



## **DETERMINATION**

**Case reference:** ADA3287

**Objector:** A member of the public

**Admission Authority:** The London Oratory School academy trust for the London Oratory School

**Date of decision:** 23 August 2017

### **Determination**

**In accordance with section 88H (4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements for September 2018 determined by The London Oratory School, Hammersmith and Fulham.**

**I have also considered the admission 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 member of the public (the objector), about the admission arrangements (the arrangements) for The London Oratory School (the school), a Catholic comprehensive academy school for pupils aged 7 to 18. The objection is to the school's admission arrangements for Year 7 (Y7) for 2018 and arises from the wording of the oversubscription criteria and the Supplementary Information Form (SIF).
2. The local authority for the area in which the school is located is Hammersmith and Fulham. The local authority is a party to this

objection. Other parties to the objection are the objector and the governing body and academy trust (which are in effect the same body) for the school.

## **Jurisdiction**

3. The terms of the academy agreement between the academy trust, which is also called The London Oratory School, and the Secretary of State for Education require that the admissions arrangements for the school are in accordance with admissions law as it applies to maintained schools. These arrangements were determined by the academy trust which is the admission authority for the school. The objector submitted her objection to these determined arrangements on 30 April 2017. The objector has asked to have her 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 (the Regulations) by providing details of her name and address to the Office of the Schools Adjudicator (OSA).
4. I am satisfied that the objection has been properly referred to me in accordance with section 88H of the Act and it is within my jurisdiction. In reaching this conclusion I have had regard to Regulation 22 of the Regulations. This provides that where the adjudicator has determined an objection to the admission arrangements of a school or academy in accordance with section 88H of the Act, no objection may be referred to the adjudicator raising the same or substantially the same issues in relation to those admission arrangements within two years of the decision by the adjudicator.
5. Issues relating to the admission arrangements of the school were considered in Determination ADA2852, on 19 June 2015. This followed two earlier determinations. The first, dated August 2014 was quashed by consent and the second (July 2015) was quashed, in part, by Mr Justice Cobb in *R (on the application of the Governing Body of the London Oratory School) v School Adjudicator [2015]*. The current objection was received by the OSA on 30 April 2017, less than two years after Determination ADA2852. The earlier determinations were made more than two years prior to the current objection.
6. For Regulation 22 to be engaged the Adjudicator must have previously “*determined an objection*”. For this to arise an objection must have been received by the Adjudicator raising the same or substantially the same issues, giving rise to the Adjudicator’s jurisdiction under Section 88H of the Act. The objection which ultimately gave rise to Determination ADA2852 was referred to the adjudicator by the British Humanist Society in 2013. Paragraph 21 of ADA2852 deals with the school’s requirement (at the relevant time) for submission of the baptismal certificates for one or both parents. This was not an issue raised in the original objection. Rather it was considered in the earlier

Determination ADA2410, dated 15 July 2014, under the Adjudicator's jurisdiction arising from Section 88I of the Act. It follows that in ADA2852 the Adjudicator was not determining "an objection" and consequently Regulation 22 is not engaged.

7. Nevertheless, I also considered whether the issues raised in the objection are the same or substantially the same issues as were determined in paragraph 21 of ADA2852 (or elsewhere in that determination). Looked at narrowly, ADA2852 in paragraph 21 deals with the requirement for baptismal certificates, which is not the issue raised in the current objection. However, looking at ADA2852 more widely I find that the Adjudicator did consider the issue. The Adjudicator implicitly accepted that evidence of Catholicity may be required from both parents (under some circumstances). The current objection does not raise as an issue the principle of there being a requirement for evidence of the Catholicity of both parents in some circumstances. For the avoidance of doubt my view is that the issue of the principle of there being such a requirement was determined in ADA2852.
8. The current objection refers to the specific wording of the oversubscription criteria for 2018. These are significantly different from the arrangements which were in place at the time of the determination in ADA2852. It queries why information regarding Catholicity is sought regarding both parents, when it appears to the objector that the Catholicity of only one parent is at issue. The objection queries the clarity, objectivity and procedural fairness of the current arrangements.
9. This issue, albeit on the different wording used in the arrangements for admission in 2014 and 2015, has been considered in Determination ADA2140 dated 15 July 2014 (and subsequently by Mr Justice Cobb). To the extent that any relevant provision of Determination ADA2410 was not quashed in that judgement, that determination was made more than two years prior to the current objection being received and is accordingly not caught by regulation 22.
10. I find that the current objection goes primarily to the wording of the admission arrangements for 2018 which has changed substantially since the determination ADA2852 and that for that reason and the reason set out above regulation 22 does not apply to remove it from my jurisdiction. 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.
11. I have also used my power under section 88I of the Act to consider the arrangements as a whole.

