



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA2959

**Objector:** A parent

**Admission Authority:** The governing body of St Peter's Catholic Primary School, Leatherhead, Surrey

**Date of decision:** 2 November 2015

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the governing body for St Peter's Catholic Primary School, Leatherhead, Surrey for admission in September 2016.**

**I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.**

**By virtue of section 88K(2) the adjudicator's decision is binding on the admission authority. The School Admissions Code requires the admission authority to revise its admission arrangements within two months of the date of this determination.**

### **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 a parent (the objector) about the admission arrangements (the arrangements) for St Peter's Catholic Primary School, Leatherhead, Surrey, a voluntary aided (VA) school with a Catholic religious character for children aged four to 11 for September 2016. The objection is to aspects of the school's faith-based oversubscription criteria.

### **Jurisdiction**

2. These arrangements were determined under section 88C of the Act by the school's governing body, which is the admission authority for the school. The objector submitted the objection to these determined arrangements on 25 June 2015 which is before the deadline for the submission of such objections. The objector wishes his or her identity

not to be disclosed to the school and other parties. The objector has satisfied the requirement of regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 (the Regulations) by providing both name and address to the adjudicator. 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. When I reviewed the arrangements I considered that they might not conform with the requirements relating to admissions in ways other than those set out in the objection. I have accordingly used my power under section 88I of the Act to consider the arrangements as a whole.

### **Procedure**

3. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
4. The documents I have considered in reaching my decision include:
  - a. the objector's letter of objection dated 25 June 2015;
  - b. the school's response to the objection and supporting documents and subsequent submissions;
  - c. the comments of Surrey County Council which is the local authority (LA) for the area on the objection and supporting documents and subsequent submissions;
  - d. the comments of the Catholic Diocese of Arundel and Brighton (the diocese) which is the school's religious body on the objection and supporting documents;
  - e. the LA's composite prospectus for parents seeking admission to schools in the area in September 2016;
  - f. confirmation of when consultation on the arrangements last took place;
  - g. copies of the minutes of the meeting of the governing body on 11 December 2014 at which the arrangements were determined; and
  - h. a copy of the determined arrangements.

### **The Objection**

5. The objection concerns a number of aspects of the school's faith-based oversubscription criteria. These are that: priority is gained by the child's attendance at Mass (rather than by the attendance of the parent or carer) and that this is contrary to the guidance offered by the diocese and is not common practice across the relevant deanery; and taking account of the child's attendance at Mass discriminates against single parent families, those with special needs, those who work at weekends and ethnic minority families who attend ethnic chaplaincies. The

objector also argues that the requirement to attend Mass for one year is not clear and not fair saying, in addition, that any period of time needs to be the same for all other Catholic schools in order to be clear and fair. The objector does not refer in the objection to any specific provision of the Code, Act or regulations. I have accordingly tested the objection against the requirements of the Code, including, in particular, the core requirements set out in paragraph 14 that arrangements be fair, clear and objective and the provisions of the paragraphs relating particularly to faith-based arrangements, namely paragraphs 1.36 to 1.38.

### **Other Matters**

6. When I reviewed the arrangements in the course of considering the objection, I identified a number of ways not raised in the objection in which the arrangements appeared not to conform with the requirements relating to admissions. These were:
  - a. The definition of looked after and previously looked after children appeared not to conform with that in paragraph 1.7 of the Code;
  - b. The arrangements did not state that children with Education, Health and Care (EHC) plans which named the school would be admitted which meant that the arrangements might not be clear as required by paragraph 14 of the Code;
  - c. the arrangements included references to expecting parents to accept and uphold the Catholic character and ethos of the school and to welcoming applications from those who support the religious ethos of the school. Taken together, these could amount to conditionality in breach of paragraph 1.9a of the Code and to suggesting that the school would not admit all who would like a place if the school had places available in breach of paragraph 15d, 1.36 and 2.8 of the Code; and
  - d. the arrangements stated that all applicants should complete the school's supplementary information form (SIF) and that if they did not the application would be likely to be considered under the final oversubscription category. The SIF also requested information not necessary to apply the school's oversubscription criteria or already covered on the common application form (CAF) The SIF accordingly appeared to breach paragraph 2.4 of the Code.

