



Office of  
the Schools  
Adjudicator

**DETERMINATION**

<b>Case reference:</b>	<b>ADA3145</b>
<b>Objector:</b>	<b>A parent</b>
<b>Admission Authority:</b>	<b>The Governing Body of St Mary's Roman Catholic Primary School, Sunderland</b>
<b>Date of decision:</b>	<b>6 September 2016</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 its Governing Body for St Mary's Roman Catholic Primary School, Sunderland.**

**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 September 2017 for St Mary's Roman Catholic Primary School, Sunderland (the school), a voluntary aided school for children aged four to 11. The objection is to the use by the school of the time that has elapsed between a child's birth and the date on which they were baptised as a means of giving priority to applicants for a place at the school.**
- 2. The local authority (LA) for the area in which the school is located is Sunderland City Council. The LA is a party to this objection. The**

other party to the objection is the Catholic Diocese of Hexham and Newcastle (the Diocese).

### **Jurisdiction**

3. These arrangements were determined under section 88C of the Act by the school's governing body, which is the admission authority for the school. The objector submitted their objection to these determined arrangements on 10 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 email and form of objection dated 10 and 11 May 2016 respectively and subsequent correspondence;
  - b. the school's, the LA's and the Diocese's responses to the objection and supporting documents;
  - c. confirmation of when consultation on the arrangements last took place;
  - d. copies of the minutes of the meeting of the governing body at which the arrangements were determined;
  - e. a copy of the adjudicator's determinations ADA 2410 dated 15 July 2014 and ADA 2852 dated 19 June 2015 and the Approved Judgement of Mr J Cobb handed down on 17 April 2015 in the case of the London Oratory v the Schools Adjudicator and others; and
  - f. a copy of the determined arrangements.

### **The Objection**

6. The objection is to the use by the school of the length of time that has elapsed between a child's date of birth and the date of their baptism as a means for giving priority to applicants.
7. The objector made reference in the objection to a previous case considered by the adjudicator which concerned the construction of faith-based oversubscription criteria in the light of the guidance given

to an admission authority by its relevant faith body. I have therefore understood this objection to be made on the grounds that the requirements of paragraph 1.38 of the Code have not been met. This is where the requirement is set down that admission authorities for schools designated as having a religious character must have regard to guidance from their faith body when constructing any faith-based admission arrangements, to the extent that the guidance complies with the mandatory provisions and guidelines of the Code.

8. The objector has also challenged the appropriateness and fairness of distinguishing between children using this criterion.

### **Other Matters**

9. When I looked at the arrangements I was concerned that:
  - (i) the statement in the arrangements that parents are expected to *“give their full, unreserved and positive support for the aims and ethos of the school”* may breach paragraph 1.9a of the Code;
  - (ii) the statement that the Governing Body *“will make its decision about the request based on the circumstances of each case”* concerning deferred entry or part-time attendance may not conform to the statements which are required by paragraph 2.16 of the Code; and
  - (iii) the priority given to children of “other faiths” may not comply with paragraph 1.37 of the Code.

I have also sought evidence concerning the most recent consultation carried out by the school about the content of its admission arrangements.

### **Background**

10. St Mary’s RC Primary School is a popular two-form entry primary school located in the Sunderland conurbation. It was most recently inspected by Ofsted in September 2013, when its overall effectiveness was judged to be good.
11. The school admits 60 children each year to Reception (Year R). In the introduction to the school’s admission arrangements, the school says the following:

*“It is essential that the Catholic character of the school’s education be fully supported by all families at the school. All parents...are therefore expected to give their full, unreserved and positive support for the aims and ethos of the school. This does not affect the right of a parent who is not of the faith to apply for a place for their child at the school.”*
12. The arrangements state that if the school is oversubscribed, priority will be given to Catholic children (as defined) using oversubscription

criteria which give priority firstly to Catholic looked after and previously looked after children (as defined), secondly to Catholic children who live within a catchment area defined by the boundaries of three Roman Catholic parishes and thirdly to other Catholic children. Priority is next afforded to other looked after and previously looked after children, followed by catechumens and members of an Eastern Christian Church, by children of other Christian denominations, then children of “other faiths”, and finally any other children. Each of the terms used in the oversubscription criteria is given a definition within the arrangements, which also say that for each of the first three priority groups, if there are insufficient places available then: “...the length of time elapsing between the date of birth and the date of Baptism or reception into the church will be the deciding factor”.

