



Office of
the Schools
Adjudicator

DETERMINATION

Case reference: ADA2961

Objector: Clifton Diocese

Admission Authority: St Patrick's Catholic Primary School, Redfield,
Bristol

Date of decision: 24 November 2015

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 trust for St Patrick's Catholic Primary School, Bristol, for admission in 2016.

I have also considered the arrangements in accordance with section 88I(5). I determine that there are other matters as set out in this determination that 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 by 28 February 2016.

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 Clifton Diocese (the diocese and the objector), about the admission arrangements for 2016 (the arrangements) for St Patrick's Catholic Primary School (the school), a primary academy school for children aged between 4 and 11 years. The objection is that the oversubscription criteria give priority to baptised Catholic children whose parents attend a particular church and this unfairly disadvantages parts of the community and does not have regard to the guidance provided by the diocese.

Jurisdiction

2. The terms of the academy agreement between the 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, which is the trust and the admission authority for the school, on that basis. 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

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 form of objection dated 29 June 2015;
 - b. further information and correspondence from the diocese including the trust deed and admissions guidance issued by the diocese to Catholic schools in September 2014 (the guidance);
 - c. the school's response to the objection, supporting documents and subsequent correspondence;
 - d. the funding agreement made by the school with the Secretary of State for Education;
 - e. Bristol City Council's (the local authority) responses to requests for information on the objection and the composite prospectus for parents seeking admission to primary schools in the area in September 2016;
 - f. maps of the area identifying relevant schools; the catchment area; and the home locations of children applying for places and those allocated places for 2013, 2014 and 2015;
 - g. information on when consultation on the arrangements last took place;
 - h. the judgment of Mr Justice Cobb (Cobb J. 2015);
 - i. copies of the minutes of the meeting at which the governing body of the school determined the arrangements; and
 - j. a copy of the determined arrangements.

The Objection

5. The objection is that the arrangements give priority to those baptised Catholics whose parents attend St Patrick's Church (the church) over Catholic children who live in the parish area and attend other Catholic churches. The objector says that this unfairly disadvantages those who live in the parish, but are unable to attend that church and attend elsewhere and that this would not comply with paragraph 1.8 of the Code.
6. The diocese provided guidance to the school which included a directive not to make baptised Catholics whose parents attend a particular church a priority in the oversubscription criteria. The school continued to do so and the objector believes that this would not comply with paragraph 1.38 of the Code which says that admission authorities for a school designated as having a religious

character **must** have regard to any guidance from the body or person representing the religious denomination.

Other Matters

7. In considering the admission arrangements for the school it came to my attention that the school had not consulted on changes to its admission arrangements as required by the Code at paragraphs 1.42 to 1.45.

Background

8. St Patrick's Catholic Primary School is in the city of Bristol and the Clifton Diocese. The school was established by funding raised by St Patrick's Church in 1933. The school and the church are situated alongside each other and share some facilities. The school has a published admission number (PAN) of 30. The school became an academy on 1 August 2012 and was judged outstanding when Ofsted inspected the school in June 2013.
9. The school's admission arrangements run to 15 pages and there are separate supplementary information and priest/minister reference forms. The distance between home and the school is used as to differentiate when oversubscribed in any oversubscription criterion or sub category of an oversubscription criterion. Detailed definitions and explanations are given of all aspects including a map showing the parish boundary as the parish is the catchment area in the arrangements.
10. In summary the oversubscription criteria in the arrangements are:
 1. *"Baptised Catholic children looked after or previously looked after children."*
 2. *"Baptised Catholic children of a parent who attends St Patrick's Church, or who attends another Catholic church within a 10 mile radius of the School which does not have its own Designated Catholic Infant or Primary School."*
 - 2.1. *Children who will have a sibling at the school at the time of their admission*
 - 2.2. *Children of a parent who has attended Sunday mass during the twelve month period immediately preceding the application deadline.*
 - 2.2.3 *weekly (at least 75% of all Sundays);*
 - 2.2.4 *monthly (at least 25% of all Sundays);*
 - 2.2.5 *occasionally (on at least one Sunday, but less than 25% of all Sundays)."*
 3. Other baptised Catholic children with the same sub categories as criterion 2.
 4. Looked after children or previously looked after children who are not baptised Catholics.
 5. Members of other Christian denominations with sub-categories

similar to criterion 2.

6. All other children with highest priority given to those with a sibling at the school, then those living within the parish and then those living outside the parish.