### **Background**

7. The school is designated as having a Catholic religious character by the Secretary of State in accordance with the Act. The school is accordingly entitled to have faith-based admission arrangements including oversubscription criteria. The admission arrangements including the SIF and a map of the parishes covered by the admission arrangements are easy to find on the school's website accessed via the

“parent’s info” tab on the homepage. The school’s oversubscription criteria are summarised below together with the number of children admitted to the school in September 2015 against each category:

No	Criterion	Children admitted
1	Baptised Catholic looked after and previously looked after children	0
2	Baptised Catholic children with exceptional social or medical needs	0
3	Baptised practising Catholic children with a sibling at the school	12
4	Baptised practising Catholic children living in the diocesan parishes of Ashted, Leatherhead, Fetcham and Effingham	16
5	Baptised practising Catholic children who do not live in one of the parishes listed at 4	0
6	Other baptised Catholic children with a sibling at the school	0
7	Other baptised Catholic children	1
8	Other looked after and previously looked after children	0
9	Other children with exceptional social or medical needs	0
10	Other children with a sibling at the school	3
11	Any other children	28

8. The school has a published admission number (PAN) of 60. In 2015, the school received a total of 100 applications of which 56 were first preference applications. The arrangements explain that if the PAN is reached and exceeded within any of the oversubscription categories, places will be allocated on the basis of the drawing of lots which will be witnessed by an observer independent of the school. Notes b and g to the admissions policy document together explain that for the purpose of the school’s admission arrangements a practising Catholic is one who has been baptised and *“has attended Sunday Mass (this includes the Vigil Mass on Saturday evening as well as other Masses on Sunday) at least once a month in the last year, endorsed by a priest”*.

### Consideration of Factors

9. Priority for admission to the school under oversubscription categories 3, 4 and 5 is based on attendance at Mass by the child once a month for a period of a year. The objector argues that taking account of the attendance of the child rather than of a carer or parent is counter to the guidance provided by the diocese and that it is not common practice across the deanery in which the school is located. The objector also

argues that taking account of the child's attendance at Mass discriminates against a number of groups.

10. In its response the diocese has said "*We would agree that rather than the child's attendance, it would be better to use the level of family's Mass attendance and to include a suitable clarification in the "Notes" section of the policy, as outlined in the model policy in the Diocesan Guidance*". The guidance provided by the diocese says at paragraph 2.4 "*In the case of schools that also include practice as a criterion, evidence of the frequency of attendance at Mass of the applicant or the applicant's family will be required. [my underlining]*" A note in the guidance makes clear that references to attendance by families are to be read as satisfied by the attendance of a single parent or carer. The objector had also drawn attention to the fact that an approach based on the child's attendance was not common practice in the deanery and, in this context, quoted another part of the diocesan guidance which states: "*It is good practice for schools in a locality (e.g. in a deanery) to develop, where possible, a common SIF and an admission policy element that also has a common format. This will help parents, priests and any other stakeholders in the admissions process.*" I note that while the diocese has said in response to the objection that it would be better to use the family's Mass attendance, the guidance actually refers to the attendance of the family (by which is meant a parent or carer) or the child.
11. The school's approach may or may not be common practice across the Catholic deanery in which it is located. The oversubscription criteria follow the core principles set out in the diocesan guidance that priority should be given to baptised Catholics and account can be taken of Mass attendance of the parent/carer or child. The SIF follows the same format as one of the model SIFs in the guidance. The Code does not require schools (including schools with the same religious character in the same area) to have the same arrangements. Rather, paragraph 1.10 is clear that it is for the admission authority to determine its arrangements in the light of its local circumstances. The diocesan guidance also explicitly allows for different approaches to take account of the different circumstances of different schools. I do not consider that the school has failed to have regard to the guidance or that the fact that its approach may be different from that of other schools is a breach of the Code.
12. I turn next to the question of whether the school's approach discriminates against single parent families, those with special needs, those who work at weekends, ethnic minority families who attend ethnic chaplaincies and those who do not wish to take small children to Mass and/or cannot afford child care to attend a weekend Mass. The arrangements are based on the attendance of the child, but a child of this age would inevitably be accompanied to Mass. I therefore do not see the relevance of the objector's point about childcare and dismiss this. A child of this age requires care at the weekend whatever the circumstances of the parent or carer and I do not consider that attending Mass once a month – which is the level required to gain the

highest degree of priority based on attendance at Mass – is so onerous that it is unfair to the groups listed by the objector. So far as those who do not wish to take small children to Mass are concerned, there may well be parents who would rather not do this, but that does not make the school's arrangements unfair. The school has said in response to the objection that it plans to change its arrangements for 2017 so that they are based on attendance by a parent or carer. This is a matter for the school subject to the required consultation. I am concerned with the arrangements for 2016 which are based on the child's attendance and I do not uphold this aspect of the objection.

