



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA2778

**Objector:** The Fair Admissions Campaign

**Admission Authority:** The academy trust of Sacred Heart High School, London Borough of Hammersmith and Fulham

**Date of decision:** 23 February 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 for admissions in September 2015 determined by the academy trust for Sacred Heart High School.**

**I have also considered the arrangements in accordance with section 88I(5). I determine that there are other matters where the arrangements do not conform with the requirements relating to admission arrangements.**

**By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements as quickly as possible.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by the Fair Admissions Campaign (the objector), about the admission arrangements (the arrangements) for Sacred Heart High School (the school), a Catholic academy school for girls aged 11 – 18 in the London Borough of Hammersmith and Fulham, the local authority (the LA) for the area, for September 2015. The school is located within the Diocese of Westminster (the diocese). The objection is in twelve parts and covers a range of detailed issues concerning the admission arrangements.

### **Jurisdiction**

2. The terms of the funding 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. These arrangements were determined by the governing body, on behalf of the academy trust which is the admission authority for the school, on 27 February 2014 on this basis.

3. The objector submitted the 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 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 objector's form of objection dated 30 June 2014, and subsequent comments;
  - b. the school's response to the objection and further correspondence and supporting documents;
  - c. the LA's comments on the objection and further correspondence and supporting documents;
  - d. the LA's composite prospectus for parents seeking admission to schools in the area in September 2014 and in 2015;
  - e. the diocese's comments on the arrangements;
  - f. confirmation of when consultation on the arrangements took place, together with copies of the consultation documents and responses to the consultation;
  - g. the minutes of the meeting of the school's governing body held on 27 February 2014 at which the academy trust determined the arrangements; and
  - h. the determined arrangements for 2015.

### **The Objection**

6. The objection comprised the following points concerning the 2015 admission arrangements:
  - 6.1 The arrangements do not comply with paragraphs 1.9(a), 1.6, 1.36 and 2.8 of the Code because the statement in the introduction to the arrangements says "*All applicants and candidates are, therefore, expected to give their full, unreserved and positive support for the aims, values and ethos of the school*".

- 6.2 The arrangements do not comply with paragraph 1.6 of the Code because *"it is not stated that children with a statement of special educational needs (SEN) that names the school will always be admitted."*
- 6.3 The arrangements do not comply with paragraph 1.9(b) of the Code because oversubscription *"criteria 4, 5, 9, and 10 take into account 'any Catholic Primary School in the Dioceses of Westminster and Southwark ('the feeder schools') for the whole of their primary education' without specifically naming the schools. Similarly the part that says 'note that this could also be met by attending a private feeder school', so while the schools are not named, arguably paragraph 1.9(l) of the Code is also breached"*.
- 6.4 The arrangements do not comply with paragraph 1.9(i) of the Code because *"criteria 4, 5, 9 and 10 also prioritise children 'whose Catholic parent has fulfilled the obligation to ensure a Catholic education'. This activity is not permitted by the diocesan guidance."*
- 6.5 The arrangements do not comply with paragraphs 14, 1.37 and 1.8 of the code because *"the oversubscription criteria with relation to the regular practice requirement are not clear as they are not found in the criteria themselves or the associated notes. It is not made clear in the oversubscription criteria or supplementary information form (SIF) how exactly applicants are ranked on the basis of attending religious worship. Are those considered practising only those who worship on holy days and other days of obligation for at least four years? If so, why does the SIF ask in terms of 'Weekly/ Fortnightly/ Monthly/ Occasionally/ Rarely/Never'?"*
- 6.6 The arrangements do not comply with paragraphs 14, 1.37 and 1.8 of the Code because *"the oversubscription criteria are unfair in not clearly allowing admission to those baptised after six months due to religious conversion. Alternatively in the SIF, it says 'if the date of baptism was more than six months after the date of birth, please explain the reason. Where relevant and available, provide documentary evidence to support your explanation.' But no explanation of what reasons might satisfy this are given."*
- 6.7 The arrangements do not comply with paragraphs 14, 1.37 and 1.8 of the Code because *"the SIF is not written in a way that is suitable for non-Catholic Christians/those of other faiths (who are applying under criteria 14) to fill in"*.
- 6.8 The arrangements do not comply with paragraphs 1.8 and 14 of the Code because *"the statement in footnote 13 that 'Christian applicants must provide copies of Baptismal Certificates for the Christian child and parent' is unfair as some Christian denominations, for example Quakers, do not practice baptism, whereas others, such as Baptists, do not perform baptism until adulthood."*

