



Office of  
the Schools  
Adjudicator

## **DETERMINATION**

**Case reference:** ADA2937

**Objector:** A member of the public

**Admission Authority:** The Governing Body of Christ Church Church of England Primary School, Kensington and Chelsea, London

**Date of decision:** 18 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 Christ Church Church of England Primary School, Kensington and Chelsea.**

**I have also considered the arrangements in accordance with section 88I (5). I determine that they 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 within two months of the date of this decision.**

### **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 member of the public (the objector), about the admission arrangements for September 2016 (the arrangements) for Christ Church Church of England Primary School (the school), a voluntary aided school for children aged four to 11.
2. The objection is to the priority which the school gives to children from Church of England families and those of other Christian denominations, and the means which it uses to do so, which result in few other children being admitted to the school.

### **Jurisdiction**

3. 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 30 June 2015.

4. The objector has exercised the right not to have their identity revealed to the other parties to the case, but both name and address are known to me as is required by Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements)(England) Regulations 2012. 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.

5. I am also using my power under section 88I of the Act to consider the arrangements as a whole.

### **Procedure**

6. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

7. The documents I have considered in reaching my decision include:

- a. the objector's email and form of objection dated 30 June 2015;
- b. the school's response to the objection and supporting documents, and subsequent correspondence;
- c. the response to the objection of the Royal Borough of Kensington and Chelsea, the local authority (the LA);
- d. the response to the objection of the Diocese of London, the faith body (the diocese);
- 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 at which the arrangements were determined; and
- h. a copy of the determined arrangements.

### **The Objection**

8. The objector complains that the arrangements of the school are "*against human rights and prejudiced*" because they do not provide a guaranteed number of places for children who live locally, but give priority to members of the Church of England other Christian denominations with the result that the remaining places offered on an "open" basis are very few in number. The objector says that this means that the arrangements are not fair to those living locally.

## **Other Matters**

9. Having had the arrangements drawn to my attention as a result of the objection, I considered them as a whole. When I did so, I was concerned that they may not conform with the requirements concerning admission arrangements and asked the school for its comments on each of these concerns, which were that:

(i) there was no statement that a child whose statement of special educational needs (SEN) or Education, Health and Care (EHC) plan names the school will be admitted and so the arrangements appeared not conform with paragraph 1.6 of the Code and were not clear as required by paragraph 14;

(ii) there was no statement concerning either the deferred entry of children below compulsory school age, or concerning the process to be followed if a parent wishes to request admission out of the normal age group and this appeared to fail to comply with paragraphs 2.16 and 2.17 of the Code;

(iii) the statement which was contained in the arrangements concerning the school's waiting list appeared not to meet the requirements of paragraph 2.14, and

(iv) the school's supplementary information form (SIF) allowed more than one parent/carer to sign and I was concerned that this may inhibit those for whom this is not possible from completing the form and that this may contravene paragraphs 1.8 and 2.4 of the Code.

10. I was also concerned that the school's failure to display its determined admission arrangements on its website prior to 4 September 2015 was not in accord with what is required of admission authorities concerning the annual determination and publication of their admission arrangements under paragraphs 1.46 and 1.47 of the Code.

## **Background**

11. The school, which is located in Chelsea in west London, admits 30 children each year to Year R. When the school was last inspected by Ofsted in July 2013 it was judged to be outstanding. The school is designated by the Secretary of State under section 69(3) of the Act as a school with a religious character, which is Church of England. The relevant faith body is the Diocese of London.

12. An objection concerning admission arrangements for the school was first lodged on 15 May 2015. At that time the objector complained about admission arrangements which the school had determined for admissions in September 2015 but did so after the last date on which objections concerning these admission arrangements could be made. The objector was not able to provide a copy of the school's arrangements for September 2016 and when I visited the school's website on 18 May 2015 admission arrangements for September 2015 were displayed there, but those for September 2016 were not.