Consideration of Factors

11. The objector says that the arrangements do not comply with paragraphs 1.8 and 1.38 of the Code. I have also taken into account other requirements of the Code. Paragraph 1.8 of the Code says, "*Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation. Admission authorities **must** ensure that their arrangements will not disadvantage unfairly, either directly or indirectly, a child from a particular social or racial group, or a child with a disability or special educational needs, and that other policies around school uniform or school trips do not discourage parents from applying for a place for their child.*"
12. The diocese says that the arrangements could disadvantage families, either directly or indirectly. As part of the objection the diocese explains that "*every parish within the diocese is assigned a school to which Catholic children living in that parish are given priority in terms of admissions. This is implemented in order for all parents, as far as is possible, to be able to access Catholic education if they wish.*" The diocese has worked with Catholic schools within the diocesan area so that Catholic children living in an area have high priority for a place at a Catholic school; the diocese intends that priority is given based on where the child lives rather than where the family attends church. This approach has effectively set a catchment area for each Catholic primary school.
13. The diocese gives examples of why a family may live in the parish but attend another church. These are: "*Those who have to worship at another parish because of having to take a family member who may be elderly or disabled to church in another location. Those who have work commitments that do not allow them to practise at the specific times at St Patrick's and therefore have to worship at a range of churches. Those who may, for whatever reason, do not feel they wish to practise at St Patrick's but prefer another church e.g. do not have a good relationship with the priest.*" The diocese further explains its view that "*There is also a lack of equality in terms of those who would actually prefer to attend St Patrick's school rather than their own designated parish school, but who are not able to financially travel to worship at St Patrick's church.*" This raises the possibility that those on lower incomes who live outside the parish would be disadvantaged and they are less likely to attend the church and thus do not attain a higher priority at the school.
14. The school's view is that as a very popular and oversubscribed school there will always be disappointed families whatever the admission arrangements. The school believes that it conforms with

paragraph 1.8 of the Code and that “*St Patrick’s Catholic Primary School is the designated Catholic school for St Patrick’s Church to enable its parishioners to have access to a Catholic education for their children.*” Correspondence between the school and the diocese shows that there is a difference of opinion on the definition of ‘*parishioner.*’ The diocese defines a parishioner as someone who lives in the parish and the school defines a parishioner as someone who attends the parish church. The Oxford English Dictionary defines parishioner as someone who lives in the parish and this is its everyday meaning. The school has debated its definition of ‘*parishioner*’ with the diocese in some detail. The term is not used in the arrangements but this distinction of interpretation is crucial to the differences between the school and the diocese.

15. I considered the effect of the arrangements on children as shown by who applied for a place at the school, where they lived and who was allocated places. The school provided data on the number of applicants showing 127 applications received for the 30 places for 2015. Up to three preferences can be expressed on the local authority’s common application form for a child living in the local authority’s area so first preferences are a better indicator of demand. The school also provided data on the number of Catholic children living in the parish. The local authority provided information on first preferences and the home location of children applying for places and the allocations made. The table below combines this information.

Table one: children for whom applications for places have been made and allocation of places

| Year | Number of first preferences | Number of children living in the parish applying for a place | Number of Catholic children living within the parish | Number of children living in the parish allocated a place | Assumption of number of Catholic children living in the parish not allocated a place at the school | Number of children living outside of the parish applying for a place | Number of children living outside the parish allocated a place |
|-------|-----------------------------|--|--|---|--|--|--|
| 2013 | 55 | 76 | 31 | 25 | 6 | 24 | 5 |
| 2014 | 54 | 87 | 26 | 25 | 1 | 26 | 5 |
| 2015* | 68 | 90 | 34 | 23 | 11 | 33 | 8 |

*additional place on appeal makes 31 children in reception year

16. This shows that for 2013, 2014 and 2015 there has been a close match between the number of baptised Catholic children living in the parish and the PAN of the school, but with insufficient places for two of the last three

years if all Catholic children living in the parish applied for a place at the school. It also shows that there are around double the number of first preferences to places available at the school. The information I have does not tell me how many of the families of these children attended the church or any Catholic church.

