



Office of  
the Schools  
Adjudicator

## DETERMINATION

**Case reference:** ADA3211

**Objector:** A parent

**Admission Authority:** The academy trust for St Peter and St Paul  
Church of England Academy, Syston,  
Leicestershire

**Date of decision:** 26 August 2016

### **Determination**

**In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2017 determined by the governing body of St Peter and St Paul Church of England Academy, Leicestershire.**

**I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which 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 the determination.**

### **The referral**

1. Under section 88H(2) of the School Standards and Framework Act 1998, (the Act), an objection has been referred to the adjudicator by a parent (the objector), about the admission arrangements (the arrangements) for St Peter and St Paul Church of England Academy, Syston (the school), a Church of England academy school for children aged four to 11 for September 2017. The objection is to the inclusion of a statement within the arrangements which appears to give priority to children for whom the admission would be in their normal age group.

2. The local authority (LA) for the area in which the school is located is Leicestershire County Council. The LA is a party to this objection. Other parties to the objection are the Diocese of Leicester (the diocese) which is the designated religious authority for the school.

## **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, the Diocese of Leicester Academies Trust, which is the admission authority for the school, on that basis. The objector submitted their objection to these determined arrangements on 14 May 2016. The objector has asked to have their identity kept from the other parties and has met the requirement of Regulation 24 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012 by providing details of their name and address to me. 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 14 May 2016;
- b. the admission authority's response to the objection and supporting documents;
- c. the comments of the LA on the objection and supporting documents;
- d. the comments of the Diocese of Leicester which is the religious authority for the school;
- e. confirmation of when consultation on the arrangements last took place;
- f. copies of the minutes of the meeting at which the local governing body of the school determined the arrangements; and
- g. a copy of the determined arrangements.

## **The Objection**

6. The objector has complained that a statement within the arrangements that "*priority will be given to children in the appropriate age range*" contravenes paragraph 2.17B of the Code which states that:

*“Where an admission authority agrees to a parent’s request for their child to be admitted out of their normal age group..... they **must not** give the application lower priority on the basis that the child is being admitted out of their normal age group.”*

The objector complains that this statement renders the process for requesting admission out of the normal age group unclear, since its effect is to make uncertain what the status of an agreed application would be. Paragraph 2.17 of the Code requires that this process is clear.

7. This objection does not raise issues which are the same, or substantially the same, as those which the adjudicator has decided on for the school in the last two years.

### **Other Matters**

8. When I looked at the arrangements, I was concerned that there were further aspects of them which may not conform with the requirements set out in the Code. I therefore wrote to the school and the other parties to seek their comments on these matters, which were that the arrangements:

(i) state that *“children are admitted once a year, at the start of the Autumn Term...”*. which may breach the requirements of paragraph 2.16 of the Code;

(ii) state that *“applications for places for children living outside the designated parish area are welcomed, if there are places available within that particular year group”* which may breach paragraph 1.14 of the Code;

(iii) state that *“parents may request deferred entry in writing, accompanied where possible with lead professional documentation supporting the request. Deferred entry = a request to seek a start later in the school year, but no later than the start of the summer term”* which may be a further breach of paragraph 2.16 of the Code;

(iv) do not provide within the stated oversubscription criteria for the admission of children other than those afforded priority, which may breach paragraphs 15a) and 1.36 of the Code; and

(v) state that *“In the event of oversubscription, places will be allocated within that particular criterion ... by a method of random selection....”* which may breach the requirement concerning the clarity of the means used to allocate places in paragraph 14 of the Code.

9. I have also made a further request to the school for evidence of the date on which its arrangements were most recently the subject of consultation.

## Background

10. The school, which is located near to Melton Mowbray in Leicestershire, is designated as a school with a Church of England religious character. The relevant faith body is the Diocese of Leicester and the academy trust for the school is the Diocese of Leicester Academies Trust. The school became an academy school on 1 March 2013. The school has a published admission number (PAN) of 60.

11. A previous determination published in late 2015 concerning the school's admission arrangements for September 2016 found that the school had failed to determine these arrangements in a timely fashion and to publish them once determined. A number of defects were found in the arrangements as eventually determined and in a subsequent version determined by the local governing body on behalf of the academy trust.