13. The objector also argues that the requirement to attend Mass for one year is not clear and not fair. The objector argues this on the basis that the LA's the composite prospectus is published in the September preceding the deadline for applications for admission (that is September 2015 in relation to applications to be made by 15 January 2016 for admission in September 2016). The objector accordingly believes that a "*reasonable duration of time would be six but no more than seven months.*" As noted above in the background section, the policy document refers to attending once a month in the past year. The SIF then asks the parent or carer to put a cross in a box to indicate that the child has attended Sunday/Saturday vigil Mass at least once a month in the last year. The objector does not give any reason for the argument that it is unfair for priority to be based on a period of attendance which starts before the publication of the composite prospectus. The arrangements will, of course, have been published significantly earlier than the prospectus. For 2016 arrangements had to be determined by 15 April 2015 and published on the school's website thereafter. This date is still less than a year before the deadline for applications. The Code does not say that priority based on religious practice is to be limited to practice which takes place after the publication of arrangements or of the composite prospectus. The diocese in its response addressed this point when it said "*Practice is not about a prospective applicant waiting until the Local Authority's prospectus comes out and "reacting" accordingly to fulfil a requirement.*" In the case of this school, priority is gained on the basis of being baptised and attending a Mass on a Sunday or Saturday evening once a month for a period of a year. This provision is objective and it is not counter to the guidance issued by the diocese which makes clear that schools can distinguish between Catholic applicants by taking account of whether and how often they attend Mass.
14. I have considered carefully whether the provision is clear given that there is no cut and dried statement as to when practice has to start. I consider that a parent looking at the policy and the SIF together would understand that a year's attendance must be completed before the deadline for submitting the application for a school place. I consider accordingly that the provision is clear and that it meets the requirement in paragraph 1.37 that admission authorities **must** ensure that parents can easily understand how any faith- based criteria will be reasonably satisfied.

15. The objector argues also that any period of time needs to be the same for all other Catholic schools in order to be clear and fair. The objector refers to the statement in the diocesan guidance to schools which says *"It is good practice for schools in a locality (e.g. in a deanery) to develop, where possible, a common SIF and an admission policy element that also has a common format."* Paragraph 1.10 of the Code states that it is for admission authorities to determine their own oversubscription criteria in the light of their individual circumstances. Guidance from a diocese cannot override the provisions of the Code and, in any case, I do not consider that the diocesan guidance is suggesting that schools should set the same faith-based criteria. The guidance refers to *"a common SIF"* and *"an admission policy element that has a common format"*. This is far from saying that all schools should have the same time period for worship. In addition, the guidance says that it is good practice to adopt common elements where possible which suggests a recognition that sometimes it will not be possible. Finally, the guidance offers alternatives in the models it provides, again recognising that arrangements will differ from school to school. The school is required to have regard to the guidance provided by its diocese. There is no evidence that it has not done so. I do not uphold this aspect of the objection.

### **Other Matters**

16. Looked after and previously looked after children: The arrangements when I first saw them referred only to children who are in the care of a local authority whereas paragraph 1.7 of the Code requires the highest priority be given also to previously looked after children. As footnote 16 to the Code explains, a looked after child also includes a child who is being provided with accommodation by a local authority in the exercise of its social services functions and a previously looked after child also includes a child who was previously provided with accommodation by a local authority in the exercise of its social services functions. The arrangements also referred to *"residence orders"*, which have been replaced with *"child arrangements orders"*. The school has told me that it has changed the wording in its draft arrangements for 2017 and will also vary the published arrangements for 2016. At the time of completing this determination, however, the arrangements had not been varied. The arrangements accordingly fail to conform with the Code and must be revised.

17. Admission of children with statements of Special Educational Need (SEN) and Education Health and Care (EHC) plans: Statements of SEN are being replaced with EHC plans. Children with EHC plans which name a school must be admitted to that school. The arrangements do mention statements of SEN but not EHC plans. Second, the reference to statements of SEN is not in the main body of the arrangements but in note j on the penultimate page. This may mean that parents do not realise that such children must be admitted and that this may also have an effect on the number of places available for other children. A more prominent statement would be clearer. The school has said that it will vary the published arrangements to refer to

the child with EHC plans but at the time of completing this determination the arrangements had not been varied. The arrangements do not conform with the Code and must be varied.