## **Procedure**

12. In considering this matter I have had regard to all relevant legislation and the School Admissions Code (the Code).

13. The documents I have considered in reaching my decision include:
- a. the objector's email dated 30 April 2017 and the attached form of objection.
  - b. the admission authority's response to the objection and supporting documents;
  - c. the comments of the local authority on the objection, further comments in correspondence and supporting documents;
  - d. Correspondence between the OSA and the admission authority and between the OSA and the Diocese of Westminster (the Diocese).
  - e. the local authority's composite prospectus for parents seeking admission to schools in the area in September 2017;
  - f. confirmation of when consultation on the arrangements last took place;
  - g. copies of the minutes of the meeting at which The London Oratory School determined the arrangements; and
  - h. a copy of the determined arrangements.

### **The Objection**

14. The objection arises from the wording of the school's oversubscription criteria and the information sought in the school's SIF. The objector's contention is that there is a statement within the oversubscription criteria that "*the child and at least one of his parents are Catholic*", whereas information on the religion of both parents is requested in the school's SIF. The objector contends that this contravenes paragraph 1.8 of the School Admissions Code which requires that:

*"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..."*

### **Other Matters**

15. In considering the arrangements as a whole under my jurisdiction it appeared to me that the description of the application of the oversubscription criteria in Category B may not meet the requirements of paragraphs 14 and 1.8 of the Code and the oversubscription criteria did not appear to me to be clear. In particular, I could not discern how they could be applied to a group of applicants in order to provide a

ranked list based on the criteria.

16. I have considered whether the provision for both parents to sign the SIF is compliant with the Code.
17. I have considered whether the provisions of category B(2), which refer to baptism within six months of birth, are compliant with the Code.
18. I have considered whether reference to residence orders in Category D is misleading as residence orders have been superseded.
19. I have considered whether in Category B(3) and B(4) the definition of “brother or sister” and “sibling” are unclear.

## **Background**

20. The London Oratory School is a comprehensive Catholic school for boys aged 7 to 18. Girls are admitted to the sixth form. Twenty boys are admitted to the Junior House in Year 3. The admission arrangements for the Junior House are not considered in this determination. A further 160 boys are admitted to Y7 each year. The school became an academy in August 2011. The school is very popular and is heavily oversubscribed. For entry to Y7 in September 2017, there were 939 applications with a Published Admission Number (PAN) of 160.
21. For admissions from 2016 onwards the school adopted amended admission arrangements which have remained unchanged since. This determination is concerned with the arrangements for entry into Y7 for September 2018. The parts of the published admission arrangements for 2018 which are particularly relevant for this determination, are as follows:

*“THE LONDON ORATORY SCHOOL - FIRST FORM (YEAR 7)  
ADMISSIONS ARRANGEMENTS SEPTEMBER 2018...*

*...ARRANGEMENTS FOR ALL ADMISSIONS*

*In these arrangements, “parent” means the parent of, or adult with legal responsibility for, the child (candidate) for whom a place at The London Oratory School is being sought. Where parent(s) is used it refers to one parent if the child resides with only one parent or to both if the child resides with both...*

*...FIRST FORM ADMISSION ARRANGEMENTS MADE DURING THE  
NORMAL ADMISSION ROUND*

*The School will admit 160 boys from across London to the first form (year 7) without reference to ability. In determining to which candidates places will be offered, priority will always be given to Catholics (defined as a baptised person in full communion with the See of Rome). In the*