12. The arrangements which the school has determined for September 2017, and which are the subject of the objection:

(i) contain in their introduction the statement *“Governors have agreed that 4+ children are admitted once a year, at the start of the Autumn Term and must be four years old by the 31<sup>st</sup> August of the year they are admitted.”*;

(ii) state that *“Applications for places for children living outside the designated parish area are welcomed, if there are places within that particular year group”*;

(iii) state that *“Parents may request deferred or delayed entry in writing, accompanied where possible with lead professional documentation supporting the request. Deferred entry = a request to seek a start later in the school year, but no later than the start of the summer term. Delayed entry = a request to the admitting authority seeking to apply and start a year later from reception”*;

(iv) state that *“if there are too many requests [applications for places], priority will be given to children in the appropriate age-range”*;

(v) include a set of oversubscription criteria which cover various categories of child but do not explain how application from children who are not included in these groups will be considered; and

(vi) state that *“In the event of oversubscription, places will be allocated within that particular criterion....by a method of random selection (drawing lots) that will be observed by an independent witness.”*

## Consideration of Case

13. When the school responded to the objection concerning its arrangements, it said that while not accepting that the arrangements were in breach of the Code, it would include a footnote explaining that

*“For clarification, ‘appropriate age range’ refers to children who are placed in their chronological age group, as well as children requesting to apply for a deferred or delayed entry”.*

14. The diocese responded to the objection saying the same thing and providing a copy of its model set of admission arrangements as provided to the school, which it said it had drawn up in conjunction with the LA. This letter shared the diocesan logo with that of the Trust for the school, which is its admission authority. It is not surprising therefore that the model admissions policy of the diocese contains almost all the matters which I have raised with the school as potential sources of non-compliance with the Code, since the governing body for the school has very largely adopted the wording of the Trust’s model policy. The LA told me that it did not consider any part of the school’s admission arrangements to be unlawful.

15. The school and the diocese have suggested making the change set out above. While it is for the school to decide how to go about defining terms which it uses in its admission arrangements, I note that it would be unnecessary to include a statement of this sort if the arrangements themselves were clear concerning the admission of children below compulsory school age and concerning those requesting admission outside the normal age group. If this were so, any reader would know that there is no question of a child other than one who was in their normal age group or one for whom admission to the year group in question had been agreed being considered for a place. Children from other age groups for whom there is no such agreement would not be being considered for a place and there is no need to refer to priority being given to children in their “appropriate” age group, which I regard as a redundant notion.

16. The arrangements, however, make no distinction between the processes that must apply to deferred entry on the one hand, and to those seeking admission outside the normal age group (what the arrangements call delayed entry) on the other. I note also that this too is an unhelpful term, since admission outside the normal age group can, and does, also refer to accelerated admissions. Paragraph 2.17 requires that:

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

The arrangements do not meet this requirement because they refer only to admission to the year group following the child’s normal age group and not to admissions outside the normal age group generally, and because they fail to set out a clear and separate process for such requests.

17. The statement which the objector has cited is placed in the school’s arrangements in the paragraph dealing with oversubscription of the

school generally. The Code makes clear that where an admission authority agrees to a parent's request for a child to be admitted outside their normal age group, that child's application must be treated in the same way as the applications of other children applying at the same time. In other words, the same oversubscription criteria are to be applied and the child is not to be given a lower priority because the admission would be out of the child's normal age group. Although the school has provided clarification that the statement about priority being given to children in the "appropriate" age range is not intended to refer to children for whom admission outside their normal age group has been agreed, I consider that the wording of the arrangements as determined would give any parent reading them quite the opposite impression to that which the Code requires. As a result, and for the reasons given above, I am of the view that the arrangements have failed to make sufficiently clear the process for requesting admission outside the normal age group as required by paragraph 2.17 of the Code and breach the requirements of paragraph 2.16B. I uphold the objection therefore.

18. Following their receipt of my letter setting out the matters of further concern, both the school and the diocese have again suggested making changes to the school's arrangements but have not yet done so.

19. The school's determined arrangements set out in a footnote the text of paragraph 2.16 of the Code, which says what an admission authority must make clear in its admission arrangements concerning the admission of children below compulsory school and deferred entry to school. The requirement of the Code is not that this statement is reproduced in admission arrangements, but that admission arrangements should comply with it, making a clear statement of how they do so. The statements included in the arrangements concerning admissions at the start of the autumn term and concerning the making of requests for deferred entry accompanied where possible with lead professional documentation both directly conflict with what is required under paragraph 2.16. It is necessary for admission arrangements to make clear that deferred entry is a right conferred on parents, and in my view they must therefore also not suggest that the exercise of this right requires the school's agreement. Neither must they make a statement which negates the effect of the exercise of that parental right. It is not in accordance with the Code for a school to state that: "*children are admitted once a year at the start of the Autumn term*". For both reasons the arrangements do not comply with what the Code requires.

20. I turn now to the question of the school's catchment area and the treatment of applicants who live outside it. What the school and the diocese have said to me makes it clear that there is no intention to treat applications for places at the school from parents living outside its catchment area other than as set out in its oversubscription criteria. As determined however, the arrangements contain a statement that appears to suggest that such applications are relevant only when there are places at the school not taken up by those who do live in the catchment area. A parent who lives outside the area has no means of knowing when they are considering applying for a place whether or not

that would be the case and should not be inhibited because of the contents of the school's admission arrangements from doing so. Paragraph 1.14 of the Code says:

*“Catchment areas do not prevent parents who live outside the catchment of a particular school from expressing a preference for the school.”*

As determined, the arrangements do not comply with what paragraph 1.14 says.

