



**DETERMINATION**

<b>Case reference:</b>	<b>ADA2914</b>
<b>Objector:</b>	<b>The London Borough of Redbridge</b>
<b>Admission Authority:</b>	<b>The academy trust for St Aidan's Catholic Primary Academy</b>
<b>Date of decision:</b>	<b>23 November 2015</b>

**Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body on behalf of the academy trust for St Aidan's Catholic Primary Academy, Redbridge.**

**I have also considered the arrangements in accordance with section 88I(5). I determine that they 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 the London Borough of Redbridge (the objector) about the admission arrangements for September 2016 (the arrangements) for St. Aidan's Catholic Primary Academy, Redbridge (the school), an academy school for children aged 3 to 11.**
- 2. The objection concerns the supplementary information forms used by the school and the information which the school includes when**

publishing its admission arrangements.

### **Jurisdiction**

3. The terms of the academy agreement between the academy trust and the Secretary of State for Education require that the admissions policy and arrangements for the academy school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the governing body on behalf of the academy trust, which is the admission authority for the school, on that basis. The objector submitted the objection to these determined arrangements on 19 June 2015. I am satisfied the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

### **Procedure**

4. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).
5. The documents I have considered in reaching my decision include:
  - a. the objector's form of objection dated 19 June 2015;
  - b. the school's response to the objection, its response to my enquiries and supporting documents;
  - c. the comments from the Diocese of Brentwood (the diocese) on the objection;
  - d. comments from the Catholic Education Service (CES) on the objection;
  - e. guidance to parents and parish priests published by the diocese;
  - f. Redbridge Council's, the local authority (the LA), composite prospectus for parents seeking admission to schools in the area in September 2016;
  - g. confirmation of when consultation on the arrangements last took place;
  - h. a copy of the minutes of the meeting of the governing body at which the arrangements were determined; and
  - i. a copy of the determined arrangements.

### **The Objection**

6. The LA submitted an objection to the admission arrangements of six Catholic primary and three Catholic secondary schools on 19 June 2015. All of the schools were within the same LA area and were within

the same diocese; however each school was its own admission authority.

7. The objector was asked to clarify the details of its objection to each individual school's arrangements. There were four parts to the objection to this school which the objector stated as:

- “1. The admission authority failed to determine a priest's reference form that is in accordance with the requirements of the Code. The form used – which they say belongs to the Diocese and they have not determined – establishes parents' marital status by asking both parents to sign and provide their home addresses. It also asks parents to give the reasons they want a Catholic school. This is not included in the admission arrangements.*
- 2. The arrangements fail to say how the information gathered on the priest's reference form on other parish activities will be used in determining their Catholicity. This is not included in the admission arrangements.*
- 3. The guidance to priests on completing the form isn't considered part of the published admission arrangements and hasn't been made clear to parents. Again, the admission authority has failed to determine this and include it in the information published for parents.*
- 4. The SIF [supplementary information form] used requires that parents provide proof of residence which has already been provided to the Local Authority. This is an unnecessary requirement and duplication.”*

8. The objector said that the arrangements did not comply with paragraphs 1.8, 1.9, 1.37 and 2.4 of the Code.

### **Other Matters**

9. When I considered the arrangements as a whole there were several points where it appeared to me that they did not, or may not comply with requirements relating to admissions.
  - a. The definition of and priority for looked after children and previously looked after children may not meet the requirements of paragraphs 1.7 and 1.37 of the Code.
  - b. The wording of the criteria which give priority to members of other Christian denominations and members of other faiths appear to be unclear and not consistent with the wording of the form used to support applications under this criterion. This

- would not comply with paragraphs 14, 1.8 or 1.37 of the Code.
- c. The final oversubscription criterion requires parents to be in sympathy with the aims and ethos of the school. Not only might this not be objective as required by paragraph 1.8 of the Code but if places are available the Code requires the school to offer them without condition and the oversubscription criteria do not appear to allow this.
  - d. The arrangements did not appear clear on the admission of children with statements of special educational needs or education, health and care plans which name the school and therefore would not comply with paragraph 14 of the Code.
  - e. The arrangements did not appear to set out the process for requesting admission out of the normal age group as required by paragraph 2.17 of the Code.