*event of over subscription, the arrangements set out below will be used to determine the boys to whom the places will be offered.*

#### *Over-subscription Criteria*

*After the admission of boys with a Statement of Special Educational Needs/Education Health and Care Plan which names the School, places will be allocated according to the criteria below.*

*The over-subscription criteria below will be applied in order of Category. Within Category B each criterion is applied in the given order to determine which applications go forward for consideration against the next criterion. This means that those who meet criterion (1) are carried forward for assessment against (2), then those meeting both (1) and (2) are carried forward for assessment against (3) and so on.*

*Category A Catholic looked after boys and Catholic boys who have been adopted (or made subject to residence/child arrangements orders or special guardianship orders) immediately following having been looked after.*

#### *Category B Catholic children from practising Catholic families*

*Parents will be required to provide validated evidence that the child and at least one of his parents are Catholic. The priest's reference form will be used to verify that the Catholic parent(s) and their son practise their faith.*

*(1) Candidate and his Catholic parent (where the child resides with only one parent, or where the child resides with both parents but only one is Catholic) or parents (where the child resides with both parents and both are Catholic) who meet their obligations in respect of Mass attendance on Sundays and Holy Days of Obligation and have done so for the past three years. This obligation is laid out in Canon Law, canons 1246, 1247, 1248 (copies of which are reproduced at the end of this document). Mass attendance must be verified by priest's reference.*

*(2) Candidates who received Baptism up to six months after birth, unless there is good reason which has been endorsed by your parish priest. (Where a child has been adopted the calculation is made from date of Adoption Order.) [the footnote to this provision reads "This is to meet obligation for baptism of infants, under Code of Canon Law, Canon 867 in Notes below" and Canon 867 is set out in full in the notes]*

*(3) Candidates who have a brother or sister at the School on the date of admission to the School. A brother or sister is defined as 'brother' or 'sister' of whole or half blood, or any other candidate (including an adopted candidate) who permanently resides at the same address and for whom the parent also has parental responsibility.*

*(4) Candidates who are a sibling of a former pupil (sibling of former pupil is defined as a brother or sister of whole or half-blood of a former pupil registered at the school and who completed at least one full year of education at the school).*

*(5) Candidates who at the time of application attend the Oratory Primary School, Bury Walk Cale Street, SW3 6QH.*

*Category C Other Catholic children*

*Category D Non Catholic children If any places remain after the applications have been considered under Categories A to C places will be allocated to non-Catholic applicants in the following order:*

*(1) Other looked after children and children who have been adopted (or made subject to residence orders or special guardianship orders) immediately following having been looked after;*

*(2) Members of the Eastern Christian Churches (which include the Orthodox Churches);*

*(3) Members of the Church of England;*

*(4) Members of other Christian denominations;*

*(5) Members of non-Christian faiths;*

*(6) Other Children.*

*In criteria D2 to D5 above, validated documentary evidence of membership of the faith will need to be provided by the priest or relevant religious body.*

*Tie-break*

*In the event of a tie for a place after the above criteria have been applied, a ballot system of random allocation will be used with each tied candidate's name being entered into the ballot and names then selected randomly by an independent external organisation (The Electoral Reform Services), until a rank of all candidates has been established. If the School is oversubscribed by practising Catholic applicants, no children from Category C or D will be included in the tie-break.*

*How is an application made?*

*All applicants must complete*

*(i) An application must be registered in the e admission system of the Local Authority in which the candidate is resident, in accordance with the requirements of the Local Authority's scheme for coordinated admission arrangements; and*

*In addition all applicants who wish to be considered if the school is oversubscribed should complete*

*(ii) The London Oratory School's Supplementary Information Form which may be obtained from the School, which must be completed in accordance with the instructions printed on the form and returned to the School on or before the applicable closing date given in these arrangements.*

*Applications which are received by the School without a Supplementary Information Form or which are incomplete or which are received by the School after the applicable closing date or which do not include the required baptism certificates will only be considered if there are fewer than 160 applicants for the 160 places. The School is under no obligation to advise parents on or before the applicable closing date that the application is in any way deficient."*