13. The objector submitted their form of objection, and provided a document which stated that it was the school's admission arrangements for September

2016, on 30 June 2015. This document was available through the LA website when I looked there on 22 July 2015 but was not posted on the school's website on that day or when I looked there again on 3 August 2015 and again on 3 September 2015.

14. The school responded to the objection on 30 August 2015, providing what it said were the school's admission arrangements for 2016 but which were entitled "Christ Church Primary School Admission Arrangements 2015-16" and were those for September 2015. This was acknowledged and rectified by the school on 4 September 2015 when it provided a document which was in every respect identical except for the headings which stated that it was the school's admission arrangements for September 2016.

15. However, this document did not correspond with the copy of the school's arrangements for September 2016 as provided by the objector and which were still displayed on the LA's website on 18 October 2015, and concerning which I had sought the comments of the school. It contained statements in respect of children whose EHC plan names the school and concerning the deferred entry of children to Year R and about the admission of children outside their normal age group. I wrote to both the school and the LA on that same day seeking the assistance of both in resolving this discrepancy. The school had provided me with evidence that the governors determined admission arrangements for September 2016 on 30 September 2014, but did not tell me this until 4 September 2015.

16. The school has assured me in an email dated 28 October 2015 that the version of its admission arrangements for September 2016 which it sent to me on 4 September 2015 were those which had been determined by the school governors nearly a year earlier and explained the lack of correspondence with the version of them published by the LA in terms of a clerical error. The LA did not reply to my request for clarification.

17. On the basis of the evidence which has been presented to me, I therefore take the school's determined admission arrangements for September 2016 to be those which it provided to me on 4 September 2015. The objector saw what they believed to be the determined arrangements for the school for September 2016 in June 2015 and submitted an objection to them. Differences between the version of the arrangements seen by the objector and those which the school has told me were its determined arrangements do not in my view affect the potential relevance of the objection and so I have decided to accept the objection as one made concerning the determined arrangements. These arrangements state that:

(i) 30 children will be admitted to Year R;

(ii) *"children who are not offered a place will automatically be added to our waiting list in the order of their eligibility for the admission criteria. When your application has been received by the school, it will be logged and you will be sent a dated receipt";*

(iii) *"Applicants with a signed Education, Health and Care plan which names Christ Church will be placed at the school";*

(iv) “Applicants may defer entry to school up until statutory school age.....Applicants may also request that their child attend part-time until statutory school age is reached”;

(v) requests for admission outside the normal age group “will need to be supported by a professional (e.g. GP, social worker) that provides the reason for admission outside the chronological year group”; and that

(vi) applications are considered in the following order:

1. Looked after and previously looked after children (as defined)
2. Children with siblings (as defined) at the school
3. 75 per cent of the remaining places are termed “Foundation” places and are available to:
  - a. children of families who regularly attend (as defined) St Luke’s or Christ Church, Chelsea and
  - b children whose families are regular worshippers (as defined) in the neighbouring parishes or in a church of another Christian denomination (as defined)
4. 25 per cent of the remaining places are termed “Open” places and are available to:
  - a. children living in the parishes of St Luke’s or Christ Church, Chelsea, with highest propriety given to those living nearest to the school (measured as set out in the arrangements)
  - b. children of other faiths and
  - c. other children.

The arrangements also:

- (i) provide a procedure for applying for a place in any other year group;
- (ii) state that those not offered a place will be placed on a waiting list and that “the above criteria will apply if vacancies arise during the year”, but no more.

### **Consideration of factors and other matters**

#### The objection

18. I asked the objector to make clearer the reasons why it was believed that the school’s arrangements were “against human rights and prejudiced” as had been stated in the objection, and to say if possible which part or parts of the Code was or were believed to be breached.

19. The objector replied by saying that the priority which is given by the school to children who worship in neighbouring parishes and in churches of other Christian denominations means that in many years no places are available as

“open” places, whereas in order to be fair the arrangements should provide a given number of such places each year.