18. References to expecting parents to accept and uphold the Catholic character and ethos of the school and to welcoming applications from those who support the religious ethos of the school: Paragraph 2.8 of the Code states that “*With the exception of designated grammar schools, all maintained schools, including schools designated with a religious character, that have enough places available **must** offer a place to every child who has applied for one, without condition or the use of any oversubscription criteria*” [my underlining]. Paragraphs 15d and 1.36 make the same point. The sentences from the arrangements quoted above taken together may suggest that if the school were not oversubscribed, it would only admit, or wish to admit, children whose parents were willing to uphold the school’s religious character or who supported the religious ethos of the school. This could also amount to a condition and so would not be in conformity with paragraph 1.9a of the Code.
19. The school has stated that it does not believe that the statement amounts to a condition and that “*it is not and never has been the intention of the school governors to make our expectation of parents upholding the ethos, a condition of entry to the school. We will therefore re-word the 2017 policy to address this.*” The school also argues that a determination (ADA2854) “*had no issue with this line.*” Determinations do not create case law or precedence; but it is worth noting that the wording of the arrangements in the school which was the subject of ADA2854 were different. The arrangements of this school do not conform with the Code and must be revised.
20. The school’s supplementary information form (SIF): The school is, of course, permitted to use a SIF to seek information which is not available on the common application form (CAF) and which is necessary to apply the oversubscription criteria. The admissions policy document and the SIF itself both state that to apply for a place at the school, parents should complete the SIF and that, if they do not, it is likely that “*governors will only be able to rank the application within the last, i.e. “Any other children” criterion*”. The admissions page on the school’s website says “*Parents are asked to complete a Supplementary Information form and return it directly to the school office by the closing date for applications. This form contains essential information which, in the event of there being more applicants than places available, allows the governors to put all applicants in order of priority, using the school’s admissions policy*”. These statements are not accurate. Information about whether a child is looked after or previously looked after will be available on the LA’s CAF. This means that a parent or carer seeking a place under criterion 8 would not need to complete the SIF. In addition, the SIF seeks proof of address which again is covered in the CAF. The school has explained that it needs this for the purpose of “*proving residency within the school parishes*”. I accept this, but the information

necessary is available from the LA and the Code is clear at paragraph 2.4 that only additional information can be requested on the SIF. Parents have to provide proof of address when they submit their CAF; they should not have to provide it again to individual schools. Lastly in relation to the SIF, this asks which Mass is attended by the child. The arrangements, as noted below, do not require attendance at any particular Sunday/Saturday evening vigil Mass and there is a separate provision on the SIF to confirm that the requirement to attend Sunday/Saturday evening vigil Mass has been met. The school has said that this is “a *practical measure to help the priest identify the child and his/her family.*” I recognise that many places of worship need to find ways to record who has attended services so that they can give an accurate picture of this attendance on SIFs. However, that does not justify the inclusion of questions on the SIF itself which are not necessary to apply the oversubscription arrangements. The school’s arrangements breach paragraph 2.4 of the Code as the SIF asks questions which are not necessary to apply the oversubscription criteria and must be revised.

## **Conclusion**

21. I have not upheld the objection for the reasons given in this determination. I have identified a number of other ways in which the arrangements do not conform with the Code. The school has undertaken to vary its arrangements in response to a number of the breaches, but at the time of completing this determination no changes had been made to the arrangements as published on the school’s website. In relation to some other breaches the school has provided me with draft arrangements for 2017 with the implication that it proposes to make changes for 2017 but not for 2016. The school has not provided any reason as to why changes cannot be made for 2016. There is no reason why the school should not make these changes – and the others identified as necessary in this determination – in time for admission to the school in 2016. I have accordingly determined that the changes are to be made within two months of the date of this determination in time for the deadline for applications for admission to the school.

## **Determination**

22. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by the governing body for St Peter’s Catholic Primary School, Leatherhead, Surrey for admission in September 2016.

23. I have also considered the arrangements in accordance with section 88I(5). I determine that the arrangements do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

24. 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 within two months of the date of this determination.

Dated: 2 November 2015

Signed:

Schools Adjudicator: Shan Scott