



**DETERMINATION**

**Case reference:** VAR685 and ADA3235

**Admission Authority:** The governing body of Archbishop Temple School, Preston, Lancashire

**Date of decision:** 5 August 2016

**Determination**

**In accordance with section 88E of the School Standards and Framework Act 1998, I reject the variation to the admission arrangements for September 2016 determined by the governing body of Archbishop Temple School, Preston.**

**In accordance with section 88I(5) of the School Standards and Framework Act 1998 I have considered the arrangements for September 2017 and 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. A request for an in-year variation of the admission arrangements (the arrangements) for September 2016 was submitted to the Office of the Schools Adjudicator (OSA) on 14 June 2016 by the Archbishop Temple School (the school), a Church of England voluntary aided (VA) secondary school in Preston in the Lancashire Local Authority area (the LA). The request related to amendments in the footnotes to the oversubscription criteria which reduced the permissible number of multi-faith applications dependent on the number of applications from looked after and previously looked after children, those with exceptional medical or social need and children of staff.

**Jurisdiction**

2. The referral was made to me in accordance with section 88E of the School Standards and Framework Act 1998 (the Act) which states that:

*“where an admission authority (a) have in accordance with section 88C determined the admission arrangements which are to apply for a particular school year, but (b) at any time before the end of that year consider that the arrangements should be varied in view of a major change in circumstances occurring since they were so determined, the authority **must** [except in a case where the authority’s proposed variations fall within any description of variations prescribed for the purposes of this section] (a) refer their proposed variations to the adjudicator, and (b) notify the appropriate bodies of the proposed variations”.*

3. I am satisfied that the proposed variation is within my jurisdiction. The arrangements were determined under section 88C of the Act by the school’s governing body which is the admission authority for the school. I have also used my power under section 88I of the Act to consider the arrangements for September 2017 as a whole as they came to my attention while I was considering the requested variation for 2016.

### **Procedure**

4. In considering this matter I have had regard to all relevant legislation, guidance and the School Admissions Code.
5. The documents I have considered in reaching my decision include:
  - a) the school’s letter of referral of 14 June 2016 and supporting documents;
  - b) the determined arrangements for September 2016 and the proposed variation to those arrangements and the determined arrangements for September 2017;
  - c) a copy of the LA’s booklet for parents seeking admission to schools in the area in September 2016;
  - d) a copy of the letter notifying the appropriate bodies about the proposed variation;
  - e) a copy of the letter consulting the relevant bodies about the proposed variation; and
  - f) correspondence from the Diocese of Blackburn (the diocese) which is the religious body for the school.
6. I have also taken account of the information I received during a meeting I convened on 8 July 2016 at the school. The meeting was attended by the headteacher, chair of governors and admissions officer from the school, representatives from the LA and the diocesan education officer.

### **Other matters**

7. I have reviewed the arrangements as a whole and believe that the following elements may not conform with the Code:

- the consultation process carried out prior to changes in the arrangements;
- the definition of looked after and previously looked after children;
- the clarity of the oversubscription criterion relating to church attendance;
- the criterion relating to children who attend a Church of England primary school;
- the clarity of the oversubscription criterion related to children of other faiths;
- the clarity of section F in the oversubscription criteria which relates to undersubscription within the other criteria;
- the final tie breaker which can be used to decide between two applications that cannot be otherwise separated;
- the supplementary information form (SIF).

## **Background**

8. The school is a popular oversubscribed Church of England school. It is a mixed school for 11 to 16 year olds. The published admission number (PAN) for admission in September 2016 and 2017 is 150 and, this year, the school received well over 800 applications.
9. In January 2014, the governing body discussed proposed changes to the arrangements for admission in September 2016 and the LA conducted a consultation process on the school's behalf. Following the consultation the arrangements were determined by the governing body on 9 June 2014 and duly published on the school's website in line with the Code. No changes were proposed to the arrangements for admission in September 2017 and the governors determined the unchanged arrangements on 21 September 2015.
10. Advice from the admissions appeals board following school admission appeals on 6 to 9 June 2016 led to an emergency meeting of the admission panel of governors to discuss changes to the arrangements. These changes were to clarify which categories of pupils should be reduced to accommodate children applying under the highest priority criteria. At this meeting it was decided to submit an in-year variation request to OSA.
11. After the admission of children with statements of educational need or with an educational health and care plan which names the school the published oversubscription criteria can be summarised as follows:
  - A 1. Looked after and previously looked after children
  - A 2. Children with special medical or social circumstances affecting the child where these needs can only be met at the school

B. Children of staff

C. A maximum of 100 children in the following priority order;

- Children who have a parent/carer who has attended public worship in a Christian church weekly/fortnightly for the year leading up to the 1<sup>st</sup> September 2016.
- Children who have a parent/carer who has attended public worship in a Christian church monthly for the year leading up to the 1<sup>st</sup> September 2016.
- Children who have a parent/carer who has attended public worship in a Christian church monthly for six months leading up to the 1<sup>st</sup> September 2016.