### **Consideration of Case**

22. The objector considers that the oversubscription criteria for the school contravene paragraph 1.8 of the Code, the relevant part of which reads as follows:

*"Oversubscription criteria **must** be reasonable, clear, objective, procedurally fair, and comply with all relevant legislation, including equalities legislation"*

In the reasons for the objection the objector states:

*"Category B of the school's oversubscription criteria states that the child and at least one of his parents are Catholic. However, on the school's Supplementary Information Form, under the 'Religion' section, it asks for the religion of the child and both the parents, even though only one of the parents needs to be a Catholic for the application purposes."*

23. The sentence in the introductory paragraph to Category B, to which the objector refers, reads:

*"Parents will be required to provide validated evidence that the child and at least one of his parents are Catholic."*

I find that this is a clear statement, particularly when read in conjunction with the paragraph quoted immediately below. It reflects the requirements of Category B. Category B, sub-category (1) sets out the first priority within Category B, as follows:

*"(1) Candidate and his Catholic parent (where the child resides with only one parent, or where the child resides with both parents but only one is Catholic) or parents (where the child resides with both parents and both are Catholic) who meet their obligations in respect of Mass*

*attendance on Sundays and Holy Days of Obligation and have done so for the past three years.”*

24. The requirement is that at least one parent must be a Catholic, meeting his or her Catholic practice obligations as set out in the arrangements, although where there are two parents, both of whom are Catholic, the Catholic practice obligations of both parents is in issue. It treats a candidate living with only one parent (who is Catholic) equally with a child with two parents, only one of whom is Catholic, provided that the Catholic parent meets his or her Catholic practice obligations. If both parents are Catholic, then both must meet their Catholic practice obligations. In other words, where both parents are Catholic both must meet their Catholic practice obligations in order to be placed on an equal footing with families with only one parent or only one parent who is Catholic, who also meet their Catholic practice obligations.
25. In order to apply Category B (1) where the child resides with both parents, the school will need to know whether each parent is or is not Catholic. Consequently, it is necessary for the school to seek this information on the SIF. The SIF goes beyond this requirement and asks “*to which religion and if applicable to which denomination*” father, mother and son belong. I do not find that this additional information is relevant to the application of Category B (which is the category engaged by the objection). However, I note that information regarding religion (including non-Catholic and non-Christian religions) is required for the application of Category D.
26. I do not find that the oversubscription criteria state that provided one parent is Catholic only that parent need be considered. The criteria clearly set out the circumstances in which the Catholicity of both parents will be relevant. I find that it is necessary for the SIF to require a statement as to whether each parent, where the child resides with two parents, is or is not Catholic. Consequently, I do not uphold the objection.

### **Other Matters**

27. **The application of the oversubscription criteria.** Paragraph 14 of the Code reads:

*In drawing up their admission arrangements, admission authorities **must** ensure that the practices and the criteria used to decide the allocation of school places are fair, clear and objective. Parents should be able to look at a set of arrangements and understand easily how places for that school will be allocated.*

Paragraph 1.8 of the Code reads (in part):

*“Oversubscription criteria must be reasonable, clear, objective,*

*procedurally fair, and comply with all relevant legislation, including equalities legislation”*

28. As stated above Category B is divided into sub-categories (1) to (5). The oversubscription criteria describe the application of the sub-categories within Category B as follows:

*“Within Category B each criterion is applied in the given order to determine which applications go forward for consideration against the next criterion. This means that those who meet criterion (1) are carried forward for assessment against (2), then those meeting both (1) and (2) are carried forward for assessment against (3) and so on.”*

29. This process culminates at (5) with those candidates who are attendees at the Oratory Primary School at the relevant time. At these stage boys who meet all of (1) to (5) are eligible for the offer of a place. However, the number of boys who will satisfy all of these criteria will be much smaller than the PAN of 160. The Oratory Primary School has only 30 children in each year group and as it is a mixed school, one would reasonably expect around 15 of them to be girls and so not eligible for a place at the school. Moreover, there is no reason why all the boys who attend the Oratory Primary School would satisfy criteria (1) to (4) inclusive. Even allowing for some looked after and previously looked after Catholic boys admitted under Category A and some boys with statements of special educational needs or education health and care plans naming the school, it seems highly unlikely the school will reach its PAN through the cumulative and sequential application of criteria (1) to (5). It is not clear from the published admission arrangements how the criteria are then applied for the remaining places.