17. The information in the table indicates that many of the children applying for a place who live in the parish are not Catholics and so they have little chance of attending the school as priority is given to Catholic children. There are several other non-Catholic schools in the local area so there is not a lack of places for local children. The school explained that in 2014 there were 29 children who fulfilled criterion 2 and in 2015 there were 40 children who fulfilled it. I cannot know if all Catholic children living in the parish applied for a place at the school but in 2015 there were 11 Catholic children living in the parish who were not allocated a place at the school with eight places allocated to children living outside the parish. The school informed me that 10 of those children attending the church did not get an offer of a place for the September intake. This would show that there is a poorer fit in 2015 between the numbers fulfilling criterion 2 in the arrangements than with the approach advocated by the diocese that is based on those living in the parish. The school said that the diocese's approach of allocation of places being related to living in the parish rather than which Catholic church was attended does not take into account the school's capacity, but there is little evidence of this based on the information provided by the school.
18. In summary the current effect of the arrangements is that for 2015:
 - a. about one third of the Catholic children living in the parish were not allocated a place at the school (it is not known if they applied);
 - b. one quarter of those who attended St Patrick's Church were not allocated a place at the school; and
 - c. just over one quarter of those who were allocated a place lived outside of the parish.
19. The effect of the school taking a different approach to that recommended by the diocese is that children living out of the parish will have a higher priority for places at the school if the family attends the church than children who live in the parish, but whose family attend another church for whatever reason. If all other Catholic schools give priority to the children living in the parish, as intended by the diocese, the effect of the arrangements is that a Catholic child living in another parish but attending the church will have a higher priority at two Catholic schools, their local one and the school, and the child living in the parish, but not attending the church, will have a lower priority for a place at their local school and at all other Catholic primary schools.
20. The information provided shows that two thirds of the pupils are drawn from the area in which the school is situated, but the arrangements are such that, hypothetically at least, that this may not always be the case. It

is possible that no Catholic child living in the catchment area, but whose family attends a Catholic church elsewhere, would be allocated a place at the school.

21. The Code permits arrangements for schools with a religious character (commonly known as faith schools), which are not permitted for other admission authorities but within parameters. Paragraph 1.9i of the Code says that admission authorities **must not**, *“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).”* The relevant body is Clifton Diocese and the diocesan guidance says, *“The definition of Catholic practice for the purpose of admission to voluntary aided schools and academies in Clifton Diocese is membership of the Catholic Church and attendance at Saturday/Sunday Mass, evidenced by a priest.”* The school prioritises children on the basis of their own or their parents’ activity as criterion 2 concerns attendance at Mass, but goes further and for priority against oversubscription criterion 2 stipulates attendance at *“St Patrick’s Church, or ... another Catholic church within a 10 mile radius of the School which does not have its own Designated Catholic Infant or Primary School.”* The diocese, in its guidance dated September 2014, said, *“governing bodies should not require worship in a particular parish.”* The diocese has made explicit communications to the school that criterion 2 is unacceptable to it.

22. I have considered the priority afforded to children who attend St Patrick’s Church. The arrangements do not comply with paragraph 1.9i of the Code because the school has prioritised children on the basis of their own or their parents’ activities, that is attending Mass at a specified church, rather than the activity as laid out by the diocese which is to attend Mass. The arrangements also do not comply with paragraph 1.8 as they are unfair and unreasonable for Catholic children living in the parish who attend Mass, but not at the named church, and as a result they have a low priority in the arrangements for their local school and every other Catholic school. The arrangements are such that it would be possible for no Catholic child, who lived in the parish and whose family attended Mass, to be allocated a place at the school.

23. The objector also argues that the school has made arrangements which are against the advice of the diocese and has therefore not complied with 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. They **must** also consult with the body or person representing the religion or religious denomination when deciding how membership or practice of the faith is to be demonstrated.”* The school expresses the view that it has had regard to the guidance from its relevant faith body, the diocese, and it has consulted with it. The school points to

the evidence of communications between itself and the diocese on this issue which contain much debate. The school referred me to a recent judicial review (Cobb J 2015) which contains lengthy consideration of what is meant by “*have regard*” in this context. The school summarises this as the meaning of paragraph 1.38 “*was held to be that an admission authority must take the Diocesan guidance into account, consider it and, if it decides to depart from it, must give clear and proper reasons for doing so. In other words, there is no obligation to follow the guidance provided there is a cogent reason for not doing so.*”

24. The correspondence provides reasons why the school has not followed the guidance from its diocese. The reasons are based upon the belief that “*the purpose of St Patrick’s Catholic Primary School is to provide a Catholic education to those attending St Patrick’s Church, with the remaining places being open to other applicants.*” In support of this view the school explains that the school building was originally funded by the congregation of the church, part of the monies collected at services at the church still support education at the school and that it would seem an injustice that those who do not attend the church may get a place above those who do attend the church, for whatever reason.
25. I have considered whether the school is contravening paragraph 1.9e of the Code which says admission authorities **must not**, “*give priority to children on the basis of any practical or financial support parents may give to the school or any associated organisation, including any religious authority.*” The school argues that its point was not that it took any financial or practical contribution into account when allocating places, but that it was evidence that the purpose of the school was for the education of Catholic children attending the church rather than living in the parish. Consideration of the financial contribution made by those who caused the school to be built and those who attend it now is not a justification for giving priority to those who attend the church. The investment of the church in the school is therefore not a “*proper reason*” for not following the guidance of the diocese.
26. The school also explained that it uses the church for many activities including services but also non-religious activities and that the parish priest is also chair of the school’s governing body. These demonstrate links between the school and church but are not proper or legitimate reasons to give priority to those who attend the church.
27. As discussed above the definition of parishioner has been disputed by the school and the diocese. The school explains as, “*every parish is assigned a school for the children of its parishioners to access, a ‘parishioner’ being a Catholic who attends the parish’s church as opposed to simply living in the parish.*” This is described more forcibly in the communications between the diocese and the school with the school focusing on the church community and what that means. The diocese and the school have been discussing this matter for some time and the correspondence goes back to at least June 2013. The diocesan guidance provides clear definitions of membership of the Catholic church and of Catholic practice