## **Background**

10. The school became an academy in November 2013. It has a published admission number of 60 and is oversubscribed. Its oversubscription criteria are as follows.
  1. Looked after and previously looked after children from Catholic families.
  2. Baptised Catholic children at least one of whose parents attends Mass every Sunday and on Holy Days of obligation with the child who are resident in the parishes of St Cedd's, St Teresa's and SS Peter and Paul's (north of the High Road, Ilford).
  3. Baptised Catholic children at least one of whose parents attends Mass every Sunday and on Holy Days of obligation with the child who are resident in neighbouring parishes.
  4. Baptised Catholic children whose parents do not attend Mass, but desire a Catholic education for their children.
  5. Looked after and previously looked after children from non-Catholic families.
  6. Baptised children of other Christian denominations at least one of whose parents regularly practice their faith and whose application is supported by the appropriate Minister of religion. In such cases the parents must be sympathetic to and supportive of the Catholic ethos of the academy.
  7. Children of non-Christian denominations at least one of whose parents regularly practice their faith and whose application is supported by the appropriate Minister of religion. In such cases the parents must be sympathetic to and supportive of the Catholic ethos of the academy.
  8. Any other applicants whose parents are in sympathy with the aims and ethos of the academy.

11. In the event of oversubscription within any criterion priority is given to siblings followed by children of members of staff then those living nearest to the school. Random allocation is used as a final tie-breaker.

### **Consideration of Factors**

12. The objection is set out in full above. In its comments on the objection the school's respondent referred to the response from the CES and said "*I have always thought the asking a Catholic family why they wanted a Catholic education is superfluous. However, I don't have anything to do with how it's [the PRF] put together, I just have to accept the opinion given by the Priest.*" The school continued to say that the PRF has been superseded by a Certificate of Catholic Practice which it sent me a copy of. The arrangements which the school sent to me however, continue to refer to the PRF as do the arrangements published on the school's web site. I therefore consider the PRF to remain part of the arrangements. The school said that the part of the PRF which asked for personal details of the family was not sent to the school but was used for "*pastoral care within the Church.*"
13. The diocese said "*the Priest's reference form and advice to priests, schools and parents are diocesan property, not the property of the Admissions Authority and therefore do not have to be Code-compliant.*" It also said it was in discussion with the CES and the Department for Education (DfE) about its documentation.
14. The diocese asked the CES to make comments on the objection on the diocese's behalf. The CES said that the RRF is a diocesan document and did not belong to any school. The CES compared it to a baptism certificate or other document such as a letter from a doctor in support of admission on exceptional medical grounds which are not part of a school's admission arrangements but are used to test whether an applicant meets an oversubscription criterion.
15. The school is an academy school and as such its academy trust is the admission authority. In this case the responsibility has been delegated to the Admissions Committee of the governing body. Paragraph 5 of the Code says "*It is the responsibility of admission authorities to ensure that admission arrangements<sup>4</sup> are compliant with this Code. Where a school is the admission authority, this responsibility falls to the governing body or Academy Trust.*" In footnote 4 to this paragraph the Code says "*Admission arrangements means the overall procedure, practices, criteria and supplementary information to be used in deciding on the allocation of school places and refers to any device or means*

*used to determine whether a school place is to be offered.”* The SIF and PRF are required to be completed if a parent wishes to be considered for a place under the faith-based criteria. They collect supplementary information, are devices used to determine whether a school place is offered and therefore I consider them to be part of the admission arrangements and as such the responsibility of the admission authority.