30. However, in fact the school does not simply follow the process set out in the arrangements. In response to my query on this issue the school have provided additional information on the application of the sub-categories within Category B. By cross-referencing the partial clarification provided by the school with the information setting out the actual application for the 2017/2018 admissions process I was able, albeit with some difficulty, to understand the process applied to the 2017/2018 admissions. In essence this appears to involve moving up and down the sub-categories, applying the tie-break at relevant points. I will not seek to set out a description of the process in full here as that is a matter for the school. My jurisdiction is limited to the determined arrangements. As those arrangements are not, as I have outlined, capable of being applied to a group of applicants in order to rank them against the oversubscription criteria so as to reach the PAN they are not clear and do not conform with paragraphs 14 and 1.8. In addition, parents would not be able to look at the arrangements and *“understand easily how places for that school will be allocated”* as is also required by paragraph 14.

31. **The provision for both parents to sign the SIF.** In its comments on the objection the local authority raises an additional, but separate, issue with the wording of the SIF. They state that the use of the words “Parent(s)/Guardian” suggests that only one parent need sign the form. They do not feel it is necessary to include the option for both signatures on the form and consider that parents may feel that they will be disadvantaged if only one enters their signature. I note that Paragraph 2.4 of the Code provides that admission authorities “*must not ask, or use supplementary information forms that ask...for both parents to sign the form*”. For the reasons set out above I have found that it is necessary for the SIF to include information on Catholicity and Catholic practice from both parents in certain circumstances. In some circumstances both parents may have provided information which is included in the form. The SIF does not require the signatures of both parents but rather makes it possible for both to sign.

32. I note that the issue of the use of the words “parent” and “parent(s)” has been explored at some length in previous determinations and in judicial review proceedings. The published arrangements for 2018 contain on the first page the following statement:

***“ARRANGEMENTS FOR ALL ADMISSIONS***

*In these arrangements, “parent” means the parent of, or adult with legal responsibility for, the child (candidate) for whom a place at The London Oratory School is being sought. Where parent(s) is used it refers to one parent if the child resides with only one parent or to both if the child resides with both.”*

I find that the use of “parent” or “parent(s)” is clear from this definition. The SIF includes a space for two parents to sign the form, in between the two signature spaces are the words “and/or” which indicate that two signatures are not required.

33. Consequently, I find that the provision for signatures by one and/or both parents is lawful and does not contravene the Code.

34. **Category B(2) Candidates who received baptism up to six months after birth.** I have considered this criterion in light of the findings in determination ADA2852 set out in paragraphs 21 to 24 in which the Adjudicator concludes that the equivalent provision set out in the 2015 admission arrangements departs from the Diocesan guidance current at the time and that the admission authority had not shown a proper or legitimate reason for such departure. At least partially in light of this finding the school amended this provision to remove the element of scoring. However, the criterion in essence remained in the 2016 arrangements and has remained in the arrangements up to and including the determined arrangements for 2018 which are considered here.

35. The provision of the Code relevant to the findings in ADA2852 is paragraph 1.38, which reads:

*“1.38 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.”*

36. The starting point in considering paragraph 1.38 is to establish what guidance, if any, was current at the time that the arrangements were determined. The admission authority determined the 2018 arrangements on 27<sup>th</sup> February 2017. The “*Joint Guidance on Admissions for the Governing Bodies of Catholic Voluntary Aided Schools*” were produced in 2003 and revised in 2007 (the 2003/2007 Guidance). At the time of the previous determinations referred to above this guidance constituted the relevant guidance for the purposes of paragraph 1.38. In January 2016 the diocese, in its bulletin to schools, stated under the heading “*admissions*”:

*“Following discussions with the Catholic Education Service regarding the Certificate of Catholic Practice, this updated advice is being sent to all schools for the 2017-2018 admissions round.....The only measure of an applicant’s practice is the provision of the Certificate of Practice. All other references to practice must be removed from the admission arrangements...Re-word any ‘practising Catholic’ criterion to read ‘A Catholic child with a Certificate of Catholic Practice...Delete the definition of ‘practising Catholic’ from your admission arrangements...Insert the following definition: ‘Certificate of Catholic Practice means a certificate given by the family’s parish priest...in the form laid down by the Bishops’ Conference of England and Wales”*

This represented a different approach to that set out in the 2003/2007 Guidance. By August 2016 the Diocese had decided that the 2003/2007 Guidance was no longer fit for purpose and took it off its website at some point during that month.

37. The school’s Sub Committee for Strategic Planning and Admissions met on 28<sup>th</sup> September 2016 to consider the use of the Certificate of Catholic Practice (the CCP) as proposed by the Diocese. Mr J P Morrison, the Director of Education for the Diocese of Westminster, attended that meeting. The minutes of that meeting note that the CCP was subject to an objection to the OSA from Surrey County Council. Governors agreed not to adopt the CCP but rather to maintain the current arrangements for another year and agreed to advise the main Board accordingly.

38. On 2 November 2016 the OSA published determination ADA3117, dealing with the objection by Surrey County Council referred to above. The Adjudicator finds (paragraph 41) that the guidance from the diocese (that the CCP is to be used to establish Catholic practice) *“does not comply with statutory provisions of the Code, and so a school is relieved from the duty to have regard to that part of the advice...under paragraph 1.38 of the Code”*. I agree with this finding for the reasons given in ADA3117. In July 2017 the Diocese published new guidance *“Diocesan Guidance on Admission to Catholic Schools July 2017”*. However, this document only has effect from the date of publication.
39. It follows that on 27<sup>th</sup> February 2017, the date on which the school determined its arrangements for 2018, there was no guidance on the definition of “practising Catholic” which the school was obliged to have regard to. Given that, I have considered the criterion at Category B(2) in light of the more general provisions of the Code as set out below.
40. Paragraph 1.9 of the Code states that *“It is for admission authorities to formulate their admission arrangements...”* and paragraph 1.36 that: *“Schools designated by the Secretary of State as having a religious character may use faith-based oversubscription criteria and allocate places by reference to faith where the school is oversubscribed”*. Paragraph 5 of the Code states that *“It is the responsibility of admission authorities to ensure that admission arrangements are compliant with this Code”*. The arrangements must also comply with the provisions of paragraphs 14 and 1.8 of the Code which are set out above.
41. I find that B(2) is clear and objective. It is a matter of record when a child is born and the date of his baptism. Provision is specifically made for adoption with the date of adoption being taken as the date from which time runs.
42. Although the 2003/2007 guidance was withdrawn at the time the 2018 arrangements were determined, and therefore the school were not required to have regard to it, it is relevant to consider the principles set out in this context. The 2003/2007 guidance sets out baptism as the basic test of Catholicity. It goes on to allow for a higher test of practising Catholic in particular circumstances, that test being frequency of attendance at mass. B(2) sets an additional test of time of baptism. As is set out in the arrangements, Canon 867 requires that parents are obliged to see that their infants are baptised within the first few weeks.
43. The school have also drawn my attention to a letter to the OSA dated 27 May 2014 from the Diocesan Director of Education which states that *“The sixth month rule which the school uses is not unreasonable provided that there is the possibility of receiving exceptions for “good reasons”. This obligation is intended to emphasise the importance of baptism for eternal salvation”*. B(2) and the priest’s reference form,

which forms part of the arrangements for 2018, does provide for good reasons to be considered in this context.