and says, “*Governing bodies should not require worship in a particular parish as it can be deemed discriminatory*” and provides examples. The use of the word “*should*” can be debated and the school brought my attention to the mandatory nature of the Code and that this is different to the guidance provided by the diocese. The school emphasised that it remains the admission authority and it is its duty and responsibility to decide its own admission arrangements.

28. I have considered all the information provided to me by the school to show that it did have regard to the guidance provided by the diocese. The school has provided evidence of its consideration of the guidance and the directive of the diocese, and its explanation why it did not agree. In summary the reasons the school gave for not following the guidance were:

- a. it does not believe that criterion 2 contravenes paragraph 1.8 of the Code as it does not believe that the arrangements disadvantage any child any more than would be caused by any other arrangements for a popular school;
- b. it wishes to give priority to those who attend the parish church as opposed to those who have “*no investment*” in it;
- c. the directive from the diocese was given without regard to the capacity of the school or any other circumstances pertaining to that school; and
- d. the school and the church share some facilities and work closely together.

29. I have explored these arguments, but do not accept them.

- a. I have found the school’s arrangements unfair and unreasonable for Catholic children living in the parish who attend Mass elsewhere and so the school does contravene paragraph 1.8.
- b. The school has given much weight to the financial investment made by the church to the school which is in contravention of paragraph 1.9e of the Code although I note that “*investment*” does not only refer to financial investment.
- c. The capacity of the school is similar to the number of Catholic children living in the catchment area of the school so the directive from the diocese is realistic in the local circumstances.
- d. Close links and shared facilities between a church and a school are not valid reasons for giving a higher priority to a child in the admission arrangements.

30. The school’s arguments are not clear and proper reasons for departing from the guidance provided by the diocese. The departure made by the school undermines the underlying principles of the guidance and is in conflict with the guidance. In addition, as discussed above, paragraph 1.9i of the Code states that the admission authorities **must not**, “*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).*” The diocese has clearly laid out what religious activities can be used to

prioritise children which does not include priority for attending Mass at a named church. The diocese is the relevant body to do so and so the school has not conformed with a mandatory requirement of the Code. For these reasons I uphold the objection.

Other matters

31. Paragraphs 1.42 to 1.45 of the Code set out the requirements for consultation including, "*When changes are proposed to admission arrangements, all admission authorities **must** consult on their admission arrangements (including any supplementary information form) that will apply for admission applications the following school year. Where the admission arrangements have not changed from the previous year there is no requirement to consult, subject to the requirement that admission authorities **must** consult on their admission arrangements at least once every 7 years, even if there have been no changes during that period.*" The school was unable to provide evidence of consultation since 2008. The school converted to become an academy in 2012. It has made significant changes to the admission arrangements since 2008 stating that they were necessary to meet mandatory requirements of the Code as permitted by paragraph 3.6 of the Code
32. The requirement to comply with the Code could have been met in a variety of ways and the school should have consulted as significant changes were made to the arrangements. In addition the school does not conform with the Code as it has not consulted on its admission arrangements at least once in seven years. The school has not complied with the requirements of the Code on consultation.

Conclusion

33. The priority the school gives within its oversubscription criteria to those who attend a particular church does not comply with the Code as it is not fair or reasonable to local Catholic children who attend Mass elsewhere for whatever reason; and it is a religious activity which is not as laid out by the diocese, which is the relevant religious body. The school has considered the guidance issued by the diocese, but does not have a proper reason for departing from it.
34. The school has not consulted on its arrangements, even though it has made significant changes, and in addition it has not consulted for over seven years. The school has not complied with the requirements of the Code to consult.

Determination

35. 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 trust for St Patrick's Catholic Primary School, Bristol, for admission in 2016.

36. I have also considered the arrangements in accordance with section 88I(5). I determine that there are other matters as set out in this determination that do not conform with the requirements relating to admission arrangements.
37. 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 by 28 February 2016.

Dated: 24 November 2015

Signed:

Schools Adjudicator: Mrs Deborah Pritchard