



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA2832

Referrer: The Fair Admissions Campaign

Admission Authority: The academy trust for Bristol Cathedral Choir School, Bristol

Date of decision: 13 February 2015

Determination

In accordance with section 88I(5) of the School Standards and Framework Act 1998, I have considered the admission arrangements determined by the academy trust for Bristol Cathedral Choir School for admissions in September 2015. I determine that they do not conform with the requirements relating to admissions in the ways set out in this determination.

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 and no later than 15 April.

The referral

1. The admissions arrangements (the arrangements) for Bristol Cathedral Choir School (the school), an academy with a Church of England religious character in the city of Bristol for pupils aged 11 – 18 for September 2015 were brought to the attention of the adjudicator on 30 June 2014 by the Fair Admissions Campaign (the referrer). The referral queries whether the priority for admission given to certain children and other aspects of the oversubscription criteria comply with the School Admissions Code (the Code). The arrangements are considered under section 88I(5) of the School Standards and Framework Act 1998 (the Act).

Jurisdiction

2. 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 the academy school are in accordance with admissions law as it applies to maintained schools. The referral was made on 30 June 2014 which is the last date on which

an objection could be made to determined admission arrangements for 2015.

3. Following an approach by the Office of the Schools Adjudicator (OSA) it emerged that the academy trust had not determined its arrangements for 2015 at that time. As an objection under section 88H of the Act can only be made to determined arrangements, there could be no objection to the arrangements. The academy trust for the school determined its arrangements on 16 October 2014. Having had the arrangements drawn to my attention I am satisfied that under section 88I of the Act I may consider them, and having formed the view that they may not comply with the requirements relating to admissions I must then decide whether they comply or not and, if not, in what respects they do not.

Procedure

4. In considering this matter I have had regard to all relevant legislation and the Code.
5. The documents I have considered in reaching my decision include:
 - a. the referrer's email dated 30 June 2014 and subsequent correspondence;
 - b. the school's response to the referral and subsequent correspondence;
 - c. the response of the Bristol City Council, the local authority (the LA) for the area, to the referral and subsequent correspondence;
 - d. the response of the Diocese of Bristol (the diocese), the religious authority for the school, and subsequent correspondence;
 - e. the LA's composite prospectus for parents seeking admission to schools in the area in September 2015;
 - f. a copy of an extract from the minutes of the meeting of 16 October 2014 at which the academy trust determined the admission arrangements for 2015; and
 - g. a copy of the determined arrangements.
6. I have also taken account of information received during a meeting I convened on 27 January 2015 (the meeting) at the school which was attended by representatives of the school and the diocese. The LA and the referrer were also invited to attend, but did not do so.

Matters raised in the referral

7. The referral read as follows:

“1.9e) (criteria [sic] b – gives preference on the basis of practical support to the church. We would argue that parents are giving practical support by allowing their children to take part in the choir)

14/1.8(criteria[sic] b – we think it is unfair/not reasonable to give priority to children who are choristers, something that some children will plainly not have the time, means or parental support to be, or may not have the ability to pass the audition or make satisfactory progress)

1.9d) (criteria [sic] b – as ‘To become a Probationer, children must first pass an audition’ and ‘Probationers must make satisfactory progress, as judged by the Cathedral Director of Music’)

We would also invite the adjudicator to consider whether criteria [sic] b is permitted under 1.9i). We have not seen the diocesan guidance so don't know if ti has an exemption for these places

1.9f) (criteria [sic] g) – children of staff at Cathedral Primary School, legally a separate school, are given priority)

2.4 (SIF asks for the child's gender, primary school)”

Other matters

8. When I reviewed the arrangements I considered there were a number of ways they might not meet the requirements of paragraphs 14 and 1.8 of the Code relating to their clarity.

Background

9. The school became an academy school in September 2008. The school has a distinctive Christian ethos and is designated as having a religious character, that character being Church of England. However, the school makes the clear statement that it is open to pupils of all faiths or none. Almost all its places are allocated without reference to faith.
10. The school's arrangements for September 2014 had previously been brought to the attention of the adjudicator. They were considered and a determination issued under s88I of the Act on 5 March 2014. Following the receipt of the referral on 30 June 2014, the case was opened as an objection to the arrangements for September 2015 under s88H of the Act. An adjudicator was appointed who began his investigation of the arrangements considering the matters raised by the referrer and the arrangements overall. Responses were received from the school, the LA and the diocese. However, it emerged that the school was unable to provide evidence that it had determined its arrangements for September 2015 as required by paragraph 1.46 of the Code and the case (ADA 2772) was deemed out of jurisdiction as the

adjudicator's jurisdiction is to consider determined admission arrangements.