44. The school have stated that the inclusion of criterion B(2) is preferable to “*increasing the number of candidates falling in a random allocation tie break*” and I note that the 2003/2007 guidance states that random allocation (the drawing of lots) is undesirable “*the allocation of places in schools should not be reduced to level of a game of chance*”.
45. In the absence of guidance on criteria relating to Catholic practice which complies with the provisions of the Code I find that B(2) is compliant with the provisions of the Code. It is clear and objective. It is reasonable in that it does not introduce the principle of a higher test of practising Catholic but rather extends that test further. The test is founded in Canon Law and provision is made for good reasons for it not being met to be considered. The school is very heavily oversubscribed. It will at least to some extent reduce the number of applications which fall to be decided by random allocation. I find that the school did consult with the diocese on how membership or practice of the faith is to be demonstrated, as required under paragraph 1.38 of the Code.
46. I wish to add here an important caveat. My findings relating to B(2) are within the context of my finding that at the relevant time there was no compliant guidance from the Diocese to which the school was bound to have regard by paragraph 1.38. As stated above, the diocese issued new guidance in July 2017. In determining its admission arrangements for 2019 and onwards the school **must** have regard to that guidance and may only depart from it for clear and proper reasons. Any consideration of a criterion such as B(2) in future years would turn on the facts at that time. Adjudicator determinations do not set precedents. Nonetheless, I think it is worth emphasising (given the change in circumstances brought about subsequent to the determination of these arrangements by guidance that will apply for 2019 arrangements) that nothing in this determination should be taken to indicate any view as to whether a criterion such as B(2) would, or would not, be compliant in future.
47. **Reference to residence orders.** The Code refers only to child arrangement orders (which have broadly replaced residence orders). Category A of the oversubscription criteria refers to “*residence/child arrangement orders*” whereas Category D (1) refers only to residence orders. I find that the wording of Category D (1) is unclear in this regard in contravention of paragraph 1.8 of the Code. The school have agreed to make the necessary amendment.
48. **Definition of “brother and sister” and of “sibling” in Category B (3) and B(4).** As well as the general provisions of paragraphs 14 and 1.8 set out above paragraph 1.11 of the Code states:

*“1.11 Admission authorities **must** state clearly in their arrangements what they mean by ‘sibling’ (e.g. whether this includes step siblings, foster siblings, adopted siblings and other children living permanently at the same address or siblings who are former pupils of the school). If an admission authority wishes to give some priority to siblings of former pupils, it **must** set out a clear and simple definition of such former pupils and how their siblings will be treated in the oversubscription criteria (bearing in mind the restrictions set out in paragraph 1.9 above).”*

49. I find that the wording of B(3) is unclear and not compliant with paragraph 1.11 of the Code. B(3) defines brother or sister “as “brother” or “sister” of the whole or half blood” but then goes on to include in the definition “any other candidate (including an adopted candidate)”. A candidate is the child for whom a place is sought at the school and the definition is of that child’s sibling. It does not make sense to include the candidate in a definition of the candidate’s siblings. In addition, it is unclear whether adopted siblings are included in the definition of brother or sister or not.

50. Category B (4) is more clear. The definition of sibling is a “*brother or sister of whole or half blood*”. However, given that the previous definition refers specifically to adopted children (albeit unclearly) the implication is that adopted siblings are not included in the definition in (4) although this is not made clear. I find that it is unclear in that the position of adopted children, whether candidates or siblings of candidates, is not clear and is not compliant with paragraph 1.11 of the Code.

## **Summary of Findings**

51. I do not uphold the objection. The school clearly sets out the circumstances in which information on one or both parents’ religion is required. The SIF provides for both parents to sign because for the application of some oversubscription criteria information on both parents is necessary. The school defines its use of the words parent and parent(s) clearly and reasonably and fairly provides for one or both parents to sign the form and does not require both parents to sign.

52. I find that the arrangements are not clear in relation to the allocation of places to Category B applicants and consequently do not comply with the Code.

53. I find that the criterion at Category B (2) (baptism within six months of birth) does comply with the Code when considered in light of the lack of diocesan guidance at the time these arrangements were determined.

54. I find the wording of Category D (1) is not clear in that it refers to residence orders and consequently contravenes the Code.

55. The definitions of siblings in Category B (3) and B (4) are not clear and do not comply with the Code.

### **Determination**

56. In accordance with section 88H (4) of the School Standards and Framework Act 1998, I do not uphold the objection to the admission arrangements determined by The London Oratory School.

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

58. 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: 23 August 2017

Signed:

Schools Adjudicator: Tom Brooke