible for a parent or student to look at them and be clear whether the school would be likely to offer a place if an application for one were made. The arrangements therefore contravene paragraph 14 of the Code where this requirements is set out.

38. I asked the school to provide me with evidence of when it last carried out a consultation concerning the contents of its admission arrangements that satisfied the requirements in paragraphs 1.42 to 1.45 of the Code. The school has told me that the last time it consulted was in 2011 and has provided evidence that this consultation included most of those listed in paragraph 1.44 of the Code. However, the only evidence that the school has been able to provide of consultation with parents was that parents of children on roll at the school were sent a letter at that time. This does not in my view satisfy the mandatory requirement that parents between the ages of two and 18 are consulted, and since I have been provided with no other evidence that such has taken place, I am of the view that the school is in breach of this aspect of paragraph 1.44.

Conclusion

39. I have given my reasons for coming to the view that the school failed to display on its website for the period of time which is required its admission arrangements for September 2014, and failed to display those for September 2015 as soon as they were determined, in breach of paragraph 1.47 of the Code.

40. I have explained why I am of the view that the school’s admission arrangements for both September 2014 and September 2015, for admissions to both Year R and Year 7 unless otherwise stated, do not comply with the requirements of the Code:

(i) in paragraphs 1.8, 1.37 and 14 by failing to provide clear faith-based oversubscription criteria;

(ii) in paragraphs 1.36 and 2.8 by failing to allow for the possibility of the admission of children without reference to faith and by failing to provide for their inclusion in the school's waiting list;

(iii) in paragraph 1.8 by not providing a final tie-breaker;

(iv) in paragraph 2.4 by requiring all applicants to complete a SIF and by including in it questions which do not have a bearing on matters included in the school's oversubscription criteria;

(v) in paragraph 2.14 by failing to include a statement concerning the re-ordering of the school's waiting list;

(vi) in paragraph 14 by the inclusion of phrases which do not have a clear meaning and by not providing clear information concerning the admission of external candidates to the school's sixth form;

(vii) in paragraph 1.9a by placing a condition on the consideration of some applications for places at the school;

(viii) in paragraph 1.37 by prioritising the admission of some children not of the faith of the school over looked after and previously looked after children who are not of the faith of the school;

(ix) in paragraph 2.16 by not including in its admission arrangements for Year R a statement concerning the deferred entry of children to the school, and

(x) in paragraph 1.44a by failing to consult parents of children between the ages of two and eighteen concerning its admission arrangements.

41. Although the school's admission arrangements for September 2014 are relevant only to the making of in-year admissions for the remainder of the current school year it is nevertheless important that the school should take action to amend them as quickly as possible.

42. The closing date for applications for school places in September 2015 has now passed and it would be unfair to any children who would be affected if offers of places were not based on the school's published admission arrangements at the time their applications were made. However, the arrangements should be amended 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 the governing body of St Michael's Catholic Secondary School, High Wycombe.

44. 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.

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: 6 January 2015

Signed:

Schools Adjudicator: Dr Bryan Slater