- 6.9 “Some of the dates are given as ‘xxxxx’ and therefore the admissions criteria have not been fully determined by 15 April” as required by the Code in paragraph 1.46.
- 6.10 The arrangements do not comply with paragraph 2.4 of the Code because “with respect to the SIF it’s not clear why details of the local parish church/priest are needed in addition to those of the church at which the parent/child worships regularly. It is also not clear as to why the questions ‘How does your Parish Priest know your child?’ and ‘How does your Parish Priest know you?’ are asked, as well as the similar questions in section C.”
- 6.11 The requirement to provide parents’ baptism certificates does not comply with paragraph 2.4(a) of the Code.
- 6.12 “The degree of selection on the basis of children’s and parents’ Mass attendance, baptism, and duty to ensure Catholic education..” is not “...reasonable as required by the Code at paragraph 1.8, in the light of the Archdiocese of Westminster’s guidance, which does not recommend that either the date of baptism or having ensured a Catholic education are taken into account, nor does it recommend that worship is considered beyond attending most Masses as per paragraph A26 of the guidance and paragraphs 1.9(i) and 1.38 of the Code.”

### Other matters

7. Having had these arrangements drawn to my attention I have reviewed the overall arrangements using my power under section 88I of the Act. There are some areas where I consider that the arrangements may not meet the requirements of the Code and I have drawn these matters to the attention of the school in correspondence and invited the school’s comments. The school responded and its comments are included in the consideration of the points later in this determination:
- 7.1 Criteria 2, 3, 4, 5 and 6 give priority to “*Practising Catholic girls from Practising Catholic families*” as part of each criterion and refer to attending Mass “*regularly*”. The arrangements state in the notes that this means a girl and her parent/guardian who have both been baptised ..... It is unclear what criteria the school will be using to decide about baptism for the parent.
- 7.2 Paragraph 1.32(c) of the Code states that admission authorities **must** ... “*take all reasonable steps to inform parents of the outcome of selection tests before..... 31 October.*” The school’s website shows that the ability test for the purpose of banding is carried out in December.
- 7.3 There is no clarification within the arrangements about the consequence of a girl failing to attend the banding test.

- 7.4 It is unclear how the school complies with paragraph 1.7 of the Code if a looked after or previously looked after girl does not take the banding test.
- 7.5 The arrangements do not explain how the school complies with paragraph 1.30 of the Code in relation to a girl with a statement of special educational needs.
- 7.6 Oversubscription criterion 1 gives priority to looked after and previously looked after Catholic girls. It is unclear how the school defines Catholic in this case.
- 7.7 Criterion 4 makes reference to comparative distances from home to other Catholic secondary schools and it is unclear how this is measured and how a parent can know about the comparative distances.
- 7.8 The published admission number (PAN) for the sixth form says up to 40 pupils will be admitted. This does not comply with paragraph 1.2 of the Code.
- 7.9 The admission policy for the sixth form includes a predicted exam grade sheet and in the sixth form curriculum booklet on the school's website it says under the heading oversubscription criteria "*where a chosen course is oversubscribed, the governors will give priority in the first instance to those students who have the highest predicted grades and subsequently the highest actual grades.*" It is unclear if pupils are competing for places on the basis of GSCE points score and whether this is a form of selection by ability that complies with paragraphs 1.18 and 2.6 of the Code.
- 7.10 In note 13 of the arrangements, the last sentence says "*the school will not offer a place to a non-Catholic applicant if it would thereby be unable to offer a place to a Catholic applicant.*" it is not clear from the sentence whether the school would admit a non-Catholic applicant if there was a place available.
- 7.11 The SIF contains a sentence in paragraph 2 that begins "the governing body reserves the right to make inquiries and seek verification ....". It is unclear what inquiry or verification the governing body has got in mind when asking parents to consent to this.

## **Background**

8. The school is a Catholic school for girls which became an academy on 1 March 2012 and the sixth form opened in September 2013. The school was inspected by Ofsted in January 2009 and was judged to be outstanding. The school has a PAN of 165 and usually has more applicants applying than there are places available. The school operates a banding system where all applicants are required to take an ability test and are then allocated to one of three ability bands with the admission number

split so that 41 places are allocated to the girls who come in the highest 25 per cent ability range; 83 places allocate to those who come in the middle 50 per cent ability range and 41 places allocated to the lowest 25 per cent ability range.