21. In spite of saying that if the school is not oversubscribed all those applying will be admitted, the oversubscription criteria in the school's determined arrangements fail to enable this because they list groups of children given priority but make no mention of other children. The last category of children listed are those who live outside the school's catchment area and whose parents worship at a Christian Church or who are members of other faiths. The arrangements do not provide at all for the possible admission of children living outside the catchment area who have no religious affiliation. Paragraph 15a) of the Code says:

*“All schools **must** have admission arrangements that clearly set out how children will be admitted.....”*

and paragraph 1.36 that for schools designated with a religious character:

*“As with other maintained schools, these schools are required to offer every child who applies.... a place at the school if there are places available.”*

Although the school and the diocese have stated their intention to rectify this omission, as determined the arrangements fail to comply with what the Code requires.

22. I turn now to the use of the term “oversubscription” in the arrangements. Paragraph 14 of the Code includes the words:

*“... admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective.”*

The school and the diocese have responded to my concerns about the clarity of the wording used to introduce the tie-breaker used in the arrangements by saying that the tie-breaker itself, which is random selection, is “*effective, clear and fair*”. I agree that this is the case, and that the school has, as required by paragraph 1.34 of the Code, set out how this will operate.

23. The arrangements use the term “oversubscription” to introduce the use of the tie-breaker, and it is used in them only in this way. In the Code, however, “oversubscription” refers to a situation where more children wish to attend a school than there are places available. As the Code makes clear, all schools – including those with a religious

character – must if they have space admit every child who would like a place. This is set out in paragraphs 15 d), 1.36 (in relation to schools with a religious character) and 2.8 of the Code. In the case of a school with a religious character, as here, it is only if the school is oversubscribed overall that it may give priority to some children on the basis of faith. The school's arrangements say that if there are more applications than places children are admitted according to a priority list of "criteria". These are in fact the school's oversubscription criteria, and I have necessarily used that term myself in the foregoing paragraphs to explain why they need to allow for the admission of any child whose parent applies for a place at the school if one is available.

24. When a school is oversubscribed, it will in most cases reach its PAN within one oversubscription category rather than on the cusp between two different categories. It may, for example, be able to admit some but not all of the children who live within its catchment area. What the school's arrangements refer to when using the term "oversubscription" in the context of the statement "*In the event of oversubscription, places will be allocated within that particular criterion*" is not oversubscription of the school. Rather, it is the process of deciding which of the children who fall within the category where the PAN has been reached and exceeded will be allocated a place and which will not. The arrangements mean that random selection will be applied to all of the children within that oversubscription category group to select those to be offered the remaining available places, and they should state this clearly, but do not. The school's arrangements use a term which has a clear and specific meaning in the Code, but with for a different purpose and so with a different meaning. Parents reading the Code and then the school's arrangements are likely to find the use of the term "oversubscription" used there confusing in my view. As a result, the arrangements do not achieve the clarity required of them by paragraph 14 of the Code.

25. The requirements concerning consultation by an admission authority prior to its determination of its admission arrangements are set out in paragraphs 1.42 – 1.45 of the Code. Paragraph 1.44 lists six groups whom the admission authority is required to engage in those consultations. The school was asked to provide evidence of when it last carried out a consultation to meet those requirements but it failed initially to do so, and this request was therefore repeated. When the school responded to this second request it provided the dates between which it carried out a consultation, together with a copy of the letter which had been sent to consultees. However, I have been given no evidence, despite repeated requests, that those groups the school was obliged to consult were included in the consultation. As a result, I conclude that the school has not met the requirements of paragraph 1.44 of the Code.

### **Summary of Findings**

26. I have explained why I have upheld the objection that the school's arrangements fail to comply with paragraphs 2.17 and 2.17B of the Code.

27. I have set out my reasons for coming to the view that the arrangements also breach paragraphs 2.16, 1.14, 1.15a), 1.36 and 1.4 of the Code and that the school has failed to provide evidence of a consultation concerning them that was in accordance with paragraph 1.44 of the Code.

### **Determination**

28. In accordance with section 88H(4) of the School Standards and Framework Act 1998, I uphold the objection to the admission arrangements for September 2017 determined by the governing body of St Peter and St Paul Church of England Academy, Leicestershire.

29. I have also considered the arrangements in accordance with section 88I(5) and find there are other matters which do not conform with the requirements relating to admission arrangements in the ways set out in this determination.

30. 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 the determination.

Dated: 26 August 2016

Signed:

Schools Adjudicator: Dr B.C. Slater