13. The explanation of the term “other faiths” in the arrangements is that it means “*children who are members of a religious community*” that is not one of those (Catholic, catechumen, Eastern Christian Church, other Christian denominations) already defined.
14. Under a heading covering the admission of children below compulsory school age and the deferment of their entry to school, the arrangements include the following:

*“Upon receipt of the offer of a place a parent should notify the school, as soon as possible, that they wish either to defer their child’s entry to the school or take up a part-time place. Any such request should be made in writing to the headteacher of the school. The governing body will make its decision about the request based on the circumstances of each case and in the interests of the child.”*

### **Consideration of Case**

15. Both the Diocese and the school have told me that the use of a Catholic child’s date of baptism (or, more precisely, the length of time between their birth and the date of their baptism) was first introduced into the school’s admission arrangements in 2014 following a consultation carried out at that time. I shall return to the subject of consultation below. Both also tell me that the date of a child’s baptism is not used as an admission criterion, but as a tie-breaker within the oversubscription criteria that give priority to baptised Catholic children.
16. This distinction is not an insignificant one, since parts of the Code place specific requirements on oversubscription criteria as such. For example, paragraph 1.8 requires that:

*“Oversubscription criteria must be reasonable, clear, objective, procedurally fair, and comply with the relevant legislation, including equalities legislation.”*

17. The Code defines oversubscription criteria as:

*“...the published criteria that an admission authority applies when a school has more applications than places in order to decide which children will be allocated a place.”*

Since the school uses the date of a child’s baptism as a means for deciding which children are admitted and which not when it is oversubscribed with baptised Catholic children, it clearly uses it as an oversubscription criterion, and all that the Code has to say about oversubscription criteria applies to it. The same would be true for any tie-breaker of course. Any tie-breaker is an oversubscription criterion and all must comply with the requirements of paragraph 1.8.

18. Paragraph 1.38 of the Code says the following:

*“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.”*

The use of a child’s date of baptism by the school as an oversubscription criterion constitutes a faith-based admission arrangement which is subject to this mandatory requirement. The relevant body or person in the case of a school designated as having a Roman Catholic character is the Diocesan Bishop or the equivalent in canon law for the diocese in which the school is situated, as laid down in Schedule 3 of the School Admissions (Admission Arrangements and Co-ordination of Admission Arrangements) (England) Regulations 2012. So in the case of the school it is the Roman Catholic Bishop of Hexham and Newcastle.

19. What paragraph 1.38 means is that the admission authority for a school with a religious character must take account of any guidance from the relevant body or person, provided that guidance complies with the Code, when constructing its faith-based admission arrangements. It may depart from compliant guidance but only if it has sufficient reason to do so and a proper evidential basis for its decision, which is the test laid down by Cobb J in *The Governing Body of the London Oratory School v The Schools Adjudicator and others* [2015] EWHC 1012 (Admin).
20. The objector has made reference to that case and to a subsequent determination of the Schools Adjudicator which found that the admission authority for that school had used a child’s date of baptism within its admission arrangements when to do so was contrary to the guidance to it from its faith body. Since its reason for departing from this guidance did not meet the test laid down by Cobb J. the school was found to be in breach of paragraph 1.38 of the Code, because it could not be said to have had regard to the guidance given to it by the relevant person.

21. The objector invites me to agree with them that the school's use of a child's date of baptism is similarly contrary to paragraph 1.38 of the Code. However, the Diocese has told me that its guidance to schools includes a notification of the approval given by the Bishop in 2014, albeit implicitly, of the use of the time-gap between date of birth and date of baptism in admission arrangements. This notification covers three decisions of the Bishop, the other two being that random selection should not be used and that "practice" may be used in certain circumstances. It is contained in a short note under the heading "Way Forward" which records that:

*"The Bishop and Directors were asked to consider the following:*

1. ....

2. *That "date of baptism" is more correctly referred to as the time-gap between date of birth and date of baptism. Caution may need to be exercised with regard to particular cases where individual circumstances may need to be taken into account.*

3. ....