11. The school formally determined its 2015 arrangements on 16 October 2014. These arrangements were then considered by the adjudicator under s88I of the Act. He held a meeting on 28 November 2014 with representatives of the school, the LA, and the diocese, and the original referrer also attended. Following that meeting the school raised concerns challenging the jurisdiction of the adjudicator and matters that it considered may indicate a lack of impartiality in the consideration of the arrangements. While not accepting any bias on the part of the adjudicator, to ensure confidence in whatever the final decision may be, the case was transferred to me on 19 December 2014. The school's representative said, "our clients are pleased to note that ...has now been assigned to consider the matter afresh...". As I indicated to the school and others involved that I would, I have read all the material submitted from 30 June 2014 onwards and have considered matters afresh. I requested the meeting with the school to try to resolve matters about which I sought clarification.
12. The school's determined arrangements for admission to Year 7 are presented in an eight-page document and have a supplementary information form (SIF) called a supplementary application form (SAF). The arrangements for Year 12 are in a six-page document and there is an application form to be completed by students who wish to study in the school's sixth form.
13. The arrangements for Year 7 say that the published admission number (PAN) is 120 and the oversubscription criteria presented in the admission arrangements for 2015 are:
 - a. Children who are looked after or previously looked after at the date the relevant application for admission is made and who a local authority has confirmed will continue to be looked after it by the time they are admitted to the secondary school. (definitions of "looked after" and "previously looked after" follow)*
 - b. Bristol Cathedral Choir School will admit up to 8 pupils of the Year 7 intake as a demonstration of faith based on their membership of the Probationer Chorister programme at Bristol Cathedral. Children admitted under this criterion are not included in the 10% admitted under the Music Specialism.*
 - c. Bristol Cathedral Choir School will admit up to 10% of the Year 7 intake on the basis of those who most clearly demonstrate that they have an aptitude in Music, using a Musical Aptitude Test for pitch, melody, texture and rhythm.*

d. Children who, at the time of application, are pupils on the roll of Cathedral Primary School. This will be applicable for entry to Year 7 from 2020.

e. Pupils who, on the date of admission, will have a sibling on roll at Bristol Cathedral Choir School (Year 7 to Year 11 and including Year 12). The term 'sibling' means..... (definition of sibling follows)

f. Pupils for whom it is essential to be admitted to Bristol Cathedral Choir School because of special circumstances to do with significant medical or social needs. The application will need to be supported by a letter from a hospital consultant, social worker or similar professional. The information should demonstrate why "Bristol Cathedral Choir School is the only school that can meet the child's needs".

g. Pupils who are sons/daughters of serving employees of Bristol Cathedral Choir School or Cathedral Primary School. This will include all staff, full and part-time working 28 hours or more during term-time and who have been employed permanently at the school for two or more years at the time at which the application for admission to the school is made, and/or where the member of staff is recruited to fill a vacant post for which there is a demonstrable skill shortage.

h. Places by random allocation to those living in the following postcodes: BS1 to BS25 and BS29 to BS37, BS40 to BS49.

i. Places still available will be allocated by random allocation to those living outside of the above postcodes.

14. The arrangements go on at paragraph 5 on page 4 to say:

"5. All Year 7 applicants are required to sit a Non Verbal Reasoning Test. This is a fair banding test to enable Bristol Cathedral Choir School to place, as far as reasonably possible, an equal number of applicants in each ability band. There are 5 ability bands, Band 1 is the highest. This will ensure that the intake includes a proportionate spread of children of different academic abilities.

The test is not an entrance exam as there is no pass or fail mark. Applicants are not ranked and priority is not given within bands according to the applicant's performance in the test. It is a standardised test specifically constructed by Granada Learning, an independent provider of educational assessments to measure academic ability without the need for pupils to practise or revise. Where Bristol Cathedral Choir School is oversubscribed priority will be given to 'looked' after and previously 'looked' after children in each band, and then any remaining oversubscription criteria, as set out above and applied in order within each band."