16. I do not consider the PRF to be equivalent to a doctor's letter in support of an application on exceptional medical grounds as suggested by CES. This is because the PRF is required for all applicants applying for a place on the grounds of them being a Catholic and the test is common to all of them. If a school gives priority for admission on exceptional medical grounds any applications on those grounds are by definition exceptional and will be different to all other applications. A form would be unlikely to be suitable to provide the school with the information required so a letter would be a practical way an admission authority could determine if a child should be offered a place on those grounds. If an admission authority did give priority based on medical needs, it would need to comply with paragraph 1.16 of the Code and set out in their arrangements how they define this need and what supporting evidence will be required. So even if I accepted a comparison between the PRF and a doctor's letter, the Code leaves the responsibility of definition and choice of evidence with the admissions authority.

17. I have also considered paragraph 1.38 of the Code which says *“Admission authorities for schools designated as having a religious character must have regard to any guidance from the body or person representing the religion or religious denomination when constructing faith-based admission arrangements, to the extent that the guidance complies with the mandatory provisions and guidelines of this Code.”* This paragraph allows for the possibility that guidance from the diocese may not comply with the Code and the responsibility for ensuring that arrangements do comply with the Code remains with the admission authority as set out in paragraph 5 of the Code quoted above.

18. In my view the Code is clear that while the governing body on behalf of the academy trust must have had regard to the diocese's guidance, it is responsible for setting the test of religious practice and for any documentation used to provide evidence that the test is met. Although the diocese was asked to provide me with the guidance it provides to schools it did not do so, the only documentation it sent to me was the PRF and its guidance to parents and priests. Based on the guidance available to it, the school is responsible for ensuring that the test and

any forms used to collect evidence comply with the Code. These are part of the admission arrangements and must be determined annually by the academy trust or governing body as set out in paragraph 1.46 of the Code and published by the school as required in paragraph 1.47.

19. Paragraph 2.4 of the Code sets out the requirements for supplementary forms used by an admission authority, I consider the PRF to be a supplementary form. Paragraph 2.4 says *“In some cases, admission authorities will need to ask for supplementary information forms in order to process applications. If they do so, they must only use supplementary forms that request additional information when it has a direct bearing on decisions about oversubscription criteria or for the purpose of selection by aptitude or ability. They must not ask, or use supplementary forms that ask, for any of the information prohibited by paragraph 1.9 above or for:*

- a) any personal details about parents and families, such as maiden names, criminal convictions, marital, or financial status (including marriage certificates);*
- b) the first language of parents or the child;*
- c) details about parents’ or a child’s disabilities, special educational needs or medical conditions;*
- d) parents to agree to support the ethos of the school in a practical way;*
- e) both parents to sign the form, or for the child to complete the form.”*

20. The oversubscription criteria are based on whether or not the child is, or was, looked after and if so were they from a Catholic family; where the child lives; whether they are a baptised child whose has a parent who attends Mass on every Sunday and on Holy Days of obligation; and if a member of another Christian or non-Christian faith whether parents regularly practise and have support from a minister of religion and finally if parents were in sympathy with the aims and ethos of the school. The child’s looked after status and their address will be provided by the LA on the common application form (CAF) so any supplementary forms used by the school, which include the PRF, can only collect information required to make decisions about the other elements of the oversubscription criteria set out above.

21. The PRF is in two parts, the first is headed *“Your Self-Assessment”* and says it is *“confidential to you and the priest and will not be supplied to the school.”* It asks for the name of both father and mother (there is a footnote saying this includes all persons who have a legal responsibility for the child), their parish of residence, whether they are Catholics, which church they normally attend and how frequently and how long that practice has been. There is space on the form for parents to

explain why they may not attend mass regularly and to provide any other relevant details. The form also says “If the child lives at more than one address, please give both and give full details.” The form then asks for the name and date of birth of the child, the date of baptism and first Holy Communion before saying “*If you or your child participate or contribute to parish activities, you may wish to indicate below*” and then asking “*Why do you wish your child to attend a Catholic school?*” At the end of this section space is provided for both parents to sign before it is given to the priest.