*At their meeting in September 2014 the Bishop and Directors agreed recommendations 1, 2 and 3."*

My reading of this document, given its content as a whole, is that while it could have been worded more clearly, its intention was to allow but not require the use by schools in the diocese of the date of baptism, while urging caution in its application. The Diocese has confirmed this reading of the document and has told me that the school consulted it before employing a child's date of baptism in its arrangements.

22. The objector is also of the view that the date of a child's baptism is not fair and that it is not a good measure of Catholic practice since it reflects commitment at one point in time only. The objector says that Canon law provides no sanction for those that do not obey its instruction concerning baptism. However, I do not think that it is for me to consider the issue of sanctions in Canon law. The Code clearly reserves faith-based admission arrangements, in common with other admission arrangements and provided they otherwise comply with the requirements of the Code, to the admission authority of a school with a religious character, as guided by the relevant body or person. I am in no doubt that in the case of the school, the use within its admission arrangements of the time that has elapsed between a child's birth and their baptism is not contrary to the guidance which it has received from the relevant person defined in the Regulations, and that the school has had regard to that guidance, and does not depart from it. As a result, the school has not breached paragraph 1.38 of the Code, in my view.

23. However, there remains the question of whether the use of a child's

date of baptism meets the requirements for oversubscription criteria. The school and the Diocese have both told me that they consider this to be a fair criterion, and furthermore that it is compliant with all the mandatory provisions of the Code, such as those in paragraph 1.8. Both have also referred in correspondence to the expectation that the warning in Diocesan guidance that its application in individual circumstances be handled with caution would be accommodated by the deliberations of an appeals panel. The Diocese refers to the fact that there is *“no provision in the admission policy for the school to take into account individual circumstances affecting the date of baptism”*. It is, however, the admission arrangements of the school which I am asked to consider in terms of their fairness, not the arrangements together with a subsequent appeals process. An appeals process only has effect after a place has been refused. The question which I must consider is whether the arrangements themselves result in the fair allocation of the available places at the school.

24. I can understand the desire of the school to find an objective means for distinguishing between otherwise equally qualified applicants, and can see that for very many of those to whom this criterion is applied there may appear to be a justification for doing so given equivalent circumstances attending the early life of the child. However, I am also aware that the Code of Canon Law of the Catholic Church says *“Parents are obliged to take care that infants are baptised in the first few weeks”* (Canon 867). I have no view on whether the earliness of baptism can be a measure of Catholic practice, but it seems doubtful to me that it can be fair in the everyday sense of the word that a distinction is drawn between two families who have equally obeyed the same Canon, and whose children were baptised within, say, three weeks for one and four weeks of their birth for the other. How could either family have known at the time of their child’s baptism that its date would be used in the way the school does?
25. It is also not difficult to imagine unavoidable individual circumstances which would make early baptism problematic or impossible for other families. An obvious example is that of any late conversion to Catholicism. The application of the school’s criterion, which uses the time that has elapsed since birth and baptism or reception into the church, would mean the children in such a family would be given lower priority for a place at the school, and so possibly denied a place. The arrangements themselves provide no remedy for such a situation, and do not meet the requirements of fairness set out in the Code therefore, in my view. I agree with the objector that this renders the arrangements non-compliant and I uphold the objection to them on these grounds.
26. Both the school and the Diocese say that *“all schools, whether of religious character or not, would expect parents to fully support their aims and ethos,”* but do not say why they think that if this is so, it means that a statement to that effect does not fall foul of paragraph

1.9a of the Code and so is permitted to be part of a school's admission arrangements. It is one thing for a school to have the expectation of support from parents once a child has been admitted, but another to place a statement of that expectation in a prominent position within the arrangements, where a parent considering making an application on behalf of their child is very likely to perceive it as a condition they are expected to meet. In my view the statement in the school's arrangements is likely to discourage some parents from applying for a place at the school. It does not help, as the school and Diocese want me to think, that the arrangements then immediately say that this expectation "*does not affect the right of a parent who is not of the faith to apply for a place for their child at the school*". Nothing can affect the right of any parent to apply for a place at any school for their child, since that right is unconditional. The point which I have considered is whether some parents are likely to believe that their right to have their child admitted to the school, were they to apply to it, is conditional on their meeting the school's expectation of support. I believe that this is so, and that the arrangements are as a result in breach of the prohibition set out in paragraph 1.9a of the Code.