15. The arrangements include other information such as details about late applications, the operation of a waiting list, in-year admissions and appeals.

16. The admission arrangements for Year 12 for students new to the school set a PAN of 25 and then if there are more students who meet the academic requirement than places available the oversubscription criteria mirror those for Year 7.

Consideration of the arrangements to include matters raised in the referral

17. I have considered the arrangements and the matters that were brought to the attention of the adjudicator and read the many exchanges that have taken place between the school, the LA, the diocese, the referrer and the OSA. I came to the view that I should seek a meeting to clarify directly with representatives of the school those matters about which I had concerns.
18. My first concern was the overall clarity of the arrangements. The school has included a large amount of detail in its arrangements based on what was in "Annex 2" of its funding agreement signed in March 2008. While that may have been appropriate at the time, there have been significant changes in admissions legislation and the Code since then and in the development of the school.
19. Paragraph 14 of the Code requires 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."* I have considered the arrangements against these requirements and whether there are other specific requirements of the Code with which the arrangements may, or may not, comply.
20. The arrangements contain much information that is not needed by parents looking at admission arrangements in order to decide whether to include the school as a preference for their child when making their application for a Year 7 place. I discussed with the school examples of the superfluous information, for example, paragraph 1c and the others that refer to what the school must do to meet the requirements of the Code, but have no, or minimal, relevance for parents. We also discussed some specific wording that could be improved and some of the material that should be removed to make the arrangements clearer overall.
21. Some parts of the arrangements are very clear, for example, that the school will admit all who apply if it is not oversubscribed. However, it is not until reaching page 3 that the reader finds the school's oversubscription criteria. The first oversubscription criterion gives priority, as required by paragraph 1.7 of the Code, to looked after and previously looked after children.

22. The second criterion, criterion b), gives priority for admission to eight probationer choristers and was said by the referrer to contravene paragraphs 1.9e, 1.8, 1.9d and possibly 1.9i of the Code. The criterion says that the priority is “.....as a demonstration of faith based on their membership of the Probationer Chorister programme at Bristol Cathedral.” Paragraph 1.9e does not allow an admission authority to “give priority to children on the basis of any practical or financial support parents may give the school or any associated organisation, including any religious authority.” So the question is whether parents are giving any practical or financial support to the school or the Cathedral by virtue of their child taking part in the probationary chorister programme. I do not consider that the parents are giving either practical or financial support to the school. Neither do I consider that there is financial support to the Cathedral, either directly or indirectly. Parents do not pay for their child to be a probationer chorister or provide choristers for whom the Cathedral would otherwise pay other children to take that role. Parents themselves do not give practical support, but it is arguable whether they give indirect practical support by enabling their child to take part as set out in the probationers’ timetable.
23. The referrer contends that the process used to recruit probationer choristers is a process of selection which contravenes paragraph 1.9d which says the arrangements **must not** “introduce any new selection by ability”. I have considered the further detail given in the footnote to 1.9d which expands on what is meant by ‘selection by ability’ and is permitted for grammar and partially selective schools. Would-be probationary choristers do not sit one or more tests of ability as used for testing for admission to fully or partially selective schools. The audition used by the Cathedral is described as an assessment designed to assess musical aptitude, which self-evidently must be necessary for a child to become a probationary chorister and in due course progress to become a chorister. The test used by the Cathedral is not in my view a test of ability as prohibited by paragraph 1.9d of the Code.
24. The school describes the admission of a chorister as a demonstration of faith. Paragraph 1.36 permits schools designated as having a religious character to use faith-based oversubscription criteria. Paragraph 1.9i of the Code says that admission authorities must not prioritise children on the basis of their current activities. I must consider whether the oversubscription criterion in question takes account of children’s activities and if it does, whether those activities avoid being prohibited by paragraph 1.9i of the Code by being religious activities “as laid out by the body or person representing the religion or religious denomination”. At the time the school determined its arrangements there was no guidance from the diocese and thus no possibility that being a probationer chorister could be a religious activity as laid out by the faith body.