9. The oversubscription criteria for the school for 2015 are as follows:
- 1) Catholic looked after girls and Catholic girls who have been adopted (or made subject to residence orders or special guardianship orders) immediately following having been looked after.
  - 2) Practising Catholic girls from practising Catholic families, who will have a sister, within the school at the time of application.
  - 3) Practising Catholic girls from practising Catholic families, who have themselves a significant medical or social need, which can be met by this school rather than any other school.
  - 4) Practising Catholic girls from practising Catholic families, who have attended any Catholic Primary School in the Dioceses of Westminster and Southwark (“the feeder schools”) for the whole of their primary education or whose Catholic parent has fulfilled the obligation to ensure a Catholic education and for whom there is no closer maintained Catholic secondary school than the Sacred Heart High School.
  - 5) Practising Catholic girls from practising Catholic families, who have attended any Catholic Primary School in the Dioceses of Westminster and Southwark (“the feeder schools”) for the whole of their primary education or whose Catholic parent has fulfilled the obligation to ensure a Catholic education.
  - 6) Other practising Catholic girls from practising Catholic families.
  - 7) Catholic girls from Catholic families, who will have a sister within the school at the time of application.
  - 8) Catholic girls from Catholic families, who have themselves a significant medical or social need, which can be met by this school rather than any other school.
  - 9) Catholic girls from Catholic families, who have attended any Catholic Primary School in the Dioceses of Westminster and Southwark (“the feeder schools”) for the whole of their primary education or whose Catholic parent has fulfilled the obligation to ensure a Catholic education and for whom there is no closer maintained Catholic secondary school than the Sacred Heart High School.
  - 10) Catholic girls from Catholic families, who have attended any Catholic Primary School in the Dioceses of Westminster and Southwark (“the feeder schools”) for the whole of their primary

education Or whose Catholic parent has fulfilled the obligation to ensure a Catholic education.

11) Other Catholic girls from Catholic families

12) Other Catholic girls.

13) Any non-Catholic looked after girls and girls who have been adopted (or made subject to residence orders or special guardianship orders) immediately following having been looked after.

14) Children from families practising other faiths in the following order:

- a) The eastern Christian churches (including the Orthodox churches)
- b) the Church of England
- c) other Christian denominations
- d) non-Christian faiths

15) Any other applicant

10. The oversubscription criteria are prefaced by an introduction that sets out the aims of the school and are followed by two pages containing thirteen explanatory notes, two pages of further information and other details. There are three pages of references to Canon Law and the school's Trust Deed. The supplementary information form (SIF) comprises three parts. Section A is for direct return to the school, section B is intended to inform a priest about an applicant and her family's religious practice and section C is for a priest to inform the school about a girl and her family's religious practice and includes information about how long the priest has known the applicant and her family; how frequently the applicant and her Catholic parent attend Mass; how long this has been their usual practice; and confirmation of whether or not the priest corroborates the information provided by the family and whether or not the application is supported. There is space to include further comments that the school might find helpful. There are then separate forms for applying to the sixth form.

### **Consideration of Factors**

11. I have considered the objection, together with other points raised by the LA, the diocese and the objector and the response of the school. I shall refer to these below as I test the arrangements against the Code, beginning with the different elements of the objection.

12. The first part of the objection is that the arrangements say "*all applicants and candidates are expected to give their full, unreserved and positive support for the aims, values and ethos of the school.*" Paragraph 2.4(d) of the Code does not allow schools to ask "*parents to agree to support the ethos of the school in a practical way*" and paragraph 1.9(a) of the Code says that schools **must not** "*place any conditions on the consideration of any allocation other than those in the oversubscription criteria...*" The

school argues that it is not placing a condition upon an application since this is not a matter that is taken into account when allocating places. It does not ask parents to support the school ethos in a practical way and explains that the sentence is an expression of hope so that parents can understand the ethos of the school.

13. I consider that the expectation is not in this case being used as a condition for the allocation of a place or as an expectation of practical support. However, the words are unclear and thus not compliant with the Code's requirement in paragraph 14 for arrangements to be "*clear*". The school may not require a parent to agree with the aims and needs to consider how it can modify the wording to make its intention clear that this is a description and an aspiration, but it is not a requirement and is not part of the admissions process. I do not uphold this element of the objection in respect of paragraph 1.9(a) of the Code but I do consider that the school must revise its wording to comply with the requirement in paragraph 14 of the Code to be clear.
14. The second part of the objection is that the arrangements do not comply with paragraph 1.6 of the Code because it is not stated that girls with a statement of special educational needs that names the school will always be admitted. The school alludes to this in the arrangements by saying that girls with statements of special educational needs are allocated to the appropriate band. Paragraph 1.6 of the Code concerns oversubscription criteria and the requirement to have oversubscription criteria. It includes within the paragraph reference to the requirement that all children with a statement that names the school must be admitted. However, the admission of such children is not via an oversubscription criterion but via separate legislation. There is no suggestion in the objection that the school does not meet the requirement to admit girls who have a statement that names the school. In the interests of clarity admission arrangements ought to say that girls who have a statement that names the school will be admitted, but the omission of such a reference does not contravene paragraph 1.6 of the Code and I do not uphold this part of the objection. I shall return to this point below when considering the banding tests in relation to paragraph 1.30 of the Code.
15. Part 3 of the objection is that criteria 4, 5, 9 and 10 give priority to the applicants who have attended "*any Catholic Primary School in the Dioceses of Westminster and Southwark (the feeder schools) for the whole of their primary education or whose Catholic parent has fulfilled the obligation to ensure a Catholic Education.....*" Paragraph 1.9(b) of the Code says schools **must not** "*take into account any previous schools attended, unless it is a named feeder school.*" Paragraph 1.15 of the Code says that "*the selection of a feeder school.....must be transparent and made on reasonable grounds.*" Diocesan guidance is that "*attendance at one or more Catholic feeder primary schools is a legitimate criterion. However, in areas where the demand for Catholic primary education exceeds the supply of places, care should be taken not to disadvantage those who have not been able to get a place in a Catholic primary school.*" The LA said in its response that naming all the feeder school within the



arrangements would seem excessive and suggested that the school could list all the schools as feeder schools in a separate list and refer to the list within the arrangements. It also suggested that the school could note in the arrangements that only schools that are publicly funded are considered as feeder schools. The school has confirmed that it does not consider that this criterion applies to a girl who has attended a non-maintained Catholic school in the area and in this respect it does not consider that it is in breach of paragraph 1.9(l) of the Code that does not permit this.

16. In considering these comments, I would expect a feeder school to be one that has strong links with the secondary school, where most of the pupils are likely to transfer to the secondary school and where there are arrangements that will help the children to make a successful transition from one school to the next. I have been shown no evidence of such links and the reasonable grounds for their selection described is concerned with ensuring a Catholic education has been provided for an applicant. The list of Catholic primary schools in these two Dioceses is extensive and it is a list of a type of schools not a list of normal feeder schools in the sense set out above. I do not consider that it is reasonable to call these schools feeder schools as allowed by paragraph 1.15 of the Code and they may not therefore be considered as named feeder schools as permitted by paragraph 1.9b of the Code. The school is not considering non-maintained schools as feeder schools but needs to ensure that this is made clear within the arrangements. I uphold this element of the objection.

17. Part 4 of the objection is that the arrangements do not comply with paragraph 1.9(i) of the Code because *“criteria 4, 5, 9 and 10 prioritise children whose Catholic parent has fulfilled the obligation to ensure a Catholic education. This activity is not permitted by the diocesan guidance.”* The school explained that it wishes to give priority to those children whose Catholic parent has ensured that the child has a Catholic education and that this education can be achieved either by attending a Catholic primary school, or by ensuring a Catholic education outside school for example by attending catechism classes in the local parish. Paragraph 1.9(i) of the code says that admission authorities **must not** *“prioritise children on the basis of their own or their parents’ past or current hobbies and activities (schools which have been designated as having a religious character may take account of religious activities, as laid out by the body or person representing the religion or religious denomination)”*. This means that the school could prioritise on the basis of an activity but only if it has been laid out by the diocese in its guidance.

18. I turned to the diocesan guidance for further clarification. Paragraph A21 of the diocesan guidance says that “ideally schools will use “Catholic” as the basic first category and this will be followed by other (for example geographical) criteria....”. The guidance goes on to say in paragraph A22 that if there is a shortage of places in the area a higher test of “practising Catholic “may be employed and that if this is employed paragraph A23 of the guidance says that “the only test that is acceptable is frequency of attendance at Mass as demonstrated on the diocesan priest’s reference

form.....” The diocese does not lay out such an activity specifically although the guidance does make reference to Canon Law and the Trust Deed for the school which in turn refer to the duty of Catholic parents in respect of Catholic education.

19. I have considered the points raised and have to take a view on whether or not the school is following the Code. In this case, the school does take account of the previous school(s) attended by applicants and in that respect contravenes paragraph 1.9(b) of the Code. If an applicant obtained their Catholic education in a different way, this is an activity, but not one that the diocese has laid out specifically in its guidance and is not therefore permitted to be considered for the purposes of allocating school places under paragraph 1.9(i) of the Code. I therefore uphold this part of the objection.
20. Part 5 of the objection is that the arrangements do not comply with paragraphs 14, 1.37 and 1.8 of the Code because *"the oversubscription criteria with relation to the regular practice requirement are not clear as they are not found in the criteria themselves or the associated notes. It is not made clear in the oversubscription criteria or SIF how exactly applicants are ranked on the basis of attending religious worship."* The school responded that note 3 and note 4 in the arrangements deal with the required evidence and should be taken with the extract from Canon Law at the end of the policy. The school considers that it is self-evident from the arrangements that weekly attendance is required within the definition of practising Catholic and that any other pattern of attendance which is not weekly would only qualify a girl under criteria 7 - 12 if places are still available. The school went on to say that the policy does not provide for "ranking" applicants and an applicant either meets the requirement for weekly attendance or they do not. The objector responded by saying that the Canon Law made it clear that applicants must attend on Sundays and named holy days of obligation but it was unclear whether someone attending fortnightly would be considered practising. The SIF asks parents to indicate whether they attend occasionally/monthly/fortnightly/weekly and this might lead parents to consider that some form of ranking takes place. If the school is only interested in weekly attendance then it should not complicate the arrangements by asking for other information.
21. I have considered these points and taken into account the requirement within paragraphs 14 and 1.8 of the Code for arrangements to be *"clear"* and the requirement in paragraph 1.37 of the Code that *"parents can easily understand how faith based criteria will be reasonably satisfied"*. I conclude that it is not clear that the arrangements are only interested in knowing whether or not an applicant and a parent attend Mass weekly and in this respect do not comply with the Code. The school needs to find a simpler and clearer way of explaining its faith requirement in each of the criteria and I uphold this part of the objection.
22. Part 6 of the objection is that the arrangements do not comply with paragraphs 14, 1.37 and 1.8 of the code because *"the oversubscription criteria are unfair in not clearly allowing admission to those baptised after*

*six months due to religious conversion. Alternatively in the SIF it says, if the date of baptism was more than six months after the date of birth, please explain the reason. Where relevant and available, provide documentary evidence to support your explanation.*" The objector says there is no explanation of what reasons might satisfy this given in the arrangements. Paragraphs 14 and 1.8 of the Code require arrangements to be "*clear, fair and objective*". In its response to this concern, the school has explained how it deals with this and how it allows for any exceptional circumstances. The school has offered to modify the explanation in the arrangements to make this clear. I consider that clarity about this will help make this part of the arrangements comply with the Code's requirement to be "clear". However, the arrangements must also make explicit the criteria by which the governing body exercises its judgement so that the arrangements can also comply with the requirement to be "objective". If the criteria to be used are not set out within the arrangements so that they be seen and understood by parents then they will not comply with the Code. In consequence I uphold this element of the objection.

23. Part 7 of the objection is that the arrangements do not comply with paragraphs 14, 1.37 and 1.8 of the Code because "*the SIF is not written in a way that is suitable for non-Catholic Christians/those of other faiths (who are applying under criterion 14) to fill-in*".
24. My observation of the SIF is that it is designed to elicit information about the Catholic faith and I can see that an applicant from another faith will find it difficult to complete the form with the information that they may think is relevant. Criterion 14 gives a priority order of applicants but it is not clear how applicants can describe their practice on the SIF to enable the school to gain the information that it requires in considering criterion 14. I uphold this part of the objection on the grounds that the SIF is not written in a way that makes it easy for those applying, who are not Catholics, to complete it. The school has agreed to look at the wording and improve this part of the SIF.
25. Part 8 of the objection is that the arrangements do not comply with paragraphs 1.8 and 14 of the Code because "*the statement in footnote 13 that Christian applicants must provide copies of baptismal certificates for the Christian child and parents is unfair as some Christian denominations, for example Quakers, do not practice baptism, whereas others, such as Baptists do not perform baptism until adulthood*." The school has accepted this point and has indicated its willingness to make a suitable amendment to enable an explanation to be included on the form so that such applicants are not treated unfairly. I uphold this part of the objection.
26. Some of the dates in the published arrangements are given as XXXX and part 9 of the objection is that because of this the arrangements were not properly determined by the governing body on 15 April as required by paragraph 1.46 of the Code. The school has agreed that this was an error and has said that it will publish the dates on its website and make them available to parents in order to be fully compliant with the Code. I uphold this part of the objection.

27. Part 10 of the objection is that there are questions on the SIF and the associated self-assessment form and priest's reference form that gather information that is not required for the application process. Paragraph 2.4 of the Code says "*in some cases, admission authorities will need to ask for supplementary information forms in order to process applications. If they do so, they **must** only use supplementary forms that request additional information when it has a direct bearing on decisions about over subscription criteria or for the purpose of selection by aptitude or ability.*"
28. In its comments on the objection the diocese says that the priest's reference form is not part of the admission arrangements and therefore exempt from the requirements of the Code. However, I do not consider that this is the case. The school states that the priest's reference confirms attendance at Mass. Without this evidence, by its own rules, the school will be unable to apply its oversubscription criteria to offer a place to a girl from a fully practising Catholic family. Footnote 4 to paragraph 5 of the Code says: "*admission arrangements means the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means used to determine whether a school place is to be offered.*" I consider that the priest's reference comes within this definition and as such is bound by the Code.
29. The priest's reference form contains questions which include references to the "parish in which you live"; "How does your parish priest know your child?"; "How long has your family lived in the parish?"; "How long has your family been registered in the parish?"; "How do you know the family?"; "Does your knowledge of this family pre date any secondary transfer process?" and "have you sought the advice of your primary headteacher?".
30. In its correspondence with me the school confirmed that it is seeking to establish whether or not applicants meet the criteria set out. Given that this is the case, the priests' reference form should be amended to remove all the unnecessary questions that are not required to make the judgement about Catholic practice. These matters have been drawn to the attention of the school and it has agreed to consider suitable amendments or deletions that can be made in order to comply with paragraph 2.4 of the Code. I uphold this element of the objection.
31. Part 11 of the objection is the requirement to provide a parent's baptism certificate. Paragraph 2.4(a) of the Code does not permit any personal details of parents and families to be sought. The baptism certificate could reveal a mother's maiden name in addition to the place of birth and ethnicity, which is not information that is needed to process a child's application to the school, and which is prohibited by the Code. I uphold this part of the objection.
32. The last part of the objection asks whether the "*degree of selection on the basis of a child and her parent's attendance at Mass, the age when baptism took place and the duty of the parents to ensure a Catholic education... are reasonable as required by paragraph 1.8 of the Code*".

The objector says that these criteria are in conflict with the diocesan guidance that advises that attendance at Mass and a certificate of baptism are the only criteria that should be used and therefore breaches paragraphs 1.38 and 1.9(i) of the Code..

33. As stated above, paragraph A21 of the diocesan guidance says that *“ideally schools will use “Catholic” as the basic first category and this will be followed by other (for example geographical) criteria....”*. The guidance goes on to say that if there is a shortage of places in the area a higher test of *“practising Catholic”* may be employed and that if this is employed the guidance says in paragraph A23 that *“the only test that is acceptable is frequency of attendance at mass as demonstrated on the diocesan priest’s reference form. It is unacceptable for schools themselves to be making judgements on pastoral matters such as Catholic practice.”*
34. The school has chosen to go further than the diocesan guidance in three respects. It has defined the time period of six months following birth for baptism, with some scope for use of discretion as described above and it has decided to add four years as the requirement for regular attendance at Mass and it takes account of whether a parent has ensured a Catholic education for their child. It explains that its reason for using these is a result of the number of applications that it receives for places and the desire to ensure that applicants have not adapted their practice in the short term solely to gain a place at the school.
35. The school says that these criteria are clearly defined with regular attendance at Mass meaning weekly, as set out in paragraph A26 of the diocesan guidance, and the priest’s reference is used to determine whether or not attendance at Mass meets the criterion and whether or not a parent has ensured a Catholic education for their child. For each applicant a decision is made about whether the applicant meets each criterion based on the evidence provided and this is recorded on a record form. The governing body also follows the diocesan guidance in paragraph A24 about taking account of exceptional circumstances.
36. In considering this part of the objection I first looked at the use of baptism in the arrangements. The diocesan guidance in paragraph A21 says that priority should be given to Catholics and that the evidence is baptism as described in paragraph A12. The school gives a reason for providing tighter criteria than are given by the guidance. The reason given by the school is clear and in this context I do not consider that it is unreasonable given the school’s desire to find objective criteria to prioritise applicants as a result of oversubscription.
37. I then considered the use of attendance at Mass as a criterion. The diocesan guidance clearly says that, if necessary, attendance at Mass can be used as a criterion for school admissions where schools are oversubscribed. The school has chosen to do this and has set out the time period that it uses within the arrangements. I conclude that the arrangements do not therefore breach Paragraph 1.8 of the Code.

38. The objector then refers to paragraph 1.38 of the Code and I consider that the school has “had regard to” the diocesan guidance and so I do not uphold this part of the objection. In respect of paragraph 1.9(i) of the Code, this was covered above with reference to part 4 of the objection and I conclude that the school is taking activities into account that are not laid out in the diocesan guidance and I uphold this part of the objection.
39. I now turn to the other matters that I have identified following my review of the overall arrangements using my power under section 88I of the Act.
40. Criteria 2, 3, 4, 5 and 6 give priority to “*Practising Catholic girls from Practising Catholic families*” as part of each criterion and refer to attending Mass “*regularly*”. The arrangements state in the notes that this means a girl and her parent/guardian who have both been baptised and who have attended mass weekly for a period of four years. The school clarified in a letter to me that the baptism for the parent does not need to have been within six months of birth. However this is not explicit in the arrangements and needs to be clarified in the arrangements in order to meet the requirement for the arrangements to be “*clear*”.
41. A further point concerns the timing of the banding tests. Paragraph 1.25 of the Code says that “*pupil ability banding is a permitted form of selection....*” This paragraph refers to Section 101 (1) of the Act which says “*....the admission arrangements for a maintained school in England or Wales may make provision for selection by ability to the extent that the arrangements are designed to secure – (a) that in any year the pupils admitted to the school in any relevant year group are representative of all levels of ability among applicants for admission to the school in that year group, and (b) that no level of ability is substantially over-represented or substantially under-represented.*” Paragraph 1.32 of the Code says that “*admission authorities must... take all reasonable steps to inform parents of the outcome of selection tests before the closing date for secondary applications on 31 October so as to allow parents time to make informed choices school...*”. The school currently administers the tests in November.
42. The school responded that the ability test is a banding test and not a selection test and that if the results of the banding test were given to parents it would simply indicate which band their daughter had been placed in and not “*allow parent to make an informed choice of school.*”
43. The LA supported the school’s argument and provided copies of correspondence with individual officers within the Department for Education on this matter. In the correspondence the LA points out the logistical difficulties of ensuring that applicants had attended the banding tests before they applied for a place and argued that the knowledge of the test outcome would provide no helpful information to a parent when deciding whether or not to apply for a place at that school.

44. I have considered the points made in the light of the Code and have to conclude that irrespective of the merit of the arguments for the tests to be taken after applications are made for places, the Code as it is currently written does not support these arguments. Both the Code and the Act are clear that banding is a form of selection. The Code says that an admission authority "**must take all reasonable steps to inform parents of the outcome of selection tests before...31 October.**"
45. My next point is that there is no clarification within the arrangements about the consequence of a child failing to attend for an ability test. It is possible that some families may not be sufficiently well organised to be able to attend the given assessment day or a child may fail to attend for the tests for other reasons such as illness or important prior engagements. In order to be "*clear and fair*" the arrangements need to clarify this point and state if the application would be disregarded or if other arrangements for testing can be made. The school has agreed to review this.
46. There is a related point concerning the testing of looked after or previously looked after children. Paragraph 1.28 of the Code refers to banding tests and states that "*Where the school is oversubscribed: looked after children and previously looked after children **must be given top priority in each band...***". The school will be able to comply with this if a child takes the ability test and is allocated to a band. However, in the event of a looked after or previously looked after child not taking the ability test the school must ensure that it would meet the requirement of paragraph 1.7 of the Code to give the highest priority to looked after children and previously looked after children within the oversubscription criteria and ensure they are admitted. The school has agreed to address this point.
47. Paragraph 1.30 of the Code says "*children with statements of special educational needs may be included in banding tests and allocated places in the appropriate bands but, regardless of any banding arrangements, they **must be allocated to place if their statement names the school.***" The arrangements are clear about the admission of girls with statements of special educational needs but it is not clear how they meet paragraph 1.7 in respect of the banding tests. The school has agreed to rectify this.
48. Oversubscription criterion 1 gives priority to looked after and previously looked after Catholic girls. I have clarified with the school that a Catholic girl is a girl who has been baptised either within six months of birth or later if there are exceptional circumstances; such circumstances could include adoption or following conversion to the faith. In the notes that accompany the oversubscription criteria there is a broad explanation about the evidence required by the governing body to decide whether or not to take account of the exceptional circumstances around baptism.
49. I have two concerns about this. The first is that paragraph 14 of the Code requires arrangements to be "*clear and objective*" and in this case I do not think that the arrangements clearly explain how a looked after or previously looked after girl is judged to be Catholic and the evidence required to support this. My second concern is that the governing body

uses its judgement to decide if any exceptional circumstances described meet its criterion or not and there are no clear criteria in the arrangements that ensure that this is a decision in compliance with paragraph 14 of the Code's requirement to be "*objective*". The diocesan guidance in paragraph A12 is that if a girl has been baptised she is a Catholic. The school has agreed to consider these points.

50. Criterion 4 makes reference to comparative distances from home to other Catholic secondary schools and it is unclear how this is measured. The school clarified that in practice it has not had to measure the comparative distances because applicants are usually informed by their primary school or by their local authority about which is their closest Catholic secondary school. The school went on to explain that it uses a customised programme to measure distance. The school provides post codes for the applicants and the company provides the distances from the homes to the school gate. There is a lack of detail about this in the arrangements and the school has agreed that it could explain how distance is measured more clearly in order to comply with paragraph 1.13 of the Code. The school has agreed to address this.
51. In general the sixth form arrangements are similar to the arrangements for admission at Year 7 and the comments made above apply. There is however one specific point and this concerns the Published Admission Number (PAN) as set out in paragraph 1.2 of the Code. The PAN is required to be a specific number and cannot be the balance of places available after internal applications have been considered. In order to comply with the Code, the school has agreed to replace the reference to "up to 40" with a PAN of 40. It remains open to the school to admit over its PAN if circumstances allow.
52. For admission to the sixth form, the school sets a minimum level of qualification in its policy, and there are faith based oversubscription criteria. On the school's website there is a copy of the sixth form curriculum booklet and within this there is a statement "*where chosen courses oversubscribed, the Governors will give priority in the first instance to those students who have the highest predicted grades and subsequently the highest actual grades.*" In correspondence the school has clarified the minimum entry requirements which girls, both internal and external, must attain and confirmed that "*they are not being asked to compete on the basis of their predicted grades. If they pass the eligibility barrier then the oversubscription criteria are applied to determine who is offered a place if there are more applicants than places available.*" The school has agreed to amend the wording in its arrangements to make this point clear.
53. In note 13 of the arrangements, the last sentence says "*the school will not offer a place to a non-catholic applicant if it would thereby be unable to offer a place to catholic applicant.*" it is unclear from the sentence whether the school would admit a non-Catholic applicant if there was a place available and the sentence could be interpreted to mean that the place would be held vacant in case a Catholic applied at a later date. Paragraph



1.36 of the Code refers to faith schools and says that “*as with other maintained schools (faith) schools are required to offer every child who applies, whether of the faith, another faith or no faith, a place at the school if there are places available.*” The school needs to ensure that its arrangements are clear on this point.

54. The SIF contains a sentence in paragraph 2 that begins “*the governing body reserves the right to make inquiries and to seek verification.....*”. It is unclear what inquiry or verification the governing body has got in mind when informing parents of this. This statement does not comply with paragraph 14 of the Code that requires arrangements to be “clear”. Paragraph 2.4 of the code sets out the information that can be sought before a place is allocated and paragraph 2.5 of the Code specifies what can be checked at a later date. The governing body must ensure that it complies with these requirements.

## **Conclusion**

55. I have considered carefully all the points made by the objector, by the school, by the diocese and by the LA. I have tested the school’s arrangements against the relevant provisions of the Code, referred to the diocesan guidance and I have used my power under section 88I of the Act to review the arrangements as a whole. The school has responded very helpfully and constructively to the points made and must now decide how to revise its arrangements in order to fully comply with the Code. Some of the elements of the objection concern the definitions of membership of the faith. I note that the school has already begun a consultation on possible changes to its arrangements. It must ensure that it consults with the diocese on these matters as part of the process of ensuring that the arrangements are compliant with the Code and so that the diocese can clarify any points in relation to the published diocesan guidance.
56. In addition to considering the objection, I have also determined that the arrangements do not conform to the requirements of the Code in the respect of other matters listed above. The school must consider these points and amend its arrangements to ensure that they comply with the requirements of the Code. This is a complicated set of arrangements and in making its revisions, the school should take every opportunity to simplify them to help ensure that parents can “*easily understand how any faith based criteria will be reasonably satisfied*”. The arrangements for 2015 have now been used to allocate places. Changes should be made to these arrangements for 2015 as they will apply to late applications and the waiting list.

## **Determination**

57. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I partially uphold the objection to the admission arrangements for admissions in September 2015 determined by the academy trust for Sacred Heart High School.

58. I have also considered the arrangements in accordance with section 88I(5). I determine that there are other matters where the arrangements do not conform with the requirements relating to admission arrangements.

59. 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: 23 February 2015

Signed:

Schools Adjudicator: David Lennard Jones