D. A maximum of 40 children who attend Church of England primary schools in the Blackburn diocese.

E. A maximum of 10 children who have, or who have a parent/carer who has attended public worship in a non-Christian faith in membership of the UK Interfaith Network and are in good standing with their faith community. Applicants in this category will be ranked by distance from the school and then by the following faith groups; Muslims, Hindus, Sikhs and 'other non-Christian faith'. Places will be allocated successively to a Muslim, a Hindu, a Sikh a member of another non-Christian faith in successive rounds until all the available places in this category are allocated.

F. All other applicants by distance.

In addition there are a number of footnotes which seek to explain the criteria.

12. The variation request explained that there had been no major change in circumstances but the school sought to amend the arrangements by the addition of two notes; one after A2 as follows; *“These places will be ranked in order of ascending distance from school, and places allocated from the top of Category C,D and E in successive rounds until all applications in this category are allocated”* and the other after B as follows; *“Places allocated in this category B will be added to the bottom of the category A applications in order of ascending distance and ranked along with them in the same way”*.
13. At the meeting the admission officer explained that the aim of the variation was to ensure that some applicants from criteria categories C, D and E may be able to gain admission and fulfil the governors' aim of diversity within the pupil population. He explained how places were allocated. This indicated that, in the past, the criteria have not been allocated in the priority order set out in the arrangements but have been allocated in order to create a proportional representation from the criteria relating to attendance at Church of England worship; attendance at a Church of England primary school and attendance at worship within other, non-Christian faiths.
14. The arrangements state that *“in the event that there are more*

*applicants than places, after admitting all children with a statement of educational need/educational health and care plan naming the school, the governing body will allocate places using the criteria below which are listed in order of priority.”* This statement is in line with paragraph 1.7 of the Code which states that “*Oversubscription criteria **must** then be applied to all other applicants in the order set out in the arrangements*”. This means that the criteria **must** be applied in order. The PAN is 150; during the process for admission in 2016 there were more than ten children in categories A,B and C. If, for example, the number allocated in A, B and C was 14 it would leave 136 places unfilled. One hundred places would be allocated under criterion C leaving 36 places to be allocated. There are likely to be more applicants under criterion D than this number and so the ‘cut off’ point would be within criterion D judged on distance from the school. This would mean that no children can be admitted under criterion E or F. The code makes clear that schools are to allocate places in accordance with their determined arrangements. As I note above, it is possible that the school has not been applying its determined arrangements accurately in deciding which children should be admitted to the school. I include this point as it is relevant to the context of this case but I stress that the application of a school’s arrangements to applicants is not within my jurisdiction; I am concerned only with whether the determined arrangements conform with the requirements relating to admissions and whether or not to approve the proposed variation.

### **Consideration of case**

15. Paragraph 3.6 of the Code says that arrangements determined for a particular school year cannot be revised (varied) except in a limited number of specific circumstances. Variations are allowed if they are necessary to give effect to a mandatory requirement of the Code, admissions law, a determination of the adjudicator or any misprint. Any other variations to the admission arrangements of a maintained school require the approval of the adjudicator in the wake of a major change in the circumstances of the school.
16. The school explained in the variation request that there had been no major change in circumstances. The variation request sought to provide the diversity which the governors are striving for however, the addition of the two notes would make it impossible for the criteria to be applied to applicants in the order set out in the arrangements as required by paragraph 1.7. This would render the arrangements unclear and unfair and accordingly in breach of paragraph 14 of the Code. I therefore reject the variation request.
17. As the arrangements had been brought to my attention I have used my power under section 88I of the Act to consider the arrangements as a whole.
18. Paragraph 14 of the Code state that “*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.*” The arrangements as a whole are over complicated; the mix of numbers and letters and the notes and footnotes in the arrangements are confusing and mean that they therefore do not comply with the Code because they are not clear.