25. The referrer has raised further questions about choristers and matters concerning moving from being a probationer to being a chorister. My jurisdiction is only for the arrangements determined for admission in September 2015. I am of the view that priority for admission for probationer choristers does take account of a child's activity and that activity is not one that is permitted as an exception to paragraph 1.9i of the Code since it is not one "as laid out" by the diocese.
26. The referrer also asserts that it is unfair/not reasonable to give priority for admission to probationary choristers. Oversubscription criterion b) is said to contravene paragraphs 14 and 1.8 concerning the requirements for oversubscription criteria as, "*some children plainly will not have the time, means or parental support to be, or may not have the ability to pass the audition or make satisfactory progress*". The purpose of oversubscription criteria is, if a school is oversubscribed, to give some children a higher priority for a place than other children. The Code sets out some of the most common, acceptable criteria and any terms that must be met by those criteria. It also says at paragraph 10 that the Code does not give a definitive list. So is it unfair and not reasonable for the school give priority for admission to probationary choristers?
27. The name of the school, Bristol Cathedral Choir School, its location adjacent to the Cathedral and the information about the school all make plain its long established links with the Cathedral and its musical heritage. The criterion is clear and objective. Of the total number of places available at the school it is a small number for which probationary choristers have priority. I do not consider it unfair or unreasonable that the arrangements should make provision for priority for these children and therefore I do not consider that the criterion contravenes paragraphs 14 or 1.8. However, the arrangements must comply with the Code: it remains the case that, in my view, the arrangements contravene paragraph 1.9i. It is clear to me that at the time the school became an academy it was intended that the historical links between the Cathedral and the school should be maintained. This would include the links between the school and the Cathedral choir. Unfortunately it appears that the relevant legal dispensation which would allow the school to depart from the Code to ensure that the links would continue with respect to the admission of probationary choristers, was not completed at that time. Therefore I must conclude that although I do not consider the criterion unfair or unreasonable, at the time the arrangements were determined there was no permission through the diocesan guidance for such an activity that might have made the criterion lawful, and neither was there the absolute permission through the funding agreement to include the priority for probationary choristers.
28. Oversubscription criterion d) cannot be an oversubscription criterion in the 2015 arrangements as it is not relevant for admissions for this

year as the Cathedral Primary School does not have any children in Year 6 who will be seeking a secondary school place in 2015. If the school wishes to indicate that it intends to name Cathedral Primary School as a feeder school for admissions in 2020 then it will need to consult on including the school as a feeder school in its arrangements for admissions in that year and, subject to consultation, determine its arrangements accordingly.

29. Paragraph 1.9f) gives as an exception to the prohibition on priority for children according to the occupational status of their parents, “.....*though children of staff at the school may be prioritised in arrangements*” and 1.39 of the Code, under the subheading “*Children of staff at the school*”, sets out the circumstances under which priority for admission can be given to the children of staff. Oversubscription criterion g) gives priority to the children of staff of the school and Cathedral Primary School. Although there is close co-operation between the school and Cathedral Primary School they are two separate schools. The children of staff employed by Cathedral Primary School are not the children of staff of the school, that is they are not the children of staff employed by Bristol Cathedral Choir School. Accordingly oversubscription criterion g) does not comply with the Code to the extent that it gives priority to the children of staff at Cathedral Primary School.

30. The referrer said the school’s SIF asks for the child’s gender and name of primary school attended contrary to the terms of paragraph 2.4 of the Code which says an admission authority “**must only use supplementary forms that request information that has a direct bearing on decisions about oversubscription criteria**”. The school in its letter of 19 November 2014 accepted that it did not need this information to apply the oversubscription criteria.

31. Having considered the arrangements as a whole there are some other matters I raised with the school at the meeting.

32. As a matter of clarity and compliance, I queried paragraph 2 of the arrangements which says, “*Parents are required to do the following:*”

- *Complete and return the Supplementary Application Form (SAF), provided and administered by Admissions at Bristol Cathedral Choir School by Wednesday 24th September.*
- *Complete and return the Common Application Form (CAF) provided, and administered by the applicant’s home Local Authority, selecting Bristol Cathedral Choir School as one of your preferences by 31 October 2014.*

*As Bristol Cathedral Choir School is its own admission authority, parents **must** complete both forms.”*

33. There is no indication at this point in the arrangements as to why the school has a SAF. Once the reader has considered the timeline on page 2 and the oversubscription criteria on page 3 it becomes clear that there are some oversubscription criteria where information not available on the CAF may be needed, for example, to indicate that the applicant wishes to be considered for priority for aptitude in music.