27. Paragraph 2.16 of the Code says:

*"Admission authorities **must** make it clear in their arrangements that, where they have offered a child a place at a school:*

*a) that child is entitled to a full-time place in the September following their fourth birthday;*

*b) the child's parents can defer the date their child is admitted to the school until later in the year but not beyond the point at which they reach compulsory school age .....and*

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

The school's admission arrangements, quoted above, say that requests to defer entry or for part-time attendance are considered by the governing body. Paragraph 2.16 is unequivocal in placing these decisions with the parent and not the school. The school and the Diocese both acknowledge this and have said that the wording was included in error. The school has said that it will change its arrangements to comply with what paragraph 2.16 requires, but has not done so yet. As determined, the arrangements do not comply with paragraph 2.16 of the Code.

28. I was also concerned that the priority given by the school to children of other faiths, as defined in the way described above, did not meet the requirement of paragraph 1.37 of the Code that:

*"Admission authorities **must** ensure that parents can easily*

*understand how any faith-based criteria will be reasonably satisfied.”*

My concern was that it would not always be possible for a parent to be sure that their own faith would constitute a faith that the school would in practice recognise. However, both the Diocese and the school have responded to my concern by saying that it is indeed their intention that if a parent says and can evidence that their child is a member of a religious community (that is, with no further proviso of any kind as to what that community might be) then the school would give their application priority. My understanding of this is that the school will defer to the view of the parent and their faith community on this matter. That being the case, my concerns on this matter are allayed and I do not find any breach of the Code in this regard.

29. I asked the school and the LA, which had carried out the most recent consultation on admission arrangements being proposed by the school on its behalf, for evidence that this consultation met the requirements of the Code. The LA has informed me that this consultation took place between 11 December 2015 and 29 February 2016 but has also sent me a copy of the emails which were sent to consultees on 11 December 2016 which state that the consultation would be ending on 29 January 2016. I take this latter date to be the correct one and it conforms with the requirement in paragraph 1.43 of the Code that consultation must end no later than 31 January 2016 in respect of admission arrangements for September 2017.
30. These emails were given to me by the LA in response to my specific request to see any letters or emails which formed part of the consultation, and details of any advertisements or notices bringing the consultation to the attention of the parties set out in paragraph 1.44 of the Code. The emails are addressed to schools, neighbouring authorities and relevant religious authorities. The LA has given me no evidence that further means of consultation such as press advertisements or notices were used.
31. Paragraph 1.44a) of the Code says that admission authorities “**must consult with parents of children between the ages of two and eighteen**”. The emails which the LA used as its means of consultation referred to the location on its own website where the school’s proposed arrangements were to be found and sought the comments of those addressed, but did not ask schools and other settings to bring the consultation to the attention of parents, for example. I have no evidence therefore that even such a limited effort was made to consult the parents described in paragraph 1.44a). No other means seem to have been used, and as far as I can see, parents were not consulted at all, either directly or indirectly. The LA has told me that it received no comments on the school’s proposed arrangements, and it behoves those responsible for the consultation, the governing body of the school, not the LA, to consider why this might be the case. The school has failed to

comply with what the Code requires.

### **Summary of Findings**

32. I have set out above my reasons for upholding the objection to the school's arrangements because of the use within them of the time that has elapsed between a child's date of birth and the date of their baptism as a means for giving priority to applications. While the school's faith body specifically permits the use of such a criterion, albeit with caveats, meaning that its use does not contravene the requirements of paragraph 1.38 of the Code, it is nevertheless unfair in its effect and does not meet the requirements placed on oversubscription criteria by paragraph 1.8.
33. I have also explained why the arrangements as determined by the school:
- (i) breach paragraph 1.9a) of the Code by appearing to place a condition on the consideration of applications; and
  - (ii) fail to meet the requirements of paragraph 2.16 of the Code concerning the statements that are required concerning deferred admission and part-time schooling.
34. It is also my view that the school has not met the requirements of paragraph 1.44 of the Code concerning the consultation it most recently conducted prior to determining its admission arrangements.

### **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 its Governing Body for St Mary's Roman Catholic Primary School, Sunderland.
36. 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.
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 within two months of the date of the determination.

Dated: 6 September 2016

Signed:

Schools Adjudicator: Dr Bryan Slater