20. The school responded to the objection by refuting any breach of the Code and by saying that prior to September 2014, priority had been given in respect of all the available places on the grounds of faith, whereas since that time some have been allocated on the basis of proximity of the child’s home to the school. It has told me that in September 2014 four children were admitted to the school on that basis.

21. The LA responded to the objection by saying that it was of the view that the arrangements complied with the requirements of the Code concerning schools with a religious character. It also supplied the most recent admission data, those for admissions in September 2015, which showed that after the admission of children with a statement of SEN/EHC plan and siblings, 12 places remained and that three of these had been offered to children on the basis of the proximity of their home to the school in line with the determined admission arrangements.

22. The diocese is also of the view that the arrangements do not contravene the Code or its own guidance to the school governors.

23. In support of the objection, the objector has complained that the school stated orally that no places have been offered to children living locally in recent years. This is, however, clearly contrary to the information which has been provided to me by the school and the LA. It is not the role of the adjudicator to consider whether or not the school has applied its arrangements accurately, only to decide whether the arrangements determined by the school comply with what is required of them in the Code and relevant legislation.

24. The objector says that because those admitted to the school are very predominantly from Church of England families, many of whom live at a distance from the school, as a result *“the school does not even vaguely mirror the religious or ethnic mix of its surroundings”*. Although the objector does not cite them specifically, the terms in which the objection was lodged are oblique references to The Human Rights Act 1998 and The Equality Act 2010. The Human Rights Act 1998 has the effect of requiring any decisions of the European Court of Human Rights to be taken into account in interpreting any Act of Parliament and for that interpretation to be, as far as possible, compatible with rights and freedoms guaranteed under the European Convention on Human Rights. This Convention provides in Article 2 to Protocol 1 that there is a right not to be denied education and a right for parents to have their children educated in accordance with their religious and other views. The Code therefore refers to The Human Rights Act 1998 and its effect concerning school admissions, as the school has reminded me in its response, in the following terms:

*“The Human Rights Act 1998 confers a right of access to education. This right does not extend to securing a place at a particular school.”*

That is to say, not being allocated a place at a particular school is not of itself a breach of any right conferred by The Human Rights Act 1998.

25. Section 10 of The Equality Act 2010 prohibits discrimination on the grounds of religion or belief, and section 85(1) applies this to schools concerning admissions. Section 89 however disapplies section 85(1) *“so far as relating to religion or belief”* to *“a school designated under section 69(3) of the School Standards and Framework Act”*. That is to say, a school so designated may make a decision about whether or not to give priority for admission to a child on the basis of religion or belief.

26. The school is designated under section 69(3) of the Act as a school with a religious character, and so it is permitted to give priority, if it is oversubscribed with applications, on the grounds of faith. The Code sets out conditions which the school must fulfil in doing this, but the objector does not complain that it has failed to do so. Rather, the objection concerns the consequences of the school doing what it is permitted to do, but these consequences do not put it in breach of any provision laid down in the Code.

27. The practical effect of the school’s admission arrangements is that the number of places likely to be available to children on the basis that they live close to the school, one in four of those remaining at the point in the allocation of places when siblings of children at the school have been admitted, will be small. The objector has also referred to the consequences of the high priority which the school gives to siblings of those already attending the school, saying that most children admitted on this basis will inevitably be of the same faith background as those already forming the majority in the school. However, giving priority to siblings is expressly permitted by the Code and doing this breaches none of its provisions. More importantly, for the reasons I have set out above, the school’s admission arrangements would not be in breach of the Code or of any relevant legislation even if all its places were allocated by reference to faith when it is oversubscribed. I do not uphold the objection.

#### Other matters

28. As I have explained above, the arrangements determined by the school on 30 September 2014 were not provided to me until 4 September 2015, and confirmation of their determination in this form was not provided until 28 October 2015. I had earlier sought the school’s comments on what I considered may be non-compliances concerning the arrangements as they appeared on the LA’s website and as they had been provided to me by the objector. I have taken the school’s responses concerning the matters which I had raised with it into account in considering the arrangements as I now understand them to have been determined, which is in the form set out above.

29. The school replied to my concern about the absence of a reference in the arrangements to children whose SEN or EHCP named the school by referring to the statement which appears in the determined arrangements. This mentions only children in the second category and not those with a statement of special educational needs and so does not conform with what is stated in paragraph 1.6 of the Code and means that these do not set out clearly how

places at the school are allocated as required by paragraph 14 of the Code. The school has proposed including an oversubscription criterion in its arrangement for the group of children in question, but paragraph 1.6 of the Code makes it clear that they are to be admitted to schools under all circumstances and not by means of an oversubscription criterion.

30. Paragraph 2.16 of the Code says:

*“Admission authorities **must**...make clear in their arrangements that....*

*c) where parents wish, children may attend part-time until later in the school year but not beyond the point at which they reach compulsory school age.”*

Paragraph 2.17 that states that:

*“Admission authorities **must** make clear in their admission arrangements the process for requesting admission out of the normal age group.”*

Although the arrangements which I had seen and concerning which I contacted the school did not do so, the determined arrangements contain a statement about deferred entry to school which says that parents may request part-time attendance until the age of statutory schooling. They also set out a procedure for parents to follow if they wish to request that their child is admitted to the school outside their normal age group and so do not contravene paragraphs 2.16 or 2.17 of the Code.

31. The school has suggested adding to the statement in its arrangements about a waiting list wording which quotes paragraph 2.14 of the Code. However, as determined, the arrangements do not comply with what admission authorities are required to state in their arrangements and which is set out there by not stating that waiting lists are re-ordered each time a child's name is added.

32. Paragraph 1.8 of the Code requires admission authorities to ensure that their arrangements do not act in a discriminatory fashion or discourage parents from applying for a place at the school, and paragraph 2.4 forbids requiring two parents to sign any SIF which a school uses. The school's SIF allows two signatures and my view is that this may discourage parents for whom this is not possible from applying for a place, and that it breaches these requirements. The school has suggested that its SIF be changed so that it is clear that the signature of only one parent or carer is needed, but in the form in which it was determined the school's SIF does not comply with the requirements of paragraphs 1.8 and 2.4 of the Code.

33. Finally, the school has also accepted that it failed to publish its determined admission arrangements as required by paragraph 1.47 of the Code, which says:

*“Once admission authorities have determined their admission arrangements, they **must** notify the appropriate bodies and **must** publish a copy of the determined arrangements on their website...”*



Since the school determined its admission arrangements for September 2016 on 4 September 2014 the requirement of paragraph 1.47 is that they should have been published on the school's website at that time, but this did not happen. As a result of this and the publication on the LA's website of arrangements which were not those determined by the school, considerable confusion has been caused. The school must determine admission arrangements for September 2017 no later than 28 February 2016 and must publish them on its website as soon as it has done so.

## **Conclusion**

34. I have not upheld the objection which was made concerning the school's admission arrangements for September 2016 and I have set out my reasons for this decision.

35. I have also considered the arrangements as a whole, and I have explained my reasons for concluding that they do not comply with the requirements which are set out in the Code by:

(i) failing to state the position concerning the admission of children whose SEN names the school;

(ii) failing to satisfy what is required by paragraph 2.14 in the statement which concerns the school's waiting list, and

(iii) employing a SIF which allows for two parental signatures.

36. The school has also failed to meet the requirements of the Code concerning the publication of its admission arrangements on its website.

## **Determination**

37. 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 Christ Church Church of England Primary School, Chelsea.

38. I have also considered the arrangements in accordance with section 88I(5). I determine that they not conform with the requirements relating to admission arrangements.

39. By virtue of section 88 K (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 decision.

Dated: 18 November 2015

Signed:

Schools Adjudicator: Dr Bryan Slater