19. At the meeting other aspects of the arrangements were discussed as outlined below. The school, the diocese and the LA were keen that arrangements should conform with the Code and the admissions officer for the school stated his intention to revise the arrangements very quickly after the meeting and to put the proposed revised arrangements before the admission authority for approval.
20. Paragraph 15 of the Code sets out the requirements for admission authorities to consult on their arrangements. During initial correspondence there was some confusion about when the last consultation took place. At the meeting the LA stated that the amended arrangements for admission in September 2016 were the subject of a full consultation between January and February 2014. The LA reports that no comments were received about the suggested changes to the arrangements. Following consultation, the school’s governing body determined the arrangements and they were published on the school’s website. I am satisfied that the consultation process and the determination and publication of the arrangements were in line with the Code.
21. The Code sets out the definitions of looked after and previously looked after children and these are also set out in the diocesan guidance to schools. The current arrangements only contain half this definition and an amendment to include the whole definition would make the arrangements clear and in line with the Code.
22. The arrangements allow for 100 pupils to be admitted under criterion C. At the meeting it was explained that any pupils over this number were then considered within a lower priority criterion; either attending a Church of England primary school (criterion D) or under the distance criterion F. This is not explained in the arrangements and therefore does not comply with the Code at paragraph 14 because it is not clear.
23. The Code at paragraph 1.9b states that *“It is for admission authorities to formulate their admission arrangements, but they **must not**; take into account any previous schools attended, unless it is a named feeder school.”* Criterion D prioritises a maximum 40 children who attend Church of England primary schools in the Blackburn diocese. This is not compliant with the Code as these schools are not named feeder schools and this requires amendment. At the meeting the school and the LA discussed this criterion and agreed that the majority of these children are admitted from one of three schools which have firm and long standing curricular and transitional links with the school. The suggestion was that this criterion should be replaced with one which names the three primary schools as feeder schools. This criterion requires amendment and the Code at paragraph 3.6 allows the governors to make these changes. The introduction of three named primary schools is a significant change in the arrangements and should

be the subject of proper consultation. The selection of any feeder schools will be required to conform with the Code requirements for reasonableness.

24. Criterion E relates to children of other faiths. A number of points relating to this criterion were discussed at the meeting;

- this criterion states that the children rather than the parent/carer should be attending worship; this requirement is different from the criterion relating to Church of England attendance and is not recommended by the diocese;
- the statement '*are in good standing with their faith community*' is subjective and undefined and does not therefore comply with the Code's requirement that arrangements **must** be objective. The school stated that this would be removed and the SIF would be used for this process in the same way that it is used for the Church of England applicants.
- the definition of world faiths in this criterion includes Christian but the criterion is for non-Christians and therefore this is unclear for parents.
- the criterion states that the proportions of faiths are in line with the census information for the area and that they may be changed in the light of changed census information. This may be the case year on year but once a set of arrangements has been determined, for admission in a particular year, they **must not** be changed (unless varied in accordance with the provisions of the Code) and therefore this section does not comply with the Code.
- if this criterion is oversubscribed there is no explanation in the arrangements that these applicants are then considered in the distance criterion F and this would make the arrangements clearer for parents.

25. Criterion F which relates to distance begins with "*In the event of there being under-subscription of applicants falling within categories D or E the remaining places shall be allocated to other children .....*" This is not required as the oversubscription criteria are applied in priority order.

26. Paragraph 1.8 of the Code states that "*Admission arrangements **must** include an effective, clear and fair tie breaker to decide between two applications that cannot otherwise be separated.*" The current arrangements only provide a tie breaker for children living in the same buildings and therefore this does not comply with the Code.

27. The Code is clear at paragraph 2.4 that, in arrangements where a Supplementary Information Form (SIF) is used then this form **must** only request additional information which has a direct bearing on the decision about oversubscription criteria. Currently the school suggests that every applicant submits a SIF and there is much information required on the form which duplicates information on the LA's Common

Application Form (CAF) and this does not comply with the Code.

### **Summary of Findings**

28. I have rejected the variation request which sought to provide diversity within the pupil population because the addition of the two notes would make it impossible for the criteria to be applied to applicants in the order set out in the arrangements as required.
29. It is clear that the school wishes to comply with the law, the regulations and the Code and in order to do so amendments to the arrangements are needed in respect of; introduction and explanation of the process; the definition of looked after and previously looked after children; the clarity of how applicants are considered if the number of pupils applying within a particular criteria exceeds the allocation; the use of non-specific primary schools; details relating to the world faith criterion; the tie breaker; and the SIF. In addition the overall clarity of the arrangements requires revision so that they are clear.
30. I received a copy of proposed revised arrangements soon after the meeting and many of the issues raised in this determination have already been addressed in that document. The admission authority now needs to complete the process of formally varying its arrangements as required by the Code.

### **Determination**

31. In accordance with section 88E of the School Standards and Framework Act 1998, I reject the variation to the admission arrangements for September 2016 determined by the governing body of Archbishop Temple School, Preston.
32. In accordance with section 88I(5) of the School Standards and Framework Act 1998 I have considered the arrangements for September 2017 and I determine that they do not conform with the requirements relating to admission arrangements in the ways set out in this determination.
33. 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: 5 August 2016

Signed:

Schools Adjudicator: Ann Talboys