34. However, it is not until reaching paragraph 5 of the arrangements on page 4 that the reader discovers what the assessment tests are for and that for almost all children it will be necessary to take the test that the school uses for banding purposes. Paragraph 5 says:

“ 5. All Year 7 applicants are required to sit a Non Verbal Reasoning Test. This is a fair banding test.....

Where Bristol Cathedral Choir School is oversubscribed priority will be given to ‘looked’ after children and previously ‘looked’ after children in each band, and then any remaining oversubscription criteria, as set out above and applied in the order within each band.”

35. It is not made clear however, that there can be no requirement for all children to take the test. Children who have a statement of special educational need that names the school, or are looked after children or previously looked after children do not need to take the banding test. These children must be allocated a place irrespective of whether they take the test or not. Other applicants cannot be required to take the test, but the arrangements need to make clear the effect of not taking the test.

36. The school says it uses five equal bands and this is to ensure that the intake includes a proportionate spread of children of different abilities. With a PAN of 120 there will be 24 places in each band (or fewer depending on the number of children who do not have to and do not take the test, but have to be allocated a place). Those who take the test are allocated to a band and then priority within the band is according to the oversubscription criteria. The arrangements do not set out what happens if a band has more than 24 applicants who have priority for a place against oversubscription criteria a) to g). Neither do the arrangements say how a band will be filled if there are fewer eligible applicants for a band than places available. The arrangements say the school will “*place, as far as reasonably possible, an equal number of applicants in each ability band*”, but there is no indication what exactly is meant by this. I also looked at the data about applications for 2014 provided in the LA’s composite prospectus and provided as part of the school’s own information, but this did not aid my understanding and resulted in other questions about the banding process.

37. At the meeting I checked with the school my understanding of the data. For admissions in 2014 there were 745 on time applications that placed the school as one of the applicant's three preferences and 589 children took the banding test. Of the 120 places allocated across the bands, 69 places were allocated within the bands against oversubscription criteria a) to g) and children with a statement naming the school, and 51 places were allocated against criterion h) using random allocation for a place from among the applicants living in the specified postcodes. This appears to indicate that all those who had priority against oversubscription criteria a) to g) would have been allocated a place had there been no banding and the banding test only had any practical effect on the 51 places allocated to a band through random allocation among the applicants living in the designated postcode. Over 500 children who did take the test did so to enable less than 10 per cent of the places at the school to be allocated. I consider that the arrangements as drafted do not make sufficiently clear for parents how places at the school are allocated through banding; the consequences of not taking the test; or the likelihood of being allocated a place.
38. The arrangements include a section about the operation of the Year 7 waiting list. As drafted it does not meet the requirement of the paragraph 2.14 of the Code by saying how long the waiting list will be held, and the clarity of the section could also be improved so that it is clear what is meant by the consolidated waiting list that is held after the first day of the school year.
39. The sixth form arrangements, as the Year 7 arrangements, contain material that relates to the school's responsibilities, for example for consultation, that do not need to be set out in the admission arrangements. Where the oversubscription criteria are the same as those for Year 7, for example the priority for children of staff, the same matter of non-compliance also applies in relation to the children of staff at Cathedral Primary School.

Conclusion

40. I have considered the school's arrangements for admission to Year 7 and Year 12, the sixth form. There are some aspects that do not meet the Code's requirement for clarity, in part because of the information that is included that is not necessary and the lack of some information or explanation that is needed. While discussing the arrangements the school was keen to consider the changes necessary to achieve Code compliant arrangements. On the matter of priority for admission of probationary choristers, in the absence at the time the arrangements were determined of permission through the school's funding agreement and guidance from the diocese, the arrangements did not comply with the Code.

Determination

41. In accordance with section 88(5) of the School Standards and

Framework Act 1998, I have considered the admission arrangements determined by the academy trust for Bristol Cathedral Choir School for admissions in September 2015. I determine that they do not conform with the requirements relating to admissions in the ways set out in this determination.

42. 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 and no later than 15 April.

Dated: 13 February 2015

Signed:

Schools Adjudicator:
Dr Elizabeth Passmore