22. The second part of the form is headed “*Priest’s Reference*”. Parents are asked to fill in the name of the child, the name of the parents and the address of the normal family home. The priest is required to say whether the parents are known to him, whether the child is known to him and if having read the guidance to priests he considers the child to be a member of a practising Catholic family. This part of the form is sent by the priest to the school. The first part of the form is either retained by the priest or returned to the parents.
23. The first part of the form asks for personal details about parents and families from which information about the parents’ marital status could be inferred. It also asks for the signatures of both parents. These are expressly prohibited by paragraph 2.4 of the Code. The form collects information which is not required to make decisions about oversubscription criteria also prohibited by paragraph 2.4 of the Code.
24. The objector questioned whether the PRF complied with paragraphs 1.9a and 1.9i of the Code. These say that admission authorities “*must not a) place any conditions on the consideration of any application other than those in the oversubscription criteria published in their admission arrangements ... i) prioritise children on the basis of their own or their parents’ past or current hobbies or activities (schools which have been designated as having a religious character may take account of religious activities, as laid out by the body or person representing the religion or religious denomination)*”. I do not think the school does take into account any conditions other than its oversubscription criteria; the concern is with the information collected to decide if the oversubscription criteria are met and how it is used. This includes the reference in the PRF to parish activities. As the diocese provided the form it sanctions the consideration of parish activities, but it is not clear what activities qualify and if they form any part in deciding if a baptised child has a Catholic parent.
25. Paragraph 14 says “*In drawing up their admission arrangements, admission authorities must ensure that the practices and the criteria*

*used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.”*

*Paragraph 1.8 says “Oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation.” And paragraph 1.37 says “Admission authorities must ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied.”*

26. The oversubscription criteria numbered 2 and 3 require two facts to be established: is the child baptised and does one of their parents attend Mass with the child every Sunday and on Holy Days of obligation (my emphasis by underlining)? This is clear and objective, if possibly difficult for many people to satisfy.
27. In the arrangements it says “The term ‘*Practising*’ in relation to the Catholic faith refers to obligations laid down on Catholics by the Code of Canon Law primary that of the obligations to assist at Mass on all Sundays and Holy Days of obligation.” It was not stated how long this practice should have been sustained for although that question is asked on the PRF. The PRF itself is not available on the school’s website (and nor is the new Certificate of Catholic Practice) as paragraph 1.47 of the Code requires it to be, it is however available through the LA’s website.
28. The CES provided me with the uniform resource locator (URL) where guidance for parents and priests could be found on the diocese’s website. I could not access these pages from diocese’s home page without using the search facility. The diocese’s guidance for parents dated May 2014 explains how to complete the form but does not give any objective definition of what is required to be a practising Catholic and there is none on the PRF itself. The guidance for parents says that the decision about whether “*you are a practicing Catholic family*” will be based on “*your Mass attendance*”. Parents may question why they are asked to provide other information and will not “*easily understand how any faith-based criteria will be reasonably satisfied.*”
29. The guidance for priests is marked “*For Admissions in September 2012*” and says the purpose of the PRF is “*to give all priests a framework in which they can essentially let Catholic schools know whether that applicant is from a practising Catholic family.*” It also says in the first annexe to the guidance “*It is for the priest to make the judgement whether a child comes from a practising Catholic family.*” There is further guidance in bold type “*for the purposes of this priest’s reference form, a person is a practising Catholic if they observe the*

*Church's precept of attending Mass on Sundays and holidays [sic] of obligation.*" The guidance goes on to say "for numerous reasons, occasional non-attendance may not constitute a breach of the obligation; canon law provides for a range of particular circumstances which excuse or mitigate the obligation." The arrangements require attendance at mass every Sunday.

