



Office of  
the Schools  
Adjudicator

**DETERMINATION**

<b>Case reference:</b>	<b>ADA 2775</b>
<b>Objector:</b>	<b>The Fair Admissions Campaign</b>
<b>Admission Authority:</b>	<b>The governing body of Cardinal Vaughan Memorial School, Royal Borough of Kensington and Chelsea</b>
<b>Date of decision:</b>	<b>24 February 2015</b>

**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 governing body for Cardinal Vaughan Memorial 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 Cardinal Vaughan Memorial School (the school), a Catholic voluntary aided school for boys aged 11 – 18 and girls aged 16 – 18 in the Royal Borough of Kensington and Chelsea, 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 ten parts and covers a range of detailed issues concerning the admission arrangements.

## **Jurisdiction**

2. These arrangements were determined by the governing body, which is the admission authority for the school, on 2 April 2014.
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 used my power under Section 88I of the Act to consider the arrangements as a whole.

## **Procedure**

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
  - a. the objection dated 30 June 2014, and subsequent email comments from the objector;
  - b. the school's response to the objection and subsequent correspondence and supporting documentation;
  - c. the LA's comments on the objection and subsequent correspondence and supporting documentation;
  - d. the diocese's comments on the objection and subsequent correspondence and supporting documentation;
  - e. the LA's composite prospectus for parents seeking admission to schools in the area in September 2014 and September 2015;
  - f. the minutes of the meeting of the school's governing body held on 2 April 2014 when it determined the arrangements; and
  - g. the determined arrangements for 2015.
6. In order to assist me in my enquiries I held a meeting at the school on Monday 2 February. This was attended by representatives from the school, the diocese, the LA and the objector. Following the meeting further information was provided and this has been taken into account in the considerations below.

## **The Objection**

7. The objection submitted contained the elements set out below:
  - 7.1 The arrangements do not comply with paragraphs 1.47 and 2.14 of the Code because the *"2014 policy is no longer on the website"*

- 7.2 The arrangements do not comply with paragraph 2.4 of the Code because *“all applicants are required to complete the supplementary information form even if not applying for a religious place.”*
- 7.3 The arrangements do not comply with paragraph 1.27 of the Code because *“the details of the banding test such as its date are not included in the arrangements.”*
- 7.4 *“The oversubscription criteria say that 12 places will be allocated on the basis of music aptitude. Presumably this should be up to 12 - there may be less than 12 applicants.”* This does not comply with paragraphs 1.8 and 14 of the Code.
- 7.5 The arrangements do not comply with paragraphs 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.”*
- 7.6 The arrangements do not comply with paragraph 1.6 of the Code because *“it is not stated that children with a statement of SEN that names the school will always be admitted - the statement just mentions that a different process is used.”*
- 7.7 The school’s supplementary information form (SIF), which is headed “application form” on its title page does not comply with paragraph 2.4 of the Code because *“it asks for both parents’ names, baptismal status and frequency of mass attendance and presumes that they are of opposite genders. It also asks for the name of the home borough and the name of the current school.”*
- 7.8 The arrangements do not comply with paragraph 2.4(a) of the Code *“with respect to the requirement to provide a parent’s baptism certificate.”*
- 7.9 *“The priest’s reference says ‘The boy’s parents have made formal provision for his Catholic education’. It is not clear from the rest of the arrangements that this is taken into account, but if it is, then it constitutes taking into account unnamed feeder schools and/or an activity not permitted by the diocesan guidance.”* This point also contravenes paragraph 2.4, 1.9(b) and 1.9 (i) of the Code.
- 7.10 The objector asks *“whether the degree of selection on the basis of baptism and requirement for holy communion are 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 received holy communion are taken into account.”* This does not comply with paragraphs 1.9(i) and 1.38 of the code.

## **Other matters**

8. Having had these arrangements drawn to my attention I have reviewed the arrangements overall 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 a letter and invited the school's comments. The school responded and its comments, together with those of the other parties, are included in the consideration about the points later in this determination:

- 8.1 The arrangements say that all applicants are required to take the ability tests for the purpose of banding but it is unclear what happens if a boy is unable to take the test on the specified day.
- 8.2 The arrangements do not clarify the requirement in paragraph 1.30 of the Code that a boy who has a statement of special educational needs must be offered a place if the statement names the school irrespective of the banding tests.
- 8.3 The arrangements are unclear about how the banding tests operate in respect of looked after or previously looked after boys.
- 8.4 The banding tests are administered in November and this does not comply with paragraph 1.32(c) of the Code.
- 8.5 Musical aptitude places are split between the ability bands and it is unclear what happens if there are insufficient applicants for places in an ability band and whether the places are transferable between bands or they remain unfilled.
- 8.6 In the arrangements and particularly in the SIF, the emphasis on the detail of the status for looked after or previously looked after children appears insensitive to this group of potential applicants.
- 8.7 Paragraph A23 of the diocesan guidance says that "*It is unacceptable for schools themselves to be making judgements on pastoral matters such as Catholic practice*" yet the governing body has decided "*to consider each case of delayed baptism on its merits*".
- 8.8 Within the arrangements it is unclear how a waiting list operates as is required by paragraph 2.14 of the Code will operate.
- 8.9 The SIF has been amended to say parent(s)/carer(s) but the details of only one parent are required for the oversubscription criteria however the option to give both sets of details is available leaving parents and carers unclear what is expected.
- 8.10 Part three of the policy for admission to the sixth form sets out how GCSE point scores will be calculated and contains a statement that "*last year offers were made to practising Catholic candidates with a predicted GCSE points score of 70 or above*". It is unclear whether pupils are competing for places on the basis of GCSE points score and if this is a form of selection by ability that complies with paragraphs 1.18 and 2.6 of the Code.

- 8.11 It is unclear what happens if predicted grades at GCSE are not achieved and students do not meet the minimum requirement for entry to the sixth form.
- 8.12 The priest's reference form for sixth form applicants includes the definition of a practising Catholic as requiring three years attendance at Mass, which is different to the definition of a practising Catholic at Year 7 which requires five years attendance at Mass. It is not clear why this is different.

## **Background**

9. Cardinal Vaughan Memorial School is a popular and over-subscribed voluntary aided Catholic school within the Catholic Diocese of Westminster. The school was inspected in September 2006 when it was judged by Ofsted to be outstanding. An interim assessment took place in June 2010 which said that the school's performance had been sustained and a full inspection would not be carried out sooner than 2011. The school admits boys into Year 7 with a published admission number (PAN) of 120. It admits boys and girls into Year 12 with a PAN of 75. The school has a specialism in music and admits up to 12 boys into year 7 on the basis of their musical aptitude.
10. The school's 2015 admission arrangements were determined by the school's governing body on 2 April 2014. The 120 places available at Year 7 are split into three ability bands with 30 places for applicants who are above average ability, 60 places for those of average ability and 30 places for those of below average ability. If applicants are looked after or previously looked after children or are admitted with a statement of special educational needs the places allocated to the bands are adjusted accordingly. Applicants are required to take an ability test that is administered by the school on a given date in November. The applicants are then placed in rank order on the test results and allocated to one of the three ability bands. The scores have no further part in the admission process once used to allocate applicants to a band. The available places within the bands are allocated on the basis of the following oversubscription criteria:
- A. looked after and previously looked after Catholic boys;
  - B(i) Catholic boys from fully practising Catholic families eligible for a music place;
  - B(ii) Catholic boys from fully practising Catholic families who are brothers of current or former pupils at the school;
  - B(iii) a) Catholic boys from fully practising Catholic families who were baptised before seven months of age and who have made First Holy Communion;
  - B(iii) b) Catholic boys from fully practising Catholic families who were not

baptised before seven months or have not made First Holy Communion;

- C. Other Catholic boys;
- D. Looked after and previously looked after boys who are not Catholic;
- E Other boys who are not Catholic.

The oversubscription criteria are followed by some general notes and accompanied by a school application form (the supplementary information form or SIF) and a priest's reference form.

11. The notes explain that the definition of a "*fully practising Catholic from a fully practising Catholic family*" means "*boys whose parents have made formal provision for their Catholic education and who have attended Sunday Mass/Saturday Vigil Mass weekly for the last five years or more and who have at least one Catholic parent who has attended Sunday mass/Saturday Vigil Mass for the last five years or more.*"
12. The definition of a Catholic is given as a "*...member of a Church in full communion with the See of Rome, including Eastern Catholic Churches. Membership of the Catholic Church will normally be evidenced by a certificate of baptism in a Catholic Church, which MUST be enclosed with the application.*"
13. The PAN for the sixth form is 75 and external applications are open to girls and boys. The school sets a minimum threshold of GCSE scores for admission to the sixth form that applies to internal as well as external applicants. The school then applies its sixth form oversubscription criteria which include ranking applicants on their predicted GCSE points scores.

### **Consideration of Factors**

14. When reviewing the arrangements I have carefully considered the different elements of the objection and, in addition, I have considered the arrangements as a whole. I have taken account of the responses from the school, the diocese, the LA and further comments from the objector.
15. The first part of the objection is that paragraph 1.47 of the Code requires a school to display the admissions arrangements for the "whole offer year (the school year in which offers for places are made)." on its website. At the time of the objection the arrangements for 2014 were not on the website, however once the matter had been drawn to the attention of the school this was swiftly rectified. I uphold this element of the objection.
16. The second part of the objection is that it is not necessary for all applicants to complete the SIF because those who are not seeking priority on the basis of their faith will be considered automatically within the last oversubscription criterion.

17. Paragraph 2.4 of the Code says that a SIF “**must** only use a supplementary information form to request additional information that has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability”. The objector argues that by saying all applicants must complete the SIF, the school is asking for more information than it requires from those who will be considered for a place under the lowest oversubscription criterion.
18. The school responded by saying that it uses the information from the SIF to place the applicants in the appropriate oversubscription criteria. It would assume that an applicant is applying under the last criterion if a SIF is not submitted but it does not consider that it is safe to assume that all those who do not complete the SIF are not Catholics. The school also said that it needed the information to be able to invite applicants to take the banding test and to be able to check that the LA lists are accurate and that missing names can be chased before applying the oversubscription criteria.
19. The diocese said in its response that “*the SIF obtains information regarding siblings, multiple births, applications for music places, children of staff, is adopted, in care/previously adopted or in care or in receipt of residence or special guardianship orders. It would be discriminatory not to allow all children the possibility of these priorities in their application.*”
20. I have considered the points made and I am not persuaded that all applicants “must” complete the SIF. The school argues that it needs to know which criterion to place an applicant in and does not think it is safe to assume that an applicant who does not complete a SIF is to be considered under the last admission criteria. In my view this assumption can be made clear in the arrangements. The LA has the responsibility of creating the consolidated list of applications that it receives from parents and schools are not informed of the priority order of these applications. It is for the LA and not the school to check that it has quality assured its application lists with parents. The school acknowledges that the information sought about baptism and Holy Communion is not required for those applying under the last criterion. The diocese commented that applicants should have access to all the criteria they can apply under, however, I observe that it is for the governing body to apply their oversubscription criteria rather than for the applicant to indicate which criterion applies. I conclude that if the arrangements make it clear to parents what assumptions the governing body will make if a form is not submitted then a parent can make an informed decision about whether or not to complete a SIF and I uphold this part of the objection.
21. The school has decided to use banding tests to help provide a comprehensive intake for the school. The third part of the objection said that the arrangements did not include information about the date of the test. The school pointed out that the date is included on page one of the arrangements. The objector acknowledged this and asked to withdraw this part of the objection. The date is indeed published in the

arrangements so I do not uphold this element of the objection, however, I refer below a concern about the date given for the tests.

22. The fourth part of the objection concerns what happens if the school is unable to allocate 12 places to Catholic applicants on the basis of musical aptitude. In its correspondence, the school has acknowledged this point and has said that it is willing to amend the arrangements to say that “up to 12 places” will be available so that the arrangements are accurate in allocating up to 10 per cent of its published admission number (PAN) to a specialism as permitted in paragraph 1.24 of the Code. I uphold this part of the objection.
23. Part 5 of the objection is that “*the oversubscription criteria are unfair in not clearly allowing admission to those baptised after six months if they convert to the Catholic faith.*” The school responded to this point by saying that it considers that this is not unfair because where a person converts to the Catholic faith or is received into the Church later in life, this part of the policy does not apply since Canons 867 (Latin churches) and 686 (Eastern churches) are not applicable to those who have converted or been received. The school therefore treats these applicants as if they meet the six month policy. In this respect I do not uphold the unfairness element of the objection.
24. However, although this point has been clarified in the correspondence resulting from the objection process, potential applicants will not be aware of this clarification and could be deterred from applying. For the arrangements to meet the requirement to be “clear” under paragraph 14 of the Code, this point needs to be included within the arrangements so that applicants can be clear about this point before they make an application for a place.
25. Part 6 of the objection is that the arrangements do not state clearly that children with a statement of special educational needs that names the school will always be admitted. This part of the objection was withdrawn when the objector agreed with the school’s response set out in the correspondence that pointed out that the arrangements are in fact clear about this. I am satisfied that the arrangements meet the requirements of the Code in this respect and I do not uphold this element of the objection.
26. Part 7 of the objection points out that the SIF asks for the names of both parents, baptismal status and frequency of Mass attendance and presumes that they are of opposite genders. It also asks for the home borough and name of current school.
27. The school responded to this point by saying that the SIF provides boxes for parents to complete their names but did not expect both boxes to be completed. Following the correspondence, the school has changed the heading on the boxes to read “parent(s)/ carer(s) name(s)” to reflect the fact that only one parent or carer is required to provide their details and removes any assumption about parents of different gender and includes the option of “carer”. It says that it asks for the home borough and

previous school to allow it to match SIFs returned to the school with the lists of applicants sent to the school by the LA that is compiled from the CAFs received. The school points out that applications are received from a large number of London boroughs and it is helpful to be able to cross reference these. The school points out that the SIF does not ask for information about baptismal status and Mass attendance, these requests are made on the priest's reference form.

28. The diocese responded to this point by saying that the information from the SIF is needed to ascertain which of the boys applying are "*Catholic boys from fully practising Catholic families*" and that the notes within the arrangements explain that only one parent needs to be a practising Catholic. The name of the borough can be found from the post code so the diocese sees no reason for this to be concealed but that the names of previous schools should not be sought as there are no named feeder schools.
29. I have considered these responses and note the school's change to the headings for boxes requesting parent's or carer's details. The change is a positive one but there remains the question of why provide the opportunity to give two sets of details? A family completing the form will not be clear whether the governing body will give greater weight to an application that has all the boxes complete or whether this is disregarded in allocating places. Paragraph 2.4 of the Code says that "*admission authorities.....must only use supplementary forms that request information that has a direct bearing on decisions about oversubscription criteria..*" For these criteria the details of only one parent or carer are required so this is all that may be requested. In the same way, the previous school has no bearing on the decision so this information should not be requested. There is further consideration about the priest's reference form below and the information requested from parents on these two forms overlaps. The school says that it uses the priest's reference form to provide evidence of baptism and Mass attendance and little, if any, of the information gathered on the SIF is required for the purpose of allocating places at the school. The priest's reference form has taken on the role of the SIF in these arrangements. The school will need to review the information requested on the SIF and its related forms to ensure the information requested complies with the Code. I uphold this element of the objection.
30. Part 8 of the objection raises the concern that the school requires a parent to produce their baptism certificate. The diocese says in paragraph A15 of its guidance that "*membership of the Catholic Church is normally shown by a certificate of baptism.....and it is reasonable for the governing body to require the production of one of these documents.....*". Paragraph 2.4(a) of the Code says that schools may not ask for "*any personal details about parents and families....*". The school is required to have regard to the diocesan guidance to the extent that this is consistent with the Code, however if, as here, there is any potential conflict, it is the Code that takes precedence.

31. A parent's baptism certificate may contain personal details such as a date of birth, maiden name, and their parents' details. This is personal information that is not required for the admissions process as defined in the arrangements. The oversubscription criteria as written require the governing body as the admission authority to know whether the parent or carer has been baptised. The school must therefore find a means to confirm that a parent is baptised without gaining access to other personal information about the parent or carer in order to comply with paragraph 2.4(a) of the Code, and in doing so must not contravene any other part of the Code. I uphold this part of the objection.
32. Part 9 of the objection says that "*it is not clear within the arrangements how the section in the priest's reference that says 'the boy's parents have made formal provision for his Catholic education' is taken into account and if it is, then it constitutes taking into account unnamed feeder schools and/or an activity not permitted by the diocesan guidance*" and in doing so contravenes paragraphs 2.4, 1.9(b) or 1.9(i) of the Code.
33. In its response, the school refers to its definition of a fully practising Catholic from a fully practising family set out on page two of the arrangements for admission to year 7, "*Boys whose parents have made formal provision for their Catholic education and who have attended Sunday Mass/Saturday Vigil Mass weekly for the last five years or more and who have at least one catholic parent who has attended Sunday mass/Saturday Vigil Mass for the last five years or more.*" The school goes on to say that if the priest ticks the "yes" box on the reference form then the practice aspect of this criterion is deemed to be met. The school says that it has now removed any reference to previous schools from its policy on the advice of the diocese following the objection. It does not consider that it is taking activities not permitted by the diocese into account. The school argued at the meeting held that it needs to find objective ways to prioritise applicants because it is routinely oversubscribed but confirmed that only a small number of the applications that it received for places from Catholics did not fulfil this criterion.
34. The objector points out that paragraph 1.9(b) of the Code says that admission authorities "**must not take account of any previous schools attended unless it is a named feeder school.**" Therefore the school should not be considering whether or not an applicant has attended a Catholic school even if it is for the purpose. The school responds that the provision of a Catholic education as set out in Canon Law is about being instructed about the Catholic faith. This can be provided in a number of ways, one of which is by attending a Catholic school. The objector then argues that if other ways of being instructed in the Catholic faith are taken into account then this is in contravention with paragraph 1.9(i) of the Code that prevent a school taking account of "*hobbies or activities*" unless they are laid out, in this case, by the diocese.
35. I turned to the diocesan guidance for further clarification. The guidance does not provide a list of religious activities that may be taken into

account. 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.....” At the meeting held at school the diocesan representative agreed that the diocese had not laid out such activities in its guidance but commented that the guidance did however refer to Canon Law and this was also referred to in the Trust Deed for the school.

36. 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, through the priest’s reference, 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, the diocese has confirmed that this is not an activity that it 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 note the reference made by the diocese to Canon Law and the school Trust Deed however, the Code is quite clear that it is the diocesan guidance where the activities should be laid out if the permission in paragraph 1.9(i) of the Code is to apply. I therefore uphold this part of the objection.
37. In the last part of the objection the objector questions “*whether the degree of selection on the basis of baptism and the requirement for Holy Communion are 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 received holy communion are taken into account.*” The objector says that this does not comply with paragraphs 1.9i and 1.38 of the Code.
38. In its response to the point about the date of baptism the school said that when consultation about the arrangements took place earlier this year there were no comments about this part of the arrangements and the governing body referred back to Canon Law on this matter. The diocese commented on this point in the objection by saying that the date of baptism is occasionally used by heavily oversubscribed schools and that this is a matter for the governing body to decide. At the meeting the diocesan representative commented that “*the diocesan guidance is not intended to be more than a guide and that the diocese does not lay everything out but sets the principles*”.
39. In considering this part of the objection I first looked at the use of baptism in the arrangements and the use of attendance at Mass. The diocesan guidance in paragraph A21 says that priority should be given to Catholics and in paragraph A12 that a “*Catholic is a member of the Catholic Church*” and in paragraph A15 that “*membership is normally shown by a*

*certificate of baptism*". It also says in paragraph A22 that *"if there is a shortage of places in the locality...a higher test of 'practising Catholic' may be employed."* Paragraph A23 says *"if a test of practising Catholic is employed, the only test that is acceptable is frequency of attendance at Mass..."*. The school uses baptism as a criterion but uses a tighter definition than that given by the guidance, similarly, it uses attendance at Mass but with a more rigorous test than that given in the diocesan guidance. The reason given by the school for departing from the diocesan guidance is clear. The school has had regard to the diocesan guidance and accepted it with an argued extra level of commitment.

40. I then considered the use of making first Holy Communion as a criterion. The diocese responded to the objection by saying that *"the question about reception of first Holy Communion should be removed from the policy. There are no formal records for this and it cannot be proved or challenged."* The school responded that it accepts what the diocesan guidance says in paragraph A33 that governing bodies may not request certificates about sacraments other than baptism but points out that it does not request any certificate with regard to Holy Communion. It says that parents are asked to tick a box and if the box is ticked then this part of the criterion is deemed to be met. The school says that it uses this criterion to help differentiate between a large group of applicants and points out that the governing body would expect boys from fully practising Catholic families to have made first Holy Communion following Canon 913 (Latin Churches) and Canon 710 (Eastern Churches).
41. In this instance the diocese has specifically said in its response to the objection that the school should not take into account the making of First Holy Communion. The school has acknowledged this point and explained that it does not ask for evidence but accepts the answer that is provided by applicants within the SIF. The school may not be asking for the evidence itself, but an applicant has to answer a question on the SIF about a matter that the diocese has said should be removed from the policy. This is a matter that the diocese has laid out as being unacceptable as part of an admissions policy and has said should not be taken into account. Therefore whether the school asks for a certificate or asks an applicant to self-certify, I conclude that this part of arrangements does not comply with paragraph 1.9i and 1.38 of the Code.
42. I now turn to the other matters that I have drawn attention to. The first points concern the banding tests. The arrangements say that all applicants are required to take the ability tests but it is not clear what happens if a boy is unable to take the test on the day arranged by the school, as a result of illness for example. In correspondence, the school said that in this eventuality it would arrange a second test date for those who were unable to attend the first date. This is a pragmatic response but in my view this does not meet the Code's requirement in paragraph 14 for arrangements to be *"clear"*. While the school may not wish to advertise that there is a second date for the tests, it does need to find suitable words to include in the arrangements that make families aware

they can discuss a difficulty concerning the date with the school. The school has acknowledged this point.

43. There is a related point concerning the testing of looked after and 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 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 child not taking the ability test it is unclear how the school would meet paragraph 1.7 of the Code that requires the highest priority to be given to looked after and previously looked after children within the oversubscription criteria. The school has agreed to review this point.
44. In addition, 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 a place if their statement names the school.” The school has clarified the point about admission of boys with statements of special educational needs but it has not clarified how it meets paragraph 1.7 in respect of the banding tests. The school has agreed to deal with this point.
45. 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.
46. The school responded with the comment that “*the purpose of this part of the Code is to give parents information which may have a bearing on their choice of schools in the CAF. Our ability banding test is not an entry test and a child’s band does not determine whether a place will be offered or not. Parents learn nothing about the likelihood of being offered a place at the school if the test is held before an application is made. We are reluctant to implement a change which does not achieve the stated outcome, may affect the implementation of the co-ordinated scheme and, most importantly, is likely to undermine our efforts to maintain a comprehensive intake in this high performing school. However carefully expressed, the results of the test are likely to be misunderstood or to*

*have undesirable consequences over time. Parents of boys in band 3 (below the average ability of the cohort applying) may be put off applying because they feel their son is not good enough or worse, is not regarded by the school as good enough, and so, indirectly, the desire to inform has disadvantaged those from particular groups. Over time, this may well cause 'band drift', a gradual skewing of the intake towards those of higher ability. We add value across the ability range and have a lot to offer pupils of below average ability. The school would not want this to change."*

47. 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.
48. 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 Act and the Code are clear that banding is a form of selection, and the Code says that an admission authority "**must take all reasonable steps to inform parents of the outcome of selection tests before...31 October.**" The school is not meeting this requirement.
49. My next point is that music places are apportioned between the ability bands on a ratio of 3:6:3 and it is unclear in the arrangements what happens if there are insufficient suitable applicants for musical places in one of these ability bands. The school has explained that the places are not transferable and if they are unfilled with a musical applicant the places are made available within the bands for other applicants. The school has agreed to clarify this point within the arrangements.
50. My next point is about the criteria, and also the SIF, where emphasis is given to the need for looked after and previously looked after applicants to provide evidence of status at the time of application. There are unlikely to be many such applicants and individual circumstances may be sensitive. I suggested that the school could find a lighter touch to manage this criterion. This comment met with a positive response from the school and it will consider how to achieve this. The school has also acknowledged that it should refer to carers as well as parents within the arrangements.
51. In my next point, the governing body has decided "*to consider each case of delayed baptism on its merits*". Paragraph 14 of the code requires arrangements to be "objective". I have seen no evidence of the objective criteria that the governing body will take into account when making a decision about delayed baptism and so, on this basis, I consider that this part of the arrangements does not comply with the Code.

52. I then pointed out that in the arrangements it is unclear how a waiting list as required by paragraph 2.14 of the Code will operate. In correspondence, the school has agreed to develop wording that it can use to clarify this.
53. My next point concerns admission to the sixth form. The school sets a minimum level of qualification for entry into the sixth form that applies to internal and to external applicants. It then says that in the event of there being more applicants than places, places will be offered to applicants with the highest predicted GCSE point scores.
54. The school commented about this and said *“In formulating our year 12 policy, we were guided by paragraph 2.6 of the Admissions Code, which says that admission authorities can set academic entry criteria for their sixth forms. Part two of the policy sets out the criteria that we use in cases of oversubscription by candidates who meet the minimum level of attainment. We are chronically oversubscribed by Catholic candidates from fully practising Catholic families and so make conditional offers by predicted GCSE score. We don’t require candidates to achieve this score in their actual grades. As long as they meet the minimum level of attainment for Sixth Form study, the offer stands whatever score they actually get.”* The school went on to say that alternative approaches had been considered but rejected because it felt that both students and the school needed some certainty about the allocation of places so they could plan for the new school year.
55. I have considered the point made. The school clearly complies with the Code in respect of setting a minimum academic requirement for courses in the sixth form and applying this to external as well as internal candidates. I also consider that it is reasonable to make conditional offers to those who are predicted to meet the required grades and for offers not to be confirmed if these minimum grades are not achieved. The school says that it has many more applicants who meet the minimum GCSE attainment criteria of 4 A grades and 2 B grades than there are places available and so it ranks applicants on the basis of predicted points scores and offers places to the highest. The school has interpreted paragraph 2.6 of the Code which permits the use of academic entry criteria to a sixth form as also enabling it to select those applicants with the highest predicted points scores. I am of the opinion that this use of ranking is not what is meant by the use of academic entry criteria and does not therefore comply with the Code. My interpretation of the term “academic entry criteria” is of one or more thresholds rather than ranking by ability as measured by predicted GCSE point scores. As a further observation, if the school has determined the academic threshold for entry to the sixth form, any student who has a place within the school at Year 11 and who meets the threshold would expect to progress to Year 12 within the sixth form as they already have a place at the school.
56. My final point concerns the different period for Mass attendance required by applicants to the sixth form compared to applicants for Year 7. Three

years is required rather than the five years required for other applicants. The school explained this difference by saying that it *“was following general practice as far as the sacraments go: in the case of year 7 entry we wanted five years because they would broadly cover the five year period from preparation for First Holy Communion (usually age 6 or so) before entry at age 11 and from Confirmation for Year 12 (that is at the age of 13) for the most part before entry at age 16.”* I have considered this response and understand it, however, as much of this determination has been concerned with discussion about the school’s definition of a Catholic, those already in the school at Year 11 and moving to Year 12 will have joined under one definition and those joining them from elsewhere in Year 12 will have applied using a different definition and this seems to me to be inconsistent. Paragraph 14 of the Code requires arrangements to be *“fair, clear and objective”* and in my view this aspect of the arrangements does not comply with this requirement.

### **Conclusion**

57. 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.
58. The objection contained a series of points and I have upheld some of these and not upheld others. The school has responded very helpfully and constructively to the points made and has identified how it intends to address where the objection has highlighted that the arrangements are not compliant with the Code.
59. 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. 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**

60. 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 governing body for Cardinal Vaughan Memorial School.
61. I have also considered the arrangements in accordance with section 88I(5). I determine that there are other matters in the 2015 admission arrangements where the arrangements do not conform with the requirements relating to admission arrangements.

62. 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: 24 February 2015

Signed:

Schools Adjudicator: David Lennard Jones