30. The priest's guidance also refers to the length of practice; it gives no specific period although it warns "A person is certainly not to be regarded as a practising Catholic if that practice has started recently solely in order to fulfil the requirements of entry to a Catholic school." The guidance for priests does however clarify that for the family to be regarded as practising just one parent is required to be a practising Catholic. It also gives scope for a priest to use their judgement if a grandparent or other relative supplements a lack of practice by the parents. The arrangements say it is the parent who should attend mass with the child. It would appear that a priest may use a degree of judgement to declare a child to be a member of a practising Catholic family and parents have no way of understanding on what grounds this decision was reached.
31. The PRF leads to a declaration by the priest that the applicant is from a practising Catholic family (as does the Certificate of Catholic Practice). The school does not require this, it needs to know that the child is baptised and that a parent takes the child to Mass every Sunday and on Holy Days of obligation or they "desire a Catholic education for their child" The PRF does not provide this information and nor does the SIF. Parents may think that the other information sought on the PRF in some unspecified way influences the priority their child is given for the school.
32. The final part of the objection is that the SIF asks for proof of residence which has already been provided to the LA. The LA's composite prospectus confirms that proof of residence is asked for with the CAF by Redbridge. From websites I have ascertained that three out of the five adjoining local authorities also ask for proof of residence with their CAF.
33. For the majority of applicants, proof of address will already be available through the child's home local authority. Paragraph 2.5 of the Code says "Admission authorities may need to ask for proof of address where it is unclear whether a child meets the published oversubscription criteria." For the majority of applicants it will be clear whether or not they live in the geographical areas set out in the oversubscription criteria as the information will have been provided by

the home local authority together with validation of the address. The school said the address was required to match the application to the correct family. It is entirely reasonable for the school to ask for the address on a form for that purpose, but it is not acceptable for it to ask for documents to prove that the family lives at that address.

34. The SIF asks for both parents' full name and religion. Paragraph 2.4 of the Code quoted above prohibits admission authorities asking for information on a SIF which is not required to make decisions about oversubscription criteria or for both parents to complete the form.
35. The purpose of the SIF is not clear to me as it does not collect any information required to make decisions about oversubscription criteria which is not included on the CAF.
36. I uphold all parts of the objection because the responsibility for any forms used in the school's admissions process sits with its admissions authority which is the governing body. All forms must be determined and published as required by paragraphs 1.46 and 1.47 of the Code and this was not done. The PRF and the SIF do not comply with paragraph 2.4 of the Code and ask for information beyond that required to make decisions about oversubscription criteria.
37. Paragraph 14 of the Code requires arrangements to be clear and paragraph 1.8 says that oversubscription criteria must be objective. While the oversubscription criteria for Catholic applicants themselves are clear, neither the PRF or Certificate of Catholic Practice or SIF provide the school with the information needed to decide if an applicant meets those criteria. Inclusion of other factors in the PRF and the guidance available to parents and priest contradicts the clarity of the oversubscription criteria. This means that parents will not be able to easily understand how the faith based criteria will be satisfied as required by paragraph 1.37 of the Code.

## **Other matters**

### Looked after and previously looked after children

38. The first oversubscription criterion is "*Looked after children and previously looked after children from Catholic families.*" The definition of previously looked after children in the arrangements is not as comprehensive as that found in paragraph 1.7 of the Code and its footnotes and it is therefore not clear which children are included in this or the fifth criterion.

39. Paragraph 1.37 of the Code says “*Admission authorities **must** ensure that parents can easily understand how any faith-based criteria will be reasonably satisfied. Admission authorities for schools designated with a religious character may give priority to all looked after children and previously looked after children whether or not of the faith, but they **must** give priority to looked after children and previously looked after children of the faith before other children of the faith. Where any element of priority is given in relation to children not of the faith they **must** give priority to looked after children and previously looked after children not of the faith above other children not of the faith.*”
40. This paragraph of the Code refers to children of the faith, not children from families of the faith as in the oversubscription criterion. The diocesan guidance to parents states “*You are a Catholic if you have been baptised into the Catholic Church*”. Being adopted or fostered by a Catholic family does not make the child a Catholic. Unless a looked after or previously looked after, child has been baptised, they cannot be given highest priority in this way.
41. I have also considered the position of a looked after or previously looked after, child who was baptised, but was not adopted or fostered by a Catholic family. Such a child, although of the faith, would not meet the first criterion as it is worded. The Code requires such a child to have highest priority. On this point the school’s respondent said “*I have always been of the opinion that it is the child’s catholicity that counts, no matter what the religion or practice of the family they have been placed with.*” The school could give all looked after and previously looked after children highest priority, but if it chooses to restrict highest priority to those of the faith, it must do so in a way that is consistent with the Code.

#### Members of other Christian and non-Christian faiths

42. The sixth oversubscription criterion is “*Baptised children of other Christian denominations at least one of whose parents regularly practice their faith and whose application is supported by the appropriate Minister of religion. In such cases the parents must be sympathetic to and supportive of the Catholic ethos of the academy.*” The seventh criterion has similar wording for non-Christian faiths. The school provides a form which it requires is submitted in support of applications for priority against these criteria. The form asks the religious leader whether or not the family is known to him and whether or not they are a practising family, it also asks for proof of residence to be sent to the school.
43. I have quoted paragraphs 14, 1.8 and 1.37 of the Code above;

arrangements are required to be clear and objective so parents can easily understand how they can meet the requirements of oversubscription criteria. Here there is a mismatch between the criterion and the associated form. The oversubscription criterion requirement is baptism, regular practice by a parent, sympathy with the aims and ethos of the school and support from a minister. The form asks the minister to say if they know the family and if it is a practising family, it does not ask for the minister to say they support the application. Even if the form did ask the minister if they supported the application, this would be a subjective judgement, there is no guidance on what the minister's support should be based on. The Code requires arrangements to be objective; length and frequency of practice would be examples of objectivity, support from a minister on unspecified grounds is not.

44. I have considered the requirement in this criterion for parents to sympathise with and support the aims and ethos of the school. There is no mechanism for a parent to demonstrate that they do so. It could be argued that if they did not they would not apply in the first place, however the parent could be applying because of the school's academic record or its proximity to the family home, not its ethos. I do not think sympathy for aims and ethos can be demonstrated objectively so this does not comply with the Code.

45. In my view this criterion is neither clear nor objective. I do not see how a parent could easily understand how they could meet the requirement of this oversubscription criterion and it does not comply with the Code.

46. I have addressed the question of asking for proof of residence on supplementary forms above.

#### Final oversubscription criteria

47. The last oversubscription criterion is "*Any other applicants whose parents are in sympathy with the aims and ethos of the academy.*" I have addressed the question of sympathy with the aims and ethos of the school above. Paragraph 2.8 of the Code says that if there are enough places available, they must be offered without condition. Requiring parents to sympathise with the aims and ethos of the school is a condition so there is no oversubscription criterion in the arrangements under which places could be offered without condition and this does not comply with the Code.

#### Children with statements of special educational needs or education, health and care plans

48. Paragraph 1.6 of the Code says that any child whose statement of special educational need or education, health and care plan names the school must be admitted before oversubscription criteria are applied to other applicants. Paragraph 14 of the Code says arrangements must be clear, so this should be explained to parents in the arrangements.

#### Admission out of the normal age group

49. Paragraph 2.17 of the Code says “*Admission authorities **must** make clear in their arrangements the process for requesting admission outside of the normal age group.*” Although there is information for parents about deferred entry, I could find no reference to admission of children outside of their age group in the arrangements.

#### **Conclusion**

50. Responsibility for any forms used in the school’s admissions process sits with its admissions authority which is the academy trust. All forms must be determined and published as required by paragraphs 1.46 and 1.47 of the Code and this was not done. The PRF and the SIF do not comply with paragraph 2.4 of the Code and ask for information beyond that required to make decisions about oversubscription criteria. Paragraph 14 of the Code requires arrangements to be clear and paragraph 1.8 says that oversubscription criteria must be objective. I have concluded that parents will not be able to easily understand how the faith based criteria will be satisfied as required by paragraph 1.37 of the Code. On these grounds I uphold the objection.

51. After considering the arrangements as whole I have identified a number of other ways in which they do not confirm with the Code.

#### **Determination**

52. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements determined by the governing body on behalf of the academy trust for St Aidan’s Catholic Primary Academy, Redbridge.

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

54. 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: 23 November 2015

Signed:

Schools Adjudicator: